



CITY OF HOUSTON INVITATION TO BID (ITB)

Issued: September 2, 2016

Bid Opening

Sealed bids, in duplicate, will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002 until **10:30 a.m. Thursday, September 29, 2016** and all bids will be opened and publicly read in the City Council Chamber at 11:00 A.M. on that date for the purchase of:

**340B DRUG PRICING PROGRAM FOR FAMILY PLANNING CONTRACEPTIVES, VACCINES,
AND OVER-THE-COUNTER MEDICATIONS
FOR THE
HOUSTON HEALTH DEPARTMENT
BID INVITATION NO. S21-S25882
NIGP CODE: 269-68**

Buyer

Laura A. Guthrie is the Buyer for this solicitation and she may be reached at 832-393-8735. Any questions regarding this solicitation should be submitted in writing to 832-393-8760 (fax) or via e-mail at lauraa.guthrie@houstontx.gov.

Electronic Bidding

In order to submit a bid for the items associated with this procurement, you must fill in the pricing information on the "PLACE BID" page.

Pre-Bid

A Pre-Bid Conference will be held for all Prospective Bidders in the Strategic Procurement Division, Basement, City Hall, 901 Bagby, Houston, Texas 77002 at 11:00 am on Tuesday, September 13, 2016 in Conference Room No. 2.

All Prospective Bidders are urged to be present. It is the bidder's responsibility to ensure that they have secured and thoroughly reviewed all aspects of the bidding documents prior to the Pre-Bid Conference. **Any revisions to be incorporated into this bidding document arising from discussions before, during and subsequent to the pre-bid conference will be confirmed in writing by Letter(s) of Clarification prior to the bid due date. No verbal responses will otherwise alter the specifications, terms and conditions as stated herein.**

Bidding forms, specifications and all necessary information should be downloaded from the Internet at <http://purchasing.houstontx.gov>. By registering and downloading this bid document, all updates to this bid document will be automatically forwarded via e-mail to any registered bidder. This information may also be obtained from the office of the Chief Procurement Officer, 901 Bagby, Basement, Houston, Texas 77002.

The place of the bid opening may be transferred in accordance with Paragraph B (5) of Section 15-3 of The Code of Ordinances, Houston, Texas. The bid opening meeting may be rescheduled in accordance with Paragraph B (6) of said Section 15-3.

The City reserves the right to reject any or all bids or to accept any bid or combination of bids deemed advantageous to it.

CITY EMPLOYEES ARE PROHIBITED FROM BIDDING ON THIS SOLICITATION IN ACCORDANCE WITH THE CODE OF ORDINANCES SECTION 15 - 1.

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SECTION A.
OFFICIAL BID FORM



**340B DRUG PRICING PROGRAM FOR FAMILY PLANNING CONTRACEPTIVES, VACCINES,
AND OVER-THE-COUNTER MEDICATIONS
FOR THE
HOUSTON HEALTH DEPARTMENT
BID INVITATION NO. S21-S25882
NIGP CODE: 269-68**

Honorable Mayor and City Council Members:

The undersigned hereby proposes to furnish and deliver 340B drug pricing program for family planning contraceptives, vaccine, and over-the-counter medications, **FOB destination point as listed on the electronic bid form and on the individual Purchase Orders**, in accordance with the Net Prices and other conditions shown herein, and in accordance with the City's Specifications and General Terms and Condition Specifications. When issued, Letters of Clarification shall automatically become part of this bid document and shall supersede any previous specifications or provisions in conflict with the Letters of Clarification. It is the responsibility of the bidder to ensure that it has obtained such letters. By submitting a bid on this project, bidder shall be deemed to have received all Letters of Clarification and to have incorporated them into its bid. THE MANUFACTURER'S NAME, PRODUCT NAME AND PRODUCT NUMBER MUST BE DESIGNATED IN THE SPACE PROVIDED IF BIDDERS ARE BIDDING AN "OR EQUAL" ITEM.

The City may accept this bid offer by issuance of a Notice of Award Letter and/or a Purchase Order covering award of said bid to this Bidder at any time on or before the 120th day following the day this Official Bid Form is opened by the City. This offer shall be irrevocable for 120 days after the bid opening or for 90 days after City Council awards the bid, whichever comes last, but this period may be extended by written agreement of the parties.

The City of Houston reserves the option, after bids are opened, to increase or decrease the quantities listed, subject to the availability of funds, and/or make award by line item.

BIDDING AND AWARD:

It is the intent of the City to award, on the basis of overall low net bid meeting specifications for the entire award; however, the right is reserved to accept or reject in whole or in part any or all bids received and to make an award on the basis of individual item, combination of items or overall best bid, as it is deemed in the best interest of the City.

THIS IS A THIRTY-SIX (36) MONTH AWARD WITH TWO (2) ONE (1) YEAR OPTIONS TO EXTEND

SPECIAL BIDDERS NOTE:

These bid documents are to be bid exactly as published or amended by any letter(s) of clarification that may be issued pertaining thereto.

LINE ITEM BIDS:

Only one item may be bid for each referenced line item. To bid the referenced line item and an alternate, bidder must submit a separate bid form for each alternate item(s) with its own original signature page. Multiple bids for the same line item on one bid form will be just cause to reject a bid from further consideration.

SECTION A. OFFICIAL BID FORM FOR 340B DRUG PRICING PROGRAM FOR FAMILY PLANNING CONTRACEPTIVES, VACCINES AND OVER-THE-COUNTER MEDICATIONS FOR HOUSTON HEALTH DEPARTMENT, CONTINUED:

PROTESTS

- Filing a Protest
 - An interested party may file a protest on the basis that the City has failed to comply with applicable federal or state law or with City ordinances. The subject of the protest shall be limited to fraud, corruption, or illegal acts undermining the objectivity and integrity of the procurement process. A protest must be filed in accordance with the timing requirements set forth herein and must include:
 - The name, address, telephone number, and email address of the protestor.
 - The number of the solicitation.
 - Information confirming that the protestor is an interested party.
 - A written statement of the grounds for the protest and the law or ordinance alleged to have been violated. The statement shall be accompanied by relevant supporting documentation and the relief requested.
 - The signature of the protestor.
 - Protests shall be submitted to: Chief Procurement Officer, City of Houston, 901 Bagby B300, Houston, TX 77002.
- The City recognizes three types of protests:
 - Protests regarding solicitation (Pre-Submission Protest)
 - Any Pre-Submission Protest regarding a solicitation published by the City shall be filed no later than five days before the opening of bids (if a competitive bid) or due date for submittals or proposals (if an RFP/RFQ), as applicable.
 - Protests regarding the evaluation or rejection of bids, qualifications, or proposals (Pre-Award Protest)
 - Any Pre-Award Protest regarding the evaluation of bids, qualifications, or proposals by the City must be filed no later than five business days prior to the City Council meeting at which the award appears on the agenda.
 - Protests made after City Council's decision to award a contract (Post-Award Protest)
 - Any protest regarding the award of a contract must be submitted no later than five calendar days after the date of the award.
 - Any protest received after the applicable deadline will not be considered.

NO CONTACT PERIOD:

Neither bidder(s) nor any person acting on bidder(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or employee of the City of Houston, their families or staff members. All inquiries regarding the solicitation are to be directed to the designated City Representative identified on the first page of the solicitation. Upon issuance of the solicitation through the pre-award phase and up to the date the City Secretary publicly posts notice of any City Council agenda containing the applicable award, aside from bidder's formal response to the solicitation, through the pre-award phase, written requests for clarification during the period officially designated for such purpose by the City Representative, neither bidder(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City of Houston, their families or staff through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any bidder. However, nothing in this paragraph shall prevent a bidder from making public statements to the City Council convened for a regularly scheduled session after the official selection has been made and placed on the City Council agenda for action, or to a City Council committee convened to discuss a recommendation regarding the solicitation.

SECTION A. OFFICIAL BID FORM FOR 340B DRUG PRICING PROGRAM FOR FAMILY PLANNING CONTRACEPTIVES, VACCINES AND OVER-THE-COUNTER MEDICATIONS FOR HOUSTON HEALTH DEPARTMENT, CONTINUED:

HIRE HOUSTON FIRST:

THIS PROCUREMENT IS SUBJECT TO THE HIRE HOUSTON FIRST PROGRAM, WHICH GIVES A PREFERENCE TO CERTAIN LOCAL BIDDERS IN AWARD OF THE PROCUREMENT. FOR MORE INFORMATION, GO TO:

<http://www.houstontx.gov/onestop/hirehoustonfirstaffidavit.pdf>

Designation as a City Business or Local Business

To be designated as a City or Local Business for the purposes of the Hire Houston First Program, as set out in Article XI of Chapter 15 of the Houston City Code, a bidder or proposer must submit the **Hire Houston First Application and Affidavit ("HHF Affidavit")** to the Director of the Office of Business Opportunity and receive notice that the submission has been approved prior to award of a contract. Bidders are encouraged to secure a designation prior to submission of a bid or proposal if at all possible.

Download the HHF Affidavit from the Office of Business Opportunities Webpage at the City of Houston e-Government Website at the following location:

<http://www.houstontx.gov/hbsc/hirehoustonfirstaffidavit.pdf>

Submit the completed application forms to: Office of Business Opportunity, Houston Business Solutions Center (HBSC), 611 Walker, Level, Houston, TX 77002 or Applications may be submitted via e-mail to HoustonBSC@houstontx.gov or faxed to 832.393.0952.

Award of a Procurement of \$100,000 or More for Purchase of Goods:

THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN **3%** OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER.

Award of Procurement under \$100,000 for Purchase of Goods:

THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN **5%** OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

SECTION A. OFFICIAL BID FORM FOR 340B DRUG PRICING PROGRAM FOR FAMILY PLANNING CONTRACEPTIVES, VACCINES AND OVER-THE-COUNTER MEDICATIONS FOR HOUSTON HEALTH DEPARTMENT, CONTINUED:

Award of Procurement that may be More or Less than \$100,000 for Purchase of Goods:

HIRE HOUSTON FIRST (CONTINUED):

THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- IF THE BID OF THE CITY BUSINESS IS LESS THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN **5%** OF THE LOWEST BID RECEIVED, OR
- IF THE BID OF THE CITY BUSINESS IS MORE THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN **3%** OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER.

Documents/forms must be downloaded from the City's Website <http://houstontx.gov/purchasing/index.html>

Additional Required Forms to be Included with this Bid:

In addition to the electronic Bid Form and the Official Signature Page, the Forms listed in Table 1 **must be completed and submitted to the Office of the City Secretary on or before the date and time the bid is due:**

Table 1
Affidavit of Ownership
Fair Campaign Ordinance
Conflict of Interest Questionnaire
Bidders Attachments Supply
Location of Bidders Inventory
Early Payment Discount
Equal Level Supplier Survey

Table 2 lists other documents and forms that should be viewed/downloaded from the City's website, but are not required to be submitted with the bid. The City will request these forms, as applicable, to be completed and submitted to the City by the recommended/successful bidder:

Table 2
Drug Forms
Certificate of Insurance
Formal Instructions for Bid Terms
EEOC
Criminal Justice Information Services Addendum (CJIS)

SECTION B.

CITY OF HOUSTON TECHNICAL SPECIFICATIONS FOR 340B DRUG PRICING PROGRAM FOR FAMILY PLANNING CONTRACEPTIVES, VACCINES AND OVER-THE-COUNTER MEDICATIONS FOR THE HOUSTON HEALTH DEPARTMENT

1.0 340B PROGRAM OVERVIEW & PRIME VENDOR PROGRAM

- 1.1 The Houston Health Department (HHD) has been federally qualified as a 'covered entity' and as an eligible participant will use this status to purchase family planning contraceptives, vaccines, and over-the-counter medications for its patients at a maximum discounted price through the 340B Prime Vendor Program (340B PVP). HHD operates out of one (1) pharmacy, four (4) clinic sites, and one (1) immunization site.
- 1.2 Suppliers/distributors shall be partnered with the 340B Prime Vendor Program (PVP). Suppliers/distributors shall have a developed distribution system that ensures covered entities equal access to a variety of 340B drugs.
- 1.3 Supplier/distributors shall be named as an Authorized Distributor of Record (ADR) by the manufacturer and shall provide such record. Supplier shall be named as a Verified-Accredited Wholesale Distributor (VAWD) by the National Association of Board of Pharmacy (NABP) and be an active VAWD accredited facility for supplies.

2.0 EXPECTATIONS FOR EQUIPMENT/PRODUCTS

Industry Standards: As they are generally understood and accepted within that industry across the nation, Suppliers will be deemed to be intimately familiar with the industry standards for items referenced, with this knowledge Suppliers are instructed to bid appropriately and properly identify the accepted industry standard. **Suppliers are requested to consider the validity of inverse packaging or unit of measures populated at the e-bid document and unit price offered should be defined in accordance to the industry standard.**

3.0 OUT OF STOCK/DISCONTINUED/RECALL NOTIFICATION

Supplier shall immediately notify the Buyer via email upon receipt of orders when an out-of-stock, discontinued or recall items occur. Supplier shall inform the Buyer of the anticipated date of availability for the out-of-stock, discontinued or recall items, and may suggest equivalent substitutes. The ordering Department(s) shall have the option of accepting the equivalent or canceling the item from the order. Under no circumstances is the Supplier permitted to make unauthorized substitutions.

4.0 340B PVP CHARGEBACK/REIMBURSEMENTS

A chargeback is the method wholesalers use to request reimbursement from manufacturers for 340B discounts provided to entities for 340B covered outpatient drugs. Wholesalers purchase drugs from the manufacturer at wholesale acquisition cost (WAC), but sell to 340B entities at the contracted 340B price, which is much less. The wholesaler submits a chargeback request to the manufacturer to account for the difference.

5.0 REPORTS

- 5.1 Supplier shall be able to provide various reports electronically when requested by the City. The reports shall be in a Microsoft Excel format and submitted electronically to the Strategic Procurement Division and or each participating Department within 30 calendar days of the end of each quarter. The end of the quarter is defined as every fourth month of the calendar year. Supplier shall submit one of the various reports independently or in combination three times per calendar year until the end of the term.
- 5.1.1 **Itemized Report** for all items purchased by each participating Department for the previous quarter. The report shall include **item descriptions, item numbers, unit of measure, quantity purchased and total cost for purchase orders and procurement card transactions.**
- 5.1.2 **Department Report** shall include department name, account number, date of last purchase, and total dollars purchased for the previous quarter.
- 5.1.3 **Fill Rate Report** by participating Department, shall include the number of orders received, orders processed, back orders, partially filled orders and re-orders. In addition, the Supplier shall provide a list of products on manufacturer back order during the quarter. The name of the manufacturer shall be listed with each product.
- 5.1.4 **Manufacturer Back Order/Discontinued/Recall Report** shall be by manufacturer by ordering Department.

6.0 QUICK SHIP PROGRAM

Supplier shall provide a quick ship program which supports one day (next day) delivery. In order to facilitate the quick ship program, ordering department(s) shall accurately communicate the supplies and order quantities that they will normally order to support their operations. The Supplier will proactively anticipate the requirements of the ordering department to have sufficient inventory of normally ordered products in stock or on hand in the Supplier's warehouse. One day (next day) delivery is applicable between the hours of 7:00 am - 3:00 pm Monday through Friday, with the exception of City holidays. Scheduled City holidays will be provided to the awarded Supplier.

7.0 EXPIRATION OF MEDICATIONS

The expiration of medications delivered to the City's authorized participating Departments is expected to meet the good manufacturing practices as determined by the Food and Drug Administration (FDA), under the Code of Federal Regulations, Title 21 Section 211.137. Under no circumstances is the Supplier authorized to deliver product with less than one (1) year of expiration for any storage or reconstitution of drug products and is required to obtain written/verbal approval from the medical directors for the ordering Department.

8.0 PRICING

- 8.1 The 340B Prime Vendor Program (PVP) is managed by Apexus through a contract awarded by Health Resources and Services Administration (HRSA), the federal government branch responsible for administering the 340B Drug Pricing Program. The 340B PVP managed by Apexus publishes the Title X Women's Health Suggested Drug List and PVP Vaccine Price List each quarter for the calendar year and pricing shall be adjusted accordingly. The City acknowledges that all pricing contained in these reports are base prices and may not include the wholesalers distribution fee, if applicable; therefore pricing at the e-bid document **must** factor your distribution fee into the price of the product in order to obtain a final delivered cost. The distribution fee, if applicable, must be referenced on the e-bid document for each of the line items. The City shall apply update pricing on the first calendar day of the published quarterly for the lists referenced aforementioned.
- 8.2 Public Health Service (PHS) pricing is adjusted quarterly as mandated by PHS legislation. PHS prices may increase or decrease on a quarterly basis. The notification published each quarter at the 340B PVP secured website will provide the City with updated quarterly prices for family planning contraceptives, vaccines and over-the-counter medications under the 340B Program. Supplier agrees to furnish the City a copy of said report in order that these prices are adjusted accordingly.

TECHNICAL SPECIFICATIONS FOR 340B DRUG PROGRAM PRICING FOR FAMILY PLANNING CONTRACEPTIVES, VACCINES, AND OVER-THE-COUNTER MEDICATIONS FOR HOUSTON HEALTH DEPARTMENT, CONTINUED:

9.0 HDHHS SITES

The Department locations and hours of operation are as follows:

<u>Location</u>	<u>Hours of Operation & Days of Operation</u>
3301 Commerce Pharmacy	8:00 AM - 5:00 PM Monday - Friday
8000 N. Stadium Dr. Immunizations Bureau	8:00 AM - 5:00 PM Monday - Friday
4605 Wilmington Sunnyside Health Clinic	9:00 AM - 6:00 PM Monday 8:00 AM - 5:00 PM Tuesday- Friday
1809 N. Main La Nueva Casa Health Clinic	9:00 AM - 6:00 PM Monday 8:00 AM - 5:00 PM Tuesday- Friday
8504 Schueller Northside Health Clinic	9:00 AM - 6:00 PM Monday 8:00 AM - 5:00 PM Tuesday- Friday
6201 Bonhomme Sharpstown Health Clinic	7:30 AM - 12:00 PM Wednesday 7:30 AM - 4:30 PM Monday, Tuesday, Thursday and Friday

10.0 340B IDENTIFICATIONS

10.1	FP77093	Northside Health Center
10.2	FP77009	La Nueva Casa
10.3	FP77051	Sunnyside Health Center
10.4	FP77036	Sharpstown Health Center

BIDDER'S QUESTIONNAIRE

In order to receive bid award consideration, the bidder must be able to demonstrate that they are currently providing or have had at least one contract, as a prime supplier, for delivering 340B drug pricing program for family planning contraceptives, vaccines, and over-the-counter medications that is similar in size and scope to this solicitation. The reference(s) should be included in the space provided below. Please attach another piece of paper if necessary. If references are not included with the bid, the bidder shall be required to provide such references to the City of Houston within five working days from receipt of a written request from the City of Houston to do so. **Bidder's capability and experience shall be a factor in determining the supplier's responsibility. Bidder must have references documenting that it has delivered 340B drug pricing program for family planning contraceptives, vaccines, and over-the-counter medications.**

1. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Services: _____

2. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Services: _____

3. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Services: _____

SECTION C
CITY OF HOUSTON
GENERAL TERMS AND CONDITIONS
FOR
340B DRUG PRICING PROGRAM FOR FAMILY PLANNING CONTRACEPTIVES, VACCINES,
AND OVER-THE-COUNTER MEDICATIONS
FOR THE
HOUSTON HEALTH DEPARTMENT

1.0 TERM OF AWARD:

- 1.1 The term of the award shall be for a thirty-six (36) month period beginning on the date specified in the Notice of Award letter. During this period, purchase orders will be issued for items as needed. Any conflict between the terms and conditions as specified herein and said purchase orders; the term and conditions of this award shall govern. The supplier will not perform against the award without first having received an official City of Houston purchase order. While it is the intent to procure goods/services by issuing an Official City of Houston Purchase Order, there will be instances when a Purchasing Card (P-Card) or Petty Cash may be used. **The City requires that the prices awarded be honored on all purchases.**
- 1.2 It is emphasized that the City of Houston does not guarantee to purchase any specific quantity of any item listed; rather, the quantities may vary depending upon the actual needs of the user departments. Supplier shall remain obligated to the City under all clauses of this award that expressly or by their nature extend beyond and survive the expiration or termination of the award, including but not limited to warranties and indemnity provisions hereof.
- 1.3 "Upon written notice to the Supplier from the Chief Procurement Officer or his designee, the term of this award shall be extended on the same terms and conditions on a month-to-month basis until (1) approval of a new award or (2) spending authority has been reached, whichever occurs first."

2.0 OPTIONAL EXTENSION:

This award may be extended for two additional one (1) year periods upon acceptance of the Supplier and thirty (30) days prior written notice from the Chief Procurement Officer. A price increase subject to the provisions of this award may be requested by the Supplier for approval by the Chief Procurement Officer at this time. If the price increase is approved by the Chief Procurement Officer or if no price increase is requested, a letter of extension will be issued by the Chief Procurement Officer for the Supplier's acceptance under the same terms and conditions as the existing award.

3.0 SUPPLIER'S DUTY TO PAY:

Supplier shall make timely payments to all persons and entities supplying labor, materials or equipment for the performance of this award. Supplier agrees to protect, defend, and indemnify the City from any claims or liability arising out of Supplier's failure to make such payments. (Disputes relating to payment of MWBE subcontractors shall be submitted to arbitration in the same manner as any other disputes under the MWBE subcontract. Failure of the Supplier to comply with the decisions of the arbitrator may, at the sole discretion of the City, to be deemed a material breach leading to termination of this award).

4.0 INTER-LOCAL AGREEMENTS

Under the same terms and conditions hereunder, the award may be expanded to other government entities through inter-local agreements between the City of Houston and the respective government entity that encompass all or part of the products provided under this award. Separate agreements will be drawn to reflect the needs of each participating entity.

GENERAL TERMS AND CONDITIONS FOR 340B DRUG PROGRAM PRICING FOR FAMILY PLANNING CONTRACEPTIVES, VACCINES, AND OVER-THE-COUNTER MEDICATIONS FOR HOUSTON HEALTH DEPARTMENT, CONTINUED:

5.0 INVOICING:

- 5.1 In order to expedite payment all invoices must be submitted in triplicate, itemized as to quantity, part number, description, and applicable discount (if any) in the same order and form as in the City of Houston Purchase Order. Variations will only delay payment. In addition, invoices must show the name of the Department, Division or Section to which the merchandise was delivered, and the City of Houston Purchase Order Number.
- 5.2 All delivery tickets must have a description of the commodity delivered.
- 5.3 Mail invoices to the Accounts Payable Section of the department and to the address, as noted on individual purchase orders.
- 5.4 Delivery tickets and packing slips shall contain the same information as the invoice.
- 5.5 All packing slips and delivery tickets must be signed by the receiving employee and must show his/her City employee number.

6.0 PAYMENT:

Payment is due thirty (30) days after the City has approved the invoice or after the City has accepted the goods, whichever occurs later.

7.0 SAFETY DATA SHEETS (SDS):

- 7.1 All Bidders should submit with their bid, two (2) complete, most current copies of the required Safety Data Sheet (OSHA Form 174), manufacturer's safety data sheet, or such other sheet that contains the same information as the OSHA Form 174 for each product bid. Should these forms be omitted from the bid, Bidder promises to deliver said forms within ten (10) working days of receipt of notice from the City. Failure to comply with this notice will be just cause for rejection of the bid from further consideration.
- 7.2 Each sheet submitted should be identified by the Bidder's complete company name; formal bid number and bid form item number."
- 7.3 A Safety Data Sheet must accompany each shipment. If a Safety Data Sheet does not accompany each shipment, the City has the right to reject each shipment.

8.0 CONTAMINATED MATERIALS:

Each Supplier shall be required to identify their source of supply. No material will be accepted from a hazardous or toxic waste site, regardless of whether the site has been identified by either a Local, State or Federal Agency. No contaminated, toxic, hazardous waste products or heavy metal product shall be contained in these deliveries. If any material, supplied to the City is found to be contaminated or contain heavy metal products, it will be the responsibility of the Supplier to remove and replace the contaminated product at their expense and at no cost to the City. The City has the option to solicit the removal of any contaminated material and charge back the Supplier any and all costs involved.

9.0 INSPECTIONS AND AUDITS:

- 9.1 The City reserves all rights to review all payments made to Suppliers by auditing at a later date. Subject to such audit, any overpayments may be recovered from the Supplier.
- 9.2 Representatives of the City have the right to examine the books of all subcontractors and/or suppliers supplying goods and/or services under the prime award insofar as those books and records relate to performance under the prime award.
- 9.3 City representatives may have the right to perform, or have performed, (1) audits of Supplier's books and records, and (2) inspections of all places where work is undertaken in connection with this award. Supplier shall keep its books and records available for this purpose for at least three years after this award terminates. This provision does not affect the applicable statute of limitations.

GENERAL TERMS AND CONDITIONS FOR 340B DRUG PROGRAM PRICING FOR FAMILY PLANNING CONTRACEPTIVES, VACCINES, AND OVER-THE-COUNTER MEDICATIONS FOR HOUSTON HEALTH DEPARTMENT, CONTINUED:

10.0 SILENCE OF SPECIFICATIONS:

The apparent silence of these specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of these specifications shall be made on the basis of this statement. The Bidder shall be an established Supplier of the items bid.

11.0 SPECIFIED EQUIPMENT, OR EQUIVALENT:

11.1 Wherever in the specifications any materials or processes are indicated or specified by patent of proprietary name and/or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating descriptions of the performance, materials and/or processes desired and shall be deemed to be followed by the words, "or equivalent", if not so stated in the specifications herein.

11.2 The burden of proof shall rest with the Bidder, in the course of a technical evaluation, to prove that the proposed item(s) are equivalent to the performance, materials, processes, or articles specified. **DETERMINATION AS TO WHETHER THE ITEM(S) BID IS/ARE EQUIVALENT TO THOSE SPECIFIED SHALL REST SOLELY WITH THE CHIEF PROCUREMENT OFFICER AND THE RECEIVING DEPARTMENT.**

12.0 DELIVERIES:

12.1 The Supplier agrees to make deliveries only upon receipt of duly signed and approved Purchase Orders issued by the City of Houston Chief Procurement Officer or designee. Delivery made without such Purchase Order shall be at Supplier's risk and shall leave the City the option of canceling any award implied or expressed herein.

12.2 Unless otherwise stated in the Bid Form or Specifications, deliveries must consist only of new and unused merchandise.

12.3 Full tare must be allowed and no charges made for packages.

12.4 In the event that the deliveries of the supplies covered in the solicitation are not made within the number of days specified, or in the event that the supplies delivered are rejected, and are not removed and replaced within the number of days specified in the official notice of rejection, the City reserves the right to terminate. The defaulting Supplier will be deemed non-responsible and will be disqualified from bidding on the solicitation if it is re-let by the City within ninety (90) days of such termination.

13.0 SHIPPING TERMS:

Prices shall be F.O.B. Destination to the delivery location designated herein or on a purchase order. The Supplier shall retain title and control of all goods until they are delivered and the award of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Supplier. The Supplier shall file all claims for visible or concealed damage. The City will notify the Supplier promptly of any damaged goods and shall assist the Supplier in arranging for inspection.

14.0 MATERIALS:

The items furnished shall be the latest product in production to commercial trade, and shall be of the highest quality as to materials used. The Supplier furnishing these items shall be experienced in the production of such items and shall furnish evidence of having supplied similar items, which have been in successful operation. The Bidder shall be an established Supplier of the items bid.

15.0 RESTOCKING (EXCHANGES AND RETURNS):

There will be no restocking charge to the City for return or exchange of any item purchased under the terms of this award. If the City wishes to return items purchased under this award, the Supplier agrees to exchange, these items for other items, with no additional charge incurred. Items must be returned to Supplier within thirty (30) days from date of delivery. If there is a difference in price in the items exchanged, the Supplier shall invoice the City for increase price or provide the City with a credit or cash refund for any decrease in price. On items returned, a credit or cash refund will be issued by the Supplier to the City. This return and exchange option shall extend for thirty (30) days following the expiration date of the award. All items returned by the City must be unused and in the same merchantable condition as when received. **Items that are special ordered and/or stocked by the Supplier at the specific request of the City may be returned only upon approval of the Supplier.**

16.0 ADDITIONS & DELETIONS:

The City, by written notice from the Chief Procurement Officer to the Supplier, at any time during the term of this award, may add or delete like or similar equipment, supplies, locations and/or services to the list of equipment, supplies, locations, and/or services to be provided. Any such written notice shall take effect on the date stated in the notice from the City. Similar equipment, supplies, services, or locations added to the award shall be in accordance with the solicitation specification/scope of services, and the charges or rates for items added shall be the same as specified on the bid form. In the event additional equipment, supplies, locations and/or services are not identical to the item(s) already awarded, the charges therefore will then be the Supplier's normal and customary charges or rates for the equipment, supplies, locations and/or services classified on the bid form.

17.0 FORCE MAJEURE

17.1 Timely performance by both parties is essential to the award. However, neither party is liable for delays or other failures to perform its obligations to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.

17.2 This relief is not applicable unless the affected party does the following:

17.2.1 uses due diligence to remove the Force Majeure as quickly as possible; and

17.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.

17.3 The City may perform or solicit functions itself during periods of Force Majeure. Such performance does not constitute a default or breach of this award by the City.

17.4 If the Force Majeure continues for more than 30 days, the Chief Procurement Officer or Director upon written authorization by the Chief Procurement Officer may terminate this award by giving 30 days' written notice to Supplier. This termination is not a default or breach. **SUPPLIER WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE AT THE TIME OF THE TERMINATION.**

18.0 SAMPLES:

18.1 If requested by the City, the two (2) apparent low Bidders will be required to submit samples of the items proposed within seven (7) days of such request. The samples will be used to determine if the proposed items meet the specifications stated herein.

18.2 **If the Bidder fails to provide samples within the seven (7) day period, as required, the City may reject your bid and not consider it for further evaluation.**

18.3 These samples, if not subject to destructive testing, will be returned to the supplying Supplier. A notice will be mailed to the Supplier when samples are ready to be released by the City. Supplier will have fourteen (14) days to redeem the samples. If samples are not redeemed within this time period the City cannot be responsible for condition or loss of the subject items.

GENERAL TERMS AND CONDITIONS FOR 340B DRUG PROGRAM PRICING FOR FAMILY PLANNING CONTRACEPTIVES, VACCINES, AND OVER-THE-COUNTER MEDICATIONS FOR HOUSTON HEALTH DEPARTMENT, CONTINUED:

19.0 WARRANTY:

A minimum warranty of twelve (12) months from Supplier and the manufacturer's warranty will be furnished on materials and workmanship shall be provided. The warranty period shall begin the day the City officially accepts the item. Any warranty work is to be completed within five (5) working days after receipt of item.

20.0 RELEASE:

PRIME SUPPLIER AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

21.0 INDEMNIFICATION:

21.1 PRIME SUPPLIER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (1) PRIME SUPPLIER'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "PRIME SUPPLIER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (2) THE CITY'S AND PRIME SUPPLIER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER PRIME SUPPLIER IS IMMUNE FROM LIABILITY OR NOT; AND
- (3) THE CITY'S AND PRIME SUPPLIER'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER PRIME SUPPLIER IS IMMUNE FROM LIABILITY OR NOT.

21.2 PRIME SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. PRIME SUPPLIER'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. PRIME SUPPLIER SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

21.3 INDEMNIFICATION PROCEDURES:

- (1) **Notice of Claims.** If the City or Prime Supplier receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:
 - (a) a description of the indemnification event in reasonable detail,
 - (b) the basis on which indemnification may be due, and
 - (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Prime Supplier is prejudiced, suffers loss, or incurs expense because of the delay.

GENERAL TERMS AND CONDITIONS FOR 340B DRUG PROGRAM PRICING FOR FAMILY PLANNING CONTRACEPTIVES, VACCINES, AND OVER-THE-COUNTER MEDICATIONS FOR HOUSTON HEALTH DEPARTMENT, CONTINUED:

21.0 INDEMNIFICATION (CONTINUED):

21.3 INDEMNIFICATION PROCEDURES (CONTINUED):

(2) Defense of Claims

- (a) Assumption of Defense. Prime Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Prime Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Prime Supplier must advise the City as to whether or not it will defend the claim. If Prime Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.
- (b) Continued Participation. If Prime Supplier elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Prime Supplier may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Supplier does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

22.0 WORKER'S COMPENSATION INSURANCE:

On any City award with a labor component or any award where Supplier delivery people make deliveries for City sites, Worker's Compensation Insurance as shown in the Insurance Section is required.

23.0 INSURANCE:

- 23.1 If performance of this award requires Supplier to provide labor in addition to supplies, labor and materials, the Supplier shall have and maintain in effect insurance coverage and furnish certificates of insurance showing the City as an additional insured, in duplicate form, prior to the beginning of the award. The City shall be named as an additional insured on all such policies except Worker's Compensation. **The issuer of any policy shall have a Certificate of Authority to transact insurance business in the State of Texas or have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide, Property-Casualty United States.** Comprehensive General Liability including Contractual Liability and Automobile Liability insurance shall be in at least the following amounts: Automobile Liability Insurance for autos furnished or used in the course of performance of this award including Owned, Non-owned, and Hired Auto coverage (Any Auto coverage may be substituted for Owned, Non-owned and Hired Auto coverage.) If no autos are owned by Supplier, coverage may be limited to Non-owned and Hired Autos. If Owned Auto coverage cannot be purchased by Supplier, Scheduled Auto coverage may be substituted for Owned Auto coverage. EACH AUTO USED IN PERFORMANCE OF THIS AWARD MUST BE COVERED IN THE LIMITS SPECIFIED - \$1,000,000.00 Combined Single Limit.
- 23.2 Worker's Compensation including Broad Form All States endorsement shall be in statutory amount.
- 23.3 All insurance policies required by this award shall require by endorsement that the insurance carrier waive any rights of subrogation against the City, and that it shall give thirty (30) days written notice to the City before they may be cancelled. Within such thirty (30) day period Supplier, covenants that it will provide other suitable policies in lieu of those about to be cancelled so as to maintain in effect the coverage required under the provisions hereof. Failure or refusal of the Supplier to obtain and keep in force the above-required insurance coverage shall authorize the City, at its option, to terminate this award at once.
- 23.4 ONLY UNALTERED ORIGINAL INSURANCE CERTIFICATES, EXCLUDING ANY ALTERATION AND INITIALS REGARDING CANCELLATION WHICH IS MADE TO MEET CITY REQUIREMENTS, AS ENDORSED BY THE UNDERWRITER ARE ACCEPTABLE. PHOTOCOPIES ARE UNACCEPTABLE.

GENERAL TERMS AND CONDITIONS FOR 340B DRUG PROGRAM PRICING FOR FAMILY PLANNING CONTRACEPTIVES, VACCINES, AND OVER-THE-COUNTER MEDICATIONS FOR HOUSTON HEALTH DEPARTMENT, CONTINUED:

23.0 INSURANCE (CONTINUED):

23.5 All certificates of insurance submitted by Contractor shall be accompanied by endorsements for additional insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability policies. For a list of pre-approved endorsement, forms see http://purchasing.houstontx.gov/forms/Sample_Insurance_Endorsements.pdf. The Director will consider all other forms on a case-by-case basis.

24.0 SUCCESSORS AND ASSIGNMENTS:

Supplier may not assign this award or dispose of substantially all of its assets without the written consent of the Chief Procurement Officer. Supplier's failure to obtain such consent shall be an event of default, authorizing the Purchasing Agent to terminate this award according to its terms.

25.0 MINORITY AND WOMEN BUSINESS ENTERPRISES:

Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 0% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO") and will comply with them.

26.0 TAXES:

The City is exempt from the Federal Excise and Transportation Tax, and the limited Sales and Use Tax. Unless the Bid Form or Specifications specifically indicate otherwise, the price bid must be net exclusive of above-mentioned taxes, and will be so construed. A Supplier desiring refunds of, or exemptions from, taxes paid on merchandise accepted by the City, must submit the proper forms, and the Chief Procurement Officer, if satisfied as to the facts, will approve or issue the necessary certificates.

27.0 AWARD:

27.1 The City reserves the right to consider and make awards of bids on articles of similar nature that will in all respects serve the purpose for which the purchase is being made. The City reserves the right to be the sole judge as to whether such articles will serve the purpose.

27.2 Unless otherwise specified, the City reserves the right to accept or reject in whole or in part any bid submitted or to waive any informality for the best interest of the City.

28.0 REJECTIONS:

28.1 Articles not in accordance with samples and specifications must be removed by the Supplier and at his expense. All disputes concerning quality of supplies delivered under this invitation to bid will be determined by the Chief Procurement Officer or designated representative.

28.2 All articles enumerated in the invitation to bid shall be subject to inspection on delivery by an officer designated for the purpose and if found inferior to the quality called for, or not equal in value to the Department's samples, or deficient in weight, measurements, workmanship or otherwise, this fact shall be certified to the Chief Procurement Officer who shall have the right to reject the whole or any part of the same.

GENERAL TERMS AND CONDITIONS FOR 340B DRUG PROGRAM PRICING FOR FAMILY PLANNING CONTRACEPTIVES, VACCINES, AND OVER-THE-COUNTER MEDICATIONS FOR HOUSTON HEALTH DEPARTMENT, CONTINUED:

29.0 BRAND NAME

Any manufacturer's names, trade names, brand names, or catalog numbers used in the specifications are for the purpose of describing and establishing the general quality level, design and performance desired. Such references are not intended to limit or restrict bidding by other Suppliers, but are intended to approximate the quality design or performance, which is desired. Any bid, which proposes like quality, design or performance, will be considered. Equivalent products will be considered, provided a complete description and product literature is provided. Unless a specific exception is made, assumption will be that the item is bid exactly as specified on the Invitation to Bid.

30.0 CHANGE ORDER

30.1 At any time during the term of the award, the Chief Procurement Officer or Director upon written authorization by the Chief Procure Officer may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this award. The Supplier shall furnish the services or deliverables in the Change Order in accordance with the requirements of this award plus any special provisions, specifications, or special instructions issued to execute the extra work.

30.2 The Chief Procurement Officer or Director upon written authorization by the Chief Procurement Officer will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Supplier]
FROM: City of Houston, Texas (the "City")
DATE: [Date of Notice]
SUBJECT: Change Order under the award between the City and [Name of Supplier]

Subject to all terms and conditions of the award, the City requests that Supplier provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:

[Signature of Chief Procurement Officer or Director upon written notice to the Chief Procurement Officer]

30.3 The Chief Procurement Officer or Director upon written authorization by the Chief Procurement Officer may issue more than one Change Order, subject to the following limitations:

30.3.1 Council expressly authorizes the Chief Procurement Officer or Director upon written authorization by the Chief Procurement Officer, to approve a Change Order of up to \$50,000. A Change Order of more than \$50,000 over the approved awarded amount must be approved by the City Council.

30.3.2 If a Change Order describes items that Supplier is otherwise required to provide under this award, the City is not obligated to pay any additional money to Supplier.

30.3.3 The total of all Change Orders issued under this section may not increase the original award amount by more than 25%.

30.4 Whenever the Supplier receives a Change Order, Supplier shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Supplier shall complete the work within the time prescribed. If no time for completion is prescribed, Supplier shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Supplier is required to perform, Supplier may request a time extension for the completion of the work. The Chief Procurement Officer's or Director's decision regarding a time extension is final.

30.5 A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the original award and is subject to the terms and conditions of the original award as if it had originally been a part of the award.

31.0 TERMINATION OF AWARD

31.1 By the City for Convenience:

The Chief Procurement Officer may terminate this award at any time upon 30-calendar days notice in writing to the Supplier. Upon receipt of such notice, Supplier shall, unless the notice directs otherwise, discontinue all services in connection with the performance of the award and shall proceed to cancel promptly all existing orders and awards insofar as such orders and awards are chargeable to this award. As soon as practicable after the receipt of notice of termination, the Supplier shall submit a statement to the appropriate department(s) showing in detail the services performed or items delivered under this award to date of termination. The City agrees to compensate the Supplier for that portion of the prescribed charges for which the services were actually performed or items delivered under this award and not previously paid.

31.2 By the City for Default by Supplier:

31.2.1 In the event that the materials and/or services furnished by the Supplier do not conform to the standard set forth herein, or if the deliveries and servicing of this award do not conform to the requirements detailed herein, the City through a written notice from the Purchasing Agent to the Supplier describing such default may as its options:

- (a) Terminate the award for default and the City shall have no further obligation under the award.
- (b) Allow the Supplier to cure default within a reasonable time as specified in the notice. The City, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, Supplier cures such default to the City's satisfaction, then the proposed termination shall be ineffective. If Supplier fails to cure such default prior to the proposed date of termination, then the City may terminate its performance under this award as of such date and have no further obligation under the award.

31.2.2 In the event of failure to deliver any or all of the items or to perform required services, the City may cover its loss by reasonably procuring from another source the items not delivered or the services not performed. Supplier shall be responsible for and shall pay to the City immediately upon demand the difference in price between that offered by the Supplier and that which the City was forced to pay for covering Supplier's failure to deliver or perform services.

31.3 By the Supplier for Default by City:

31.3.1 Default by the City shall occur if the City fails to perform or observe the terms and conditions of the award required to be performed or observed by the City, and the Supplier gives notice in writing to the City within 30 calendar days of the act or omission claimed by the Supplier to constitute default on the part of the City.

31.3.2 Upon receipt of such notice in writing from the Supplier, however, the City shall have 30 calendar days to cure such default. The Supplier, at its sole option, may extend the proposed date of termination to a later date.

31.3.3 If City cures such default prior to the proposed date of termination, the proposed termination shall be ineffective. If the City fails to cure such default prior to the proposed date of termination, then the Supplier may terminate its performance as of such date.

32.0 PATENTS

The Supplier agrees to indemnify and save harmless the City, the Chief Procurement Officer and assistants from all suits and actions of every nature and description brought against them or any of them, for or on account of the use of patented appliances, products or processes, and he shall pay all royalties and charges which are legal and equitable. Evidence of such payment or satisfaction shall be submitted, upon request of the Chief Procurement Officer, as a necessary requirement in connection with the final estimate for payment in which such patented appliance, products or processes are used

GENERAL TERMS AND CONDITIONS FOR 340B DRUG PROGRAM PRICING FOR FAMILY PLANNING CONTRACEPTIVES, VACCINES, AND OVER-THE-COUNTER MEDICATIONS FOR HOUSTON HEALTH DEPARTMENT, CONTINUED:

33.0 SUPPLIER DEBT

If Supplier, at any time during the term of this award, incurs a debt, as the word is defined in section 15-122 of the Houston City code of ordinances, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that Supplier has incurred a debt, the City Controller shall immediately notify Supplier in writing. If Supplier does not pay the debt within 30 days of either such notification, the City Controller may deduct funds in an amount equal to the debt from any payments owed to Supplier under this award, and Supplier waives any recourse therefore.

34.0 CRIMINAL JUSTICE INFORMATION SYSTEMS (CJIS) COMPLIANCE (Applicable to Houston Police Department (HPD) Occupied Facilities) :

The Houston Police Department recognizes that by allowing physical or logical (electronic) access to HPD facilities or network resources, people may gain access to information or systems they are statutorily prohibited from accessing. To comply with state and federal regulations, the Houston Police Department is required to document and investigate access requests to be sure access is necessary and permitted. Bidders/Respondents, therefore, agree to review the Criminal Justice Information Systems (CJIS) process and related documents located at <http://www.houstontx.gov/police/cjis/hpdvendorcertification.htm> and shall comply with the terms and requirements therein.

35.0 MARKETPLACE:

- 35.1 The City of Houston has implemented an online tool to facilitate purchases from approved contracts/awards. This tool, City of Houston (COH) MarketPlace, can be accessed electronically by end users. End users can place multiple orders through a single login using the P-card or purchase order.
- 35.2 Supplier products can be made available in COH MarketPlace at no cost. Suppliers whose contracts/awards are added to COH MarketPlace will be required to cooperate in the electronic setup, implementation, and maintenance.