



Lori A. Weaver
Interim Commissioner

Patricia M. Tilley
Director

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

29 HAZEN DRIVE, CONCORD, NH 03301
603-271-4501 1-800-852-3345 Ext. 4501
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July 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 laboratory equipment from Clear Labs, Inc. (VC#427937), San Carlos, CA, in the amount of \$398,238, effective upon Governor and Executive Council approval through June 30, 2024. 100% Federal Funds.

Funds are available in the following account for State Fiscal Year 2024.

05-95-90-903010-19010000 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SERVICES, HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF LABORATORY SERVICES, ELC CARES COVID-19

State Fiscal Year	Class / Account	Class Title	Job Number	Amount
2024	030-500302	Equipment New/Replacement	90183538	\$398,238
			Total	\$398,238

EXPLANATION

This request is **Sole Source** because the New Hampshire Public Health Laboratory (NHPHL) needs to purchase proprietary equipment used in Whole Genome Sequencing (WGS).

The purpose of this request is to purchase a Clear Dx System LR-SR instrument that will automate the NHPHL's Whole Genome Sequencing testing. The NHPHL utilizes Whole Genome Sequencing to detect, investigate, and prevent illnesses caused by viruses and bacteria and to identify foodborne and other infectious diseases that may lead to outbreaks. This instrument will also be used for COVID-19 variant processing, Wastewater Sequencing, and bacterial sequencing for PulseNet and GenomeTrakr participation. This Clear Labs instrument will reduce sequencing completion time by several days, reduce sources of error, and allow staff to work on other tasks.

Respectfully submitted,

Lori A. Weaver

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State of New Hampshire Purchase Order

PURCHASE ORDER NUMBER
1093551
 This number must appear on all invoices, packages, cartons, bills of lading, and packing slips.

Date: 07/13/2023
 Status: DRAFT
 Ship Via:
 FOB:
 Freight Terms: Freight Allowed
 Terms: Net 30
 Due Days: 30

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

CLEAR LABS INC
 1559 INDUSTRIAL RD
 SAN CARLOS CA 94070

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

Vendor #: 427937 Phone: (978) 998-1674 Agency Contact: Jim Cavallini 1-603-271-9364 or
 Contact: Richard Hampton Fax: 91

In accordance with Class Exc Waiver

LINE	QTY	UOM	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
			Deliver on or before August 15, 2023 unless specified by line james.cavallini@dhhs.nh.gov		
1	1.00	EA	CLEAR DX PACKAGING CL-IP ITEM#CL-IP	1,800.00000	1,800.00
2	2.00	EA	CLEAR DX SYS INSTALL TRAIN ITEM#850067	3,600.00000	7,200.00
3	1.00	EA	CLEAR DX SYS PLAN 1 YR ITEM#850071	24,988.00000	24,988.00
4	1.00	EA	CLEAR DX SYSTEM LR-SR ITEM#860005 Please forward any and all invoices to dhhs.dphs.contract@dhhs.nh.gov Quote#00000341	344,950.00000	344,950.00
5	1.00	EA	CLEAR LAB MICROBIAL SURV ITEM#900016	6,500.00000	6,500.00
6	1.00	EA	CLEAR LABS IQ/OQ/PQ SARS-COV2 ITEM#900006	6,500.00000	6,500.00
7	1.00	EA	FREIGHT FREIGHT	300.00000	300.00
8	3.00	EA	MICROBIAL SURV V2.0 REAGENT FEE ITEM#850080	1,400.00000	4,200.00
9	3.00	EA	MICROBIAL SURV V2.0 TECH ACCESS ITEM#850081	600.00000	1,800.00
			Purchase Order Summary		
			Goods Total:		\$398,238.00
			Order Total:		\$398,238.00

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

Total Amount: \$398,238.00

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 delegate ("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.