



Lori A. Weaver
Interim Commissioner

Patricia M. Tilley
Director

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STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH SERVICES

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29 HAZEN DRIVE, CONCORD, NH 03301
603-271-4501 1-800-852-3345 Ext. 4501
Fax: 603-271-4827 TDD Access: 1-800-735-2964 www.dhhs.nh.gov

April 18, 2023

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Health and Human Services (DHHS), Division of Public Health Services (DPHS) on behalf of the Department of Administrative Services, as required pursuant to MOP 150, VII, C, to make a **Sole Source** purchase of a laboratory instrument referred to as a mass spectrometer to replace an existing, aging instrument from Agilent Technologies, (VC#176061), Santa Clara, CA, in the amount of \$299,847.26, effective upon Governor and Executive Council approval through June 30, 2023. 100% Federal Funds.

Funds are available in the following accounts for State Fiscal Year 2023.

05-95-90-903510-11140000 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SERVICES, HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF EMERGENCY PREPAREDNESS, RESPONSE AND RECOVERY, PUBLIC HEALTH EMERGENCY PREPAREDNESS

State Fiscal Year	Class / Account	Class Title	Job Number	Amount
2023	030-500331	Equipment-Replacement	90077404	\$265,316.52
2023	020-500219	Current expenses-Shipping	90077404	\$7,473.14
		Subtotal		\$272,789.66

05-95-90-903510-24680000 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SERVICES, HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF EMERGENCY PREPAREDNESS, RESPONSE AND RECOVERY, PUBLIC HEALTH CRISIS RSP-ARP

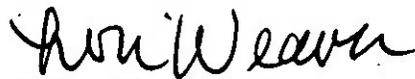
State Fiscal Year	Class / Account	Class Title	Job Number	Amount
2023	030-500331	Equipment-Replacement	90077404	\$27,057.60
		Subtotal		\$27,057.60
		TOTAL		\$299,847.26

EXPLANATION

This request is **Sole Source** because the Public Health Laboratory needs to purchase instruments from this manufacturer that are compatible with other instruments used in the lab. The Public Health Laboratory is required to have two instruments of this nature in order to maintain the emergency response model for the lab response network. Hardware, software, methods and consumable parts can be transferred from one instrument to the other as needed.

The purpose of this request is to purchase a laboratory instrument referred to as a mass spectrometer (Liquid Chromatograph-mass spectrometer/- LC-MS/MS) for the Lab Response Network-Chemistry unit (LRN-C unit). This instrument is used to detect and measure warfare agents and will be replacing an existing aging instrument. The current instrument has reached the end of its usable life and is exhibiting problems resulting in increased instrument downtime and excessive maintenance. Without this instrument, the LRN-C lab won't be able to respond to chemical threats in a timely manner, including highly toxic warfare agents. As a member of the laboratory response network, LRN-C lab must be able to respond immediately to chemical emergencies. Not replacing the aging instrument would result in the lab's reduced capacity to respond to chemical threats.

Respectfully submitted,



Lori A. Weaver
Interim Commissioner



State of New Hampshire Purchase Order

PURCHASE ORDER NUMBER
1091849
 This number must appear on all invoices, packages, cartons, bills of lading, and packing slips.

Date: 04/14/2023
 Status: DRAFT
 Ship Via:
 FOB: Destination
 Freight Terms: Vendor Paid
 Terms: Net 30
 Due Days: 30

Bill To: HHS: HEALTH MGMT, OFFICE OF
 129 PLEASANT STREET
 CONCORD NH 03301

AGILENT TECHNOLOGIES INC
 5301 STEVENS CREEK BLVD
 SANTA CLARA CA 95051

Ship To:

HHS: HEALTH MGMT, OFFICE OF
 29 HAZEN DR
 CONCORD NH 03301

Phone: 800 227 9770
 Fax: 91 302 633 8901

Agency Contact: Jim Cavallini 1-603-271-9364

Vendor #: 176061
 Contact: Sandra Beal

In accordance with quote

LINE	QTY	UOM	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
			Deliver on or before May 15, 2023 unless specified by line The Folks in the Lab are aware of the new protocol on anything up to and over \$250,000.00 will once approved through DAS will then be presented to G&C for final approval. I had reminded them to make sure they have ready to go when this is set.		
1	1.00	EA	1260 INFINITY II BINARY PUMP ITEM#G7112	18,946.60000	18,946.60
2	1.00	EA	1260 INFINITY II MULTI COLUMN TH ITEM#G7116	4,414.00000	4,414.00
3	1.00	EA	1260 INFINITY II MULTISAMPLER ITEM#G7167	24,347.50000	24,347.50
4	1.00	EA	2POS 6PORT VALVE HEAD ITEM#G4231	4,966.50000	4,966.50
5	1.00	EA	FREIGHT FREIGHT	7,473.14000	7,473.14
6	1.00	EA	HPLC W-ALS CHILLER ITEM#G6475 Please forward any and all invoices to the PH Lab at the following address dhhs.dphs.contract@dhhs.nh.gov Quote from Agilent #4326543 Valid Until 5/21/23	212,641.92000	212,641.92
7	1.00	EA	MASSHUNTER WS SW ITEM3M5930	4,144.80000	4,144.80
8	1.00	EA	PEAK NITROGEN GEN SYSTEM ITEM#G1953	22,912.80000	22,912.80
			Purchase Order Summary		
				Goods Total:	\$299,847.26
				Order Total:	\$299,847.26
				Total Amount:	\$299,847.26

Buyer: Corrine Tatro
 Phone: 603-271-4308
 Process Level: 09500

1. The State of New Hampshire engages the firm or individual ("the Vendor") to perform the services and/or sale of goods, described in the attached State Proposal and the Vendor's proposal, bid or quotation, any of which are incorporated herein by reference.

2. **COMPLIANCE BY VENDOR WITH LAWS AND REGULATIONS.** In connection with the performance of this agreement, the Vendor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which shall impose any obligation or duty upon the Vendor, including, but not limited to civil rights and equal opportunity laws. In addition, the Vendor shall comply with all applicable copyright laws.

3. **TERM.** The contract and all obligations of the parties thereunder, shall become effective on a specified date and shall be completed in their entirety prior to a specified date. Any work undertaken by the Vendor prior to the effective date shall be at his sole risk and, in the event that the contract shall not become effective, the State shall be under no obligation to reimburse the Vendor for any such work.

4. **CONTRACT PRICE.** The contract price, a payment schedule and a maximum limitation of price shall be as specified by the proposal or bid invitation and the Vendor's response. All payments shall be conditioned upon receipt, and approval by the State, of appropriate vouchers and upon satisfactory performance by the Vendor, as determined by the State. The payment by the State of the Contract Price shall constitute complete reimbursement to the Vendor for all expenses of any nature incurred by the Vendor in the performance by the contractor and complete payment for the Services. The State shall have no other liability to the Vendor.

5. **DELIVERY.** If the Vendor fails to furnish items and/or services in accordance with all requirements, including delivery, the state may repurchase similar items from any other source without competitive process, and the original Vendor may be liable to the state for any excess costs.

If a Vendor is unable to complete delivery by the date specified, he must contact the using branch and or agency. However, the branch and or agency is not required to accept a delay to the original delivery date. All deliveries are subject to inspection and receiving procedure rules as established by the State of New Hampshire. Deliveries are not considered accepted until compliance with these rules has been established. State personnel signatures on shipping documents shall signify only the receipt of shipment.

6. **INVOICING.** All invoices must be in triplicate showing Order Number, Unit and Extension Prices and discounts allowed. A separate invoice shall be submitted for each order. Unless otherwise noted on the proposal or purchase order, payment will not be due until thirty(30) days after all services have been completed, or all items have been delivered, inspected and accepted or the invoice has been received, whichever is later.

7. **PERSONNEL.**

7.1. The Vendor shall disclose in writing the names of all owners (5% or more), directors, officers, employees, agents or subcontractors who are also officials or employees of the State of New Hampshire. Any change in this information shall be reported in writing within fifteen (15) days of their occurrence.

7.2. The person signing this agreement on behalf of the State, or his or her delegatee ("Contracting Officer") shall be the State's representative for purposes of this agreement. In the event of any dispute concerning the interpretation of this agreement, the Contracting Officer's decision shall be final.

8. **EVENT OF DEFAULT; REMEDIES.**

8.1. Any one or more of the following acts or omissions of the Vendor shall constitute an event of default hereunder ("Events of Default").

8.1.1. failure to deliver the goods or services satisfactorily or on schedule; or

8.1.2. failure to submit any report required hereunder; or

8.1.3. failure to perform any of the other covenants and conditions of this agreement.

8.2. Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1. give the Vendor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty(30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this agreement, effective two (2) days after giving the Vendor notice of termination; and

8.2.2. give the Vendor a written notice specifying the Event of Default and suspending all payments to be made under this agreement and ordering that the portion of the Contract Price, which would otherwise accrue to the Vendor during the period from the date of such notice until such time as the State determines that the Vendor has cured the Event of Default, shall never be paid to the Vendor; and

8.2.3. set off against any other obligation the State may owe to the Vendor any damages the State suffers by reason of any Event of Default; and

8.2.4. treat the agreement as breached and pursue any of its remedies at law or in equity, or both.

9. **WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express failure of any Event of Default shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof regarding any further or other default on the part of the Vendor.

10. **VENDOR'S RELATION TO THE STATE.** In the performance of this agreement the Vendor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Vendor nor any of its officers, employees, agents or members shall have authority to bind the State nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees.

11. **ASSIGNMENT AND SUBCONTRACTS.** The Vendor shall not assign, or otherwise transfer any interest in this agreement without the prior written consent of the State. No work required by this contract shall be subcontracted without the prior written consent of the State.

12. **INDEMNIFICATION.** The Vendor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the state, its officers and employees, by or on behalf of any person; on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Vendor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.

12.1. **PATENT PROTECTION.** The Vendor agrees to indemnify and defend the State of New Hampshire from alleged and actual patent infringements and further agrees to hold the State of New Hampshire harmless from any liability arising under RSA 382-A:2-312(3). (Uniform Commercial Code).

13. **TOXIC SUBSTANCES.** In compliance with RSA 277-A known as the Workers Right to Know Act, the Vendor shall provide Material Safety Data Sheets with the delivery of any and all products covered by said law.

14. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given below.

15. **AMENDMENT.** This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto.

16. **CONSTRUCTION OF AGREEMENT AND TERMS.** This agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns.

17. **ADDITIONAL PROVISIONS.** The additional provisions (if any) have been set forth as Exhibit "A" hereto.

18. **ENTIRE AGREEMENT.** This agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.