

NEW

State of Maine**Master Agreement****Effective Date:** 08/01/19**Expiration Date:** 07/31/22**Master Agreement Description:** Bio-Rad Supplies and Reagents**Buyer Information**Justin Franzose 207-624-7337 **ext.** justin.franzose@maine.gov**Issuer Information**LISA ROBBINS 207-287-2727 **ext.** lisa.robbins@maine.gov**Requestor Information**Lisa Robbins 207-287-2727 **ext.** lisa.robbins@maine.gov**Authorized Departments**

10A DEPT OF HUMAN SERVICES

Vendor Information**Vendor Line #: 1****Vendor ID**

VC1000009169

Vendor Name

BIO-RAD LABS

Alias/DBA

DIAGNOSTIC PRODUCTS

Vendor Address Information

5400 EAST SECOND STREET

BENICIA, CA 94510

US

Vendor Contact Information

EARICA SMITH

800-224-6723 **ext.** 5698

government_contracts@bio-rad.com

Commodity Information

Vendor Line #: 1

Vendor Name: BIO-RAD LABS

Commodity Line #: 1

Commodity Code: 49043

Commodity Description: Bio-Rad Supplies and Reagents

Commodity Specifications:

Commodity Extended Description: AS PER THE SPECIFICATIONS ATTACHED AND MADE PART OF THIS MA.

Quantity	UOM	Unit Price
0.00000		\$0.00
Delivery Days	Free on Board	
Contract Amount	Service Start Date	Service End Date
\$0.00	08/01/19	07/31/22
Catalog Name	Discount	
	0.0000 %	
	Discount Start Date	Discount End Date



**Bio-Rad
Laboratories**

Clinical Diagnostics Group
5400 East Second Street
Benicia, CA 94510
Ph: 1-800-224-6723
government_contracts@bio-rad.com

CONFIDENTIAL

May 14, 2019

Lori Webber
Department of Health and Human Services
Health Labs
12 State House Station
Augusta, ME 04333

Dear Lori Webber:

The attached Agreement relates to the Reagent Rental Plan for the EVOLIS Microplate Processor and Geenius System has been formulated at the request of Jane Earls, your Bio-Rad Laboratories Account Manager.

If this Agreement meets with your approval, please do the following:

- ☐ Have the Agreement signed by the appropriate authority.
- ☐ Include a purchase order number. If your facility does not use purchase order numbers, please indicate this.
- ☐ Email a copy of the signed agreement to earica_smith@bio-rad.com. Upon receipt, I will countersign the agreement and your Account Manager will forward a copy to you for your files. If you require an original countersigned agreement, please send the original via regular mail to my attention. I will countersign it and send you a copy for your files.

We at Bio-Rad are looking forward to being of service to you in this matter. If you have any questions, please contact Christina Santora or me.

Sincerely,

Janette J.
Stockert

Janette J. Stockert
Contracts Analyst

Digitally signed by Janette J. Stockert
DN: cn=Janette J. Stockert, o=BioRad
Laboratories, ou=COG,
email=janette.j.stockert@bio-rad.com,
c=US
Date: 2019.05.14 13:00:22 -0700

JJS: es

cc: Jane Earls
Christina Santora

CONFIDENTIAL

May 14, 2019

EVOLIS™ and GEENIUS SYSTEM REAGENT RENTAL AGREEMENT**CUSTOMER:** Department of Health and Human Services
12 State House Station
Augusta, ME 04333
Sold to: 1001005
Ship to: 1001005**SUPPLIER:** Bio-Rad Laboratories, Inc.
5400 East Second Street
Benicia, CA 94510**1. EQUIPMENT**

- 1.1 Upon Customer's acceptance of this EVOLIS Microplate Processor and Geenius Reagent Rental Agreement, Customer shall continue use of the following item(s) of equipment (all of the items collectively referred to as the "Equipment").

Equipment is currently located at customer's site:

<u>Cat. #</u>	<u>Description</u>	<u>Quantity</u>
89700D (Existing)	EVOLIS Microplate Processor	1
92465 (Existing)	Geenius Reader	1
92052 (Existing)	Geenius Computer	1
12000211 (Existing)	Printer (Includes USB Cable)	1
12000019 (Existing)	Barcode Scanner	1
12000682 (Existing)	Literature Binder	1

- 1.2 During the duration of the EVOLIS Microplate Processor and Geenius System Reagent Rental Agreement, the Customer shall use the Equipment only at Department of Health and Human Services Health Labs and shall not remove or transfer it without the prior consent of Supplier.

2. RENTAL CHARGES

- 2.1 Pricing is based on the minimum tests per year volumes listed in 2.2. Cost per kit will cover rental of the Equipment, service and reagent costs. Reagents will be billed when shipped.
- 2.2 Customer agrees to purchase the minimum number of tests listed below over the Term:

<u>Catalog #</u>	<u>EVOLIS REAGENTS</u>	<u>Tests/Year</u>	<u>Price/Test</u>	<u>Price/Kit</u>
26218	GS HIV Combo Ag/Ab EIA (960 tests)** (New Catalog number 12009860 -"Upon availability")	6,720	\$4.50	\$4,320.00
930740	Ortho HCV v3.0 EIA Kit (480 tests)	3,100	\$5.00	\$2,400.00

	<u>EVOLIS CONSUMABLES</u>	<u>Annual Qty</u>	<u>Price</u>
89897	Evolis Performance Evaluation Kit	1	\$0.00
25098	Evolis pipette tips 1100 ul (960 tips/box)	3	\$0.00
25097	Evolis pipette tips 300 ul (960 tips/box)	10	\$0.00
25099	Microcide Cleaning Concentrate	1	\$0.00
25260	Stopping Solution Bulk Pack (5/Pack)	7	\$0.00
25261	Wash Solution Bulk Pack (15/Pack)	7	\$0.00
933040	Ortho HCV Stop Solution	1	\$0.00
933730	Ortho HCV Wash Solution	1	\$0.00
	BARCODE KITS		
31113	ODS Ortho HCV 3.0 Barcode Kit	1	\$0.00

<u>Catalog #</u>	<u>GEENIUS REAGENTS</u>	<u>Units/Year</u>	<u>Price/Unit</u>
72461	Geenius HIV ½ Supplemental Assay-20 Tests	5	\$920.00
72339	Geenius HIV ½ Controls – 1 Positive, 1 Negative	1	\$44.00

Items below can be ordered on an as needed basis:

Catalog #	EVOLIS REAGENTS	Price/Kit
26217	GS HIV Combo Ag/Ab EIA (192 tests)** (New Catalog number 12009912 --"Upon availability")	\$960.00

	EVOLIS CONSUMABLES	Price
48155525B	Tubes, Polypropylene, 5 ml 75 x 13 mm (500/pk)	\$66.15
25221B	Sarstedt Tubes (500/case)	\$68.00
25222B	Sarstedt Caps (500/case)	\$99.00
4025900	V-Vials 500/Case	\$184.80
4025820	V-Vials Push Caps, 500/Case	\$114.00
0900-05	Null Strips, 5 plates/box	\$48.00
89799	Waste bag	\$65.00
00100C	VIROTROL I 1X5ML Class C	\$439.00

	LSG BIOPLEX 200 CONSUMABLES	Price
171203060	Bio-Plex Calibration Kit	\$618.00
171203001	Bio-Plex Validation Kit	\$1,875.00
171000055	Bio-Plex Sheath Fluid, 20L	\$66.00
MLL9601	Unskirted 96-well plate	\$94.00
MSB1001	Microseal B, 100/pack	\$143.00

3. PAYMENT TERMS

Payment terms are net 30 days from date of invoice.

4. PRICE CHANGES

- 4.1 Supplier agrees to hold firm quoted prices in paragraph 2 for the first year for the Evolis Microplate Processor Reagents and Consumables with freight to be borne by Supplier. After the first year, the price will increase each year thereafter by 5%.
- 4.2 Supplier agrees the prices quoted in paragraph 2 for Geenius Reagents herein shall be fixed for the Term. Fixed pricing is based on compliance to minimum volumes with freight to be borne by Supplier.
- 4.3 Supplier agrees to hold firm quoted prices in paragraph 2 for the first year for the Bioplex 200 Consumables. After the first year, the price will increase each year thereafter by 3% with freight to be borne by Customer (See Appendix A for freight model)

5. CARE AND SERVICING OF THE EQUIPMENT

- 5.1 At no additional cost to Customer, Supplier will provide telephone assistance 24 hours per day, 365 days per year.
- 5.2 As part of this Agreement, Supplier or Supplier appointed personnel will provide on-site or depot (returned to Supplier) service, as needed, to keep the Equipment in good working order. On-site or depot service will be provided, at no cost to customer, Monday through Friday, 8:00 a.m. to 6:00 p.m. (local time), excluding national holidays. On-site extended service coverage (Saturday, Sunday, and/or holidays) is available, but is not included in this Agreement. Supplier's Signature Service Agreement Rate Schedule for "Extended Reagent Rental Service Coverage" is available upon request.
- 5.3 Supplier will not be required to pay the cost of any damage to the Equipment caused by Customer's negligence, abuse, or alteration of the Equipment, or by any service performed by unauthorized personnel or by use of any non-Supplier approved reagents, calibrators or disposables.
- 5.4 Customer agrees that only Supplier appointed personnel are to service the Equipment.
- 5.5 Customer agrees to utilize only Supplier approved reagents, calibrators, and disposables on the Equipment.
- 5.6 The Evolis Automated Platform has the capability of running assays that are not manufactured or distributed by Bio-Rad Laboratories. These assays are referred to as 'Custom Assays' or Assay Protocol Files (APFs) that can only be run when using Flex-E software from Supplier. In doing so, the customer accepts the following:
 - All custom APFs run on the Evolis must be provided by Supplier.
 - APFs have been developed and tested at Supplier, per the package insert and quality control criteria. No samples are used in the development or testing of the APFs.
 - Supplier has not validated any custom APF's. The customer is responsible for validating each APF.

- If the customer requests any changes to the APF, Supplier will evaluate whether the modifications are feasible, and may make the changes for the customer for an additional fee.
- Customer can make their own modifications to the APF. The customer is responsible for the evaluation, validation, and storage (backup) all modified APF's.
- Customer is responsible for reviewing the APF User Instructions for relative Technical Information on the specific assay.

5.7 Supplier shall not be responsible for the moving (de-installation and re-installation) of equipment from one location to another, additional operator training, and/or any other extra services not specified in this Agreement.

5.8 Customer agrees to provide Supplier with an internet connection to each instrument to facilitate remote troubleshooting, problem diagnosis and possible resolution without dispatch of a Supplier Engineer. Customer is prohibited from disclosing PHI to Bio-Rad, and Customer is solely responsible for safeguarding any PHI that is accessible to Bio-Rad.

6. TITLE TO THE EQUIPMENT

6.1 Supplier is the owner of and retains title to the Equipment.

6.2 Customer shall not permit or suffer any attachment, encumbrance, lien, or security interest to be filed against the Equipment and shall promptly notify Supplier if any of the foregoing is filed or claimed and shall indemnify Supplier for any loss or damage resulting from any of the foregoing.

6.3 Upon the request of Supplier, Customer will execute a financing statement as provided under the Uniform Commercial Code to permit Supplier to perfect a security interest in the Equipment.

7. RISK OF LOSS & DAMAGE

7.1 Customer will be responsible for any damage to the Equipment not caused by Supplier's services or products. Customer shall promptly notify Supplier of any damage to equipment described herein.

7.2 If Customer is liable for damage and if Supplier, in its sole discretion, decides the damaged items are not repairable, Customer shall pay Supplier the current catalog trade price for the item of the Equipment less depreciation based on a ten (10) year straight line base (prorated monthly). There upon Customer will own that item "as is" with all faults and defects.

7.3 Customer will agree to insure said piece of equipment against "All Risks" of physical damage or loss and forward to Supplier a Certificate of Insurance naming Supplier as Loss Payee, if requested.

8. LABEL

Customer shall not remove any labels, symbols or serial numbers that are or may be affixed to the items of Equipment being utilized hereunder, except as requested by Supplier in writing.

9. TAXES

Customer shall pay all taxes, federal, state, and local, which may be imposed upon the use, possession, ownership, or rental of the Equipment and the Customer shall reimburse Supplier for any taxes paid for the Equipment. Supplier is the owner of and retains title to the Equipment and responsibility for any applicable property taxes provided Customer forwards such property tax notification to: CDG Global Finance Department, Bio-Rad Laboratories, Inc., 4000 Alfred Nobel Drive, Hercules, CA 94547.

10. TRANSPORTATION

See Section 4 for explanation of transportation charges to (and where applicable from) the place of business of the customer for Equipment and reagents.

11. CUSTOMER'S ORDER FORM

All terms and conditions contained in any order form issued by the Customer to obtain the Equipment or to purchase reagent products from Supplier are entirely superseded by this EVOLIS Microplate Processor Reagent Rental Agreement and by the terms and conditions of any invoice issued by Supplier hereunder and are hereby agreed to be null and void, except for those specific terms concerning quantity, billing directions, and shipping instructions, and any additional terms specifically accepted by Supplier.

12. WARRANTY

Supplier warrants and represents that the Equipment will perform in accordance with Supplier's standard warranty (provided at installation).

13. LANDLORD'S WAIVER

Customer shall furnish upon request a waiver signed by Customer's landlord by which the landlord waives all rights to seize, possess or withhold any item of the Equipment by reason of the Customer's failure to pay its rent to the landlord.

14. FORCE MAJEURE

Supplier shall not be liable for any failure to perform under this EVOLIS Microplate Processor Reagent Rental Agreement due to strikes (legal or illegal), lockouts, fires, floods or water damage, riots, governmental acts or orders, interruption of transportation, inability to obtain materials upon reasonable prices or terms, or any other causes beyond its control.

15. TERM

15.1 This Agreement will be effective on Customer's "go-live" date (not to exceed 60-days from installation of Equipment) and will continue in effect for a term of thirty-six (36) months (the "Term") unless sooner terminated by either party as provided herein. Except for a party's right to terminate for cause as provided for herein, under no circumstances shall this Agreement be cancelled during the first three-hundred and sixty (360) days following the effective date. Thereafter, this Agreement may be terminated by Customer by serving a 60-day written notice of termination upon the other party at the address listed in paragraph 18, below. This Agreement will terminate automatically on the date as of which Customer in any manner acquires title to the Equipment.

15.2 In addition, Supplier may immediately terminate this Agreement in the event (a) Customer fails to make payment when due, as described in subparagraph 17.2, (b) materially breaches this Agreement (other than non-payment) and fails to cure such breach with thirty (30) days of notice by Supplier of such breach, or (c) Customer makes an assignment for the benefit of creditors or proceedings are commenced by or for Customer under any bankruptcy, insolvency, or debtor's relief law.

15.3 Should Customer terminate this Agreement prior to the expiration of the Agreement Term, Customer is required to pay all expenses incurred in connection with the enforcement of any remedies, including all expenses of packing, shipping and handling the Equipment.

16. RETURN OF EQUIPMENT

Upon termination of the EVOLIS Microplate Processor and Geenius System Reagent Rental Agreement, for any reason, except taking title to the Equipment, Supplier will carefully pack and return the Equipment to Supplier.

17. WAIVER

17.1 Customer agrees this EVOLIS Microplate Processor and Geenius Reagent Rental Agreement is only an agreement of use with respect to the Equipment, that Customer does not in any way acquire title to or the ownership of the Equipment or any item thereof except by forced purchase under paragraph 8, that upon termination or cancellation of this EVOLIS Microplate Processor and Geenius System Reagent Rental Agreement for whatever reason, the Customer shall immediately return the Equipment or permit its removal, that the Customer's sole right hereunder is to peaceably possess and use the Equipment provided it makes all payments when and as due.

17.2 In the event Customer fails to make payment required hereunder when such payment become due, Supplier may, in its discretion and without further liability whatever, terminate this EVOLIS Microplate Processor and Geenius System Reagent Rental Agreement and enter upon the Customer's facility and remove the Equipment. Customer waives prior notice, preseizure hearing and judicial process as prior conditions to repossession of the Equipment or any item thereof.

18. NOTICES

To Supplier: Bio-Rad Laboratories
5400 East Second Street
Benicia, CA 94510
Attention: Contract Administration

To Customer: Department of Health and Human Services Health Labs
12 State House Station
Augusta, ME 04333
Attention: Lori Webber

19. CONFIDENTIALITY

Customer shall not publish, disseminate, or disclose to any third party, including any bench-marking services (i) the terms and conditions of this Agreement, (ii) all financial terms and conditions contained in any quotation from Supplier, or (iii) any information, in written or other tangible form, which has been conspicuously marked by Supplier as "confidential" or "proprietary" or if not so marked, is later summarized and confirmed as confidential in a writing transmitted to Customer within fifteen (15) days after disclosure. The foregoing restriction shall not apply to any information that: (i) is or becomes publicly available without Customer's breach of any obligations owed to Supplier; (ii) is known to Customer prior to Supplier's disclosure of such information to Customer; (iii) becomes known to Customer from a source other than Supplier without a breach of an obligation of confidentiality owed to Supplier. Customer may disclose Confidential Information if such disclosure is required by order of a court of competent jurisdiction, or by order of a governmental agency or legislative body under any written law, regulation or legal order, provided that the Customer promptly notifies Bio-Rad thereof, and upon the request and reasonable expense of the latter, reasonably cooperates with Bio-Rad in contesting such disclosure or in seeking confidentiality treatment of the information. If disclosure is ultimately required, Customer will restrict any disclosure to only such information that it is legally obligated to disclose. Any Confidential Information disclosed pursuant to this Section will remain confidential against all other parties.

20. CERTIFICATION

Customer certifies that prior to the execution of this Agreement, Supplier offered to sell reagent test kits to the Customer, and/or to lease or sell the Equipment to the Customer, separately, and that the Customer has refused those offers, and has bound itself to the terms of this Agreement instead.

AGREED TO and Accepted this 17th day of July, 20 19.

Bio-Rad Laboratories, Inc.

Customer

By: Janette J. Stockert
Digitally signed by Janette J. Stockert
DN: cn=Janette J. Stockert, o=Bio-Rad
Laboratories, ou=CDG,
email=janette_stockert@bio-rad.com,
c=US
Date: 2019.05.14 13:15:13 -07'00'

By: Lisa Robbins

Janette J. Stockert
Contracts Analyst
Title

Clerk IV
Title

TBD
Purchase Order Number

THIS AGREEMENT IS VALID ONLY IF EXECUTED PRIOR TO JULY 31, 2019.



**Bio-Rad
Laboratories, Inc.**

Life Science Group
2000 Alfred Nobel Drive
Hercules, California 94547
Phone: 510-741-1000
Fax: 510-741-5800

Appendix A

Shipping and Handling

Freight Fees:

Applicable shipping costs are calculated based on the product type, total value of order, and destination as indicated in the chart below.

Order Amount	Freight Charge
0-\$200	\$25.75
\$200 - \$1000	\$41.40
\$1000 - \$17,000	4.10% of order amount
\$17,000	\$750.00

Special Handling Fees:

Additional charges are assessed for products classified as dangerous goods or requiring special packaging with blue or dry ice (see table below). You will be able to review the charges in your shopping cart before placing the order.

Additional packaging charges:

Blue ice packaging	\$5.00
Dry ice packaging	\$20.00
Hazardous goods surcharge	\$35.00
Overnight rush	\$44.00

STATE OF MAINE

GENERAL TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES UNDER BUYER PURCHASE ORDERS (BPOs) AND MASTER AGREEMENTS (MAs)

- 1. DEFINITIONS:** The following definitions are applicable to these standard terms and conditions:
 - a. The term “Buyer” or “State” shall refer to the Government of the State of Maine or a person representing the Government of the State of Maine.
 - b. The term “Department” or “DAFS” shall refer to the State of Maine Department of Administrative and Financial Services.
 - c. The term “Bureau” or “BGS” shall refer to the State of Maine Bureau of General Services.
 - d. The term “Division” shall refer to the State of Maine Division of Purchases.
 - e. The term “Contractor”, “Vendor”, or “Provider” shall refer to the organization that is providing goods and/or services through the contract to which these standard terms and conditions have been attached and incorporated.
 - f. The term “Contract” or “Agreement” shall refer to the contract document to which these standard terms and conditions apply, taking the format of a Buyer Purchase Order (BPO) or Master Agreement (MA) or other contractual document that is mutually agreed upon between the State and the Contractor.
- 2. WARRANTY:** The Contractor warrants the following:
 - a. That all goods and services to be supplied by it under this Contract are fit and sufficient for the purpose intended, and
 - b. That all goods and services covered by this Contract will conform to the specifications, drawing samples, symbols or other description specified by the Division, and
 - c. That such articles are merchantable, good quality, and free from defects whether patent or latent in material and workmanship, and
 - d. That all workmanship, materials, and articles to be provided are of the best grade and quality, and
 - e. That it has good and clear title to all articles to be supplied by it and the same are free and clear from all liens, encumbrances and security interest.

Neither the final certificate of payment nor any provision herein, nor partial nor entire use of the articles provided shall constitute an acceptance of work not done in accordance with this agreement or relieve the Contractor liability in respect of any warranties or responsibility for faulty material or workmanship. The Contractor shall remedy any defects in the work and pay any damage to other work resulting therefrom, which shall appear within one year from the date of final acceptance of the work provided hereunder. The Division of Purchases shall give written notice of observed defects with reasonable promptness.

3. TAXES: Contractor agrees that, unless otherwise indicated in the order, the prices herein do not include federal, state, or local sales or use tax from which an exemption is available for purposes of this order. Contractor agrees to accept and use tax exemption certificates when supplied by the Division as applicable. In case it shall ever be determined that any tax included in the prices herein was not required to be paid by Contractor, Contractor agrees to notify the Division and to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to the Division.

4. PACKING AND SHIPMENT: Deliveries shall be made as specified without charge for boxing, carting, or storage, unless otherwise specified. Articles shall be suitably packed to secure lowest

transportation cost and to conform to the requirements of common carriers and any applicable specifications. Order numbers and symbols must be plainly marked on all invoices, packages, bills of lading, and shipping orders. Bill of lading should accompany each invoice. Count or weight shall be final and conclusive on shipments not accompanied by packing lists.

5. DELIVERY: Delivery should be strictly in accordance with delivery schedule. If Contractor's deliveries fail to meet such schedule, the Division, without limiting its other remedies, may direct expedited routing and the difference between the expedited routing and the order routing costs shall be paid by the Contractor. Articles fabricated beyond the Division's releases are at Contractor's risk. Contractor shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet delivery schedule, and, unless otherwise specified herein, no deliveries shall be made in advance of the Division's delivery schedule. Neither party shall be liable for excess costs of deliveries or defaults due to the causes beyond its control and without its fault or negligence, provided, however, that when the Contractor has reason to believe that the deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to the Division. If the Contractor's delay or default is caused by the delay or default of a subcontractor, such delay or default shall be excusable only if it arose out of causes beyond the control of both Contractor and subcontractor and without fault of negligence or either of them and the articles or services to be furnished were not obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.

6. FORCE MAJEURE: The State may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The State may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

7. INSPECTION: All articles and work will be subject to final inspection and approval after delivery, notwithstanding prior payment, it being expressly agreed that payment will not constitute final acceptance. The Division of Purchases, at its option, may either reject any article or work not in conformity with the requirements and terms of this order, or re-work the same at Contractor's expense. The Division may reject the entire shipment where it consists of a quantity of similar articles and sample inspection discloses that ten (10%) percent of the articles inspected are defective, unless Contractor agrees to reimburse the Division for the cost of a complete inspection of the articles included in such shipment. Rejected material may be returned at Contractor's risk and expense at the full invoice price plus applicable incoming transportation charges, if any. No replacement of defective articles of work shall be made unless specified by the Division.

8. INVOICE: The original and duplicate invoices covering each and every shipment made against this order showing Contract number, Vendor number, and other essential particulars, must be forwarded promptly to the ordering agency concerned by the Vendor to whom the order is issued. Delays in receiving invoice and also errors and omissions on statements will be considered just cause for withholding settlement without losing discount privileges. All accounts are to be carried in the name of the agency or institution receiving the goods, and not in the name of the Division of Purchases.

9. ALTERATIONS: The Division reserves the right to increase or decrease all or any portion of the work and the articles required by the bidding documents or this agreements, or to eliminate all or any portion of such work or articles or to change delivery date hereon without invalidating this Agreement. All such alterations shall be in writing. If any such alterations are made, the contract amount or amounts shall be adjusted accordingly. In no event shall Contractor fail or refuse to continue the performance of the work in providing of articles under this Agreement because of the inability of the parties to agree on an adjustment or adjustments.

10. TERMINATION: The Division may terminate the whole or any part of this Agreement in any one of the following circumstances:

- a. The Contractor fails to make delivery of articles, or to perform services within the time or times specified herein, or
- b. If Contractor fails to deliver specified materials or services, or
- c. If Contractor fails to perform any of the provisions of this Agreement, or
- d. If Contractor so fails to make progress as to endanger the performance of this Agreement in accordance with its terms, or
- e. If Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency, or
- f. Whenever for any reason the State shall determine that such termination is in the best interest of the State to do so.

In the event that the Division terminates this Agreement in whole or in part, pursuant to this paragraph with the exception of 8(f), the Division may procure (articles and services similar to those so terminated) upon such terms and in such manner as the Division deems appropriate, and Contractor shall be liable to the Division for any excess cost of such similar articles or services.

11. NON-APPROPRIATION: Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

12. COMPLIANCE WITH APPLICABLE LAWS: Contractor agrees that, in the performance hereof, it will comply with applicable laws, including, but not limited to statutes, rules, regulations or orders of the United States Government or of any state or political subdivision(s) thereof, and the same shall be deemed incorporated herein by reference. Awarding agency requirements and regulations pertaining to copyrights and rights in data. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act, (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000). Mandatory standards and policies relating to energy efficiency which are

contained in the state energy conservation plan issued in compliance with Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

13. INTERPRETATION: This Agreement shall be governed by the laws of the State of Maine as to interpretation and performance.

14. DISPUTES: The Division will decide any and all questions which may arise as to the quality and acceptability of articles provided and installation of such articles, and as to the manner of performance and rate of progress under this Contract. The Division will decide all questions, which may arise as to the interpretation of the terms of this Agreement and the fulfillment of this Agreement on the part of the Contractor.

15. ASSIGNMENT: None of the sums due or to become due nor any of the work to be performed under this order shall be assigned nor shall Contractor subcontract for completed or substantially completed articles called for by this order without the Division's prior written consent. No subcontract or transfer of agreement shall in any case release the Contractor of its obligations and liabilities under this Agreement.

16. STATE HELD HARMLESS: The Contractor agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and other persons, firm or corporation furnishing or supplying work, services, articles, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Agreement.

17. SOLICITATION: The Contractor warrants that it has not employed or written any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement, and it has not paid, or agreed to pay any company, or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Division shall have the absolute right to annul this agreement or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

18. WAIVER: The failure of the Division to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this order or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition or the future exercise of such right, but the obligation of Contractor with respect to such future performance shall continue in full force and effect.

19. MATERIAL SAFETY: All manufacturers, importers, suppliers, or distributors of hazardous chemicals doing business in this State must provide a copy of the current Material Safety Data Sheet (MSDS) for any hazardous chemical to their direct purchasers of that chemical.

20. COMPETITION: By accepting this Contract, Contractor agrees that no collusion or other restraint of free competitive bidding, either directly or indirectly, has occurred in connection with this award by the Division of Purchases.

21. INTEGRATION: All terms of this Contract are to be interpreted in such a way as to be consistent at all times with this Standard Terms and Conditions document, and this document shall take precedence over any other terms, conditions, or provisions incorporated into the Contract.

State of Maine Waiver of Competitive Bidding Request Form

Form Instructions: Please provide the requested information in the white boxes below. This form is to precede all contract requests that are not the direct result of a competitive bid process.

DHHS/DCM Contract Administrator:	Chris Moiles	Office/Division/Program of Contract Administrator:	DHHS, MeCDC Health and Environmental Testing Lab
Est. Contract Amount:	\$162,000.00	Contract or RQS Number:	RQS 10A 20190717*057
		Purchasing Maine ID:	
		DHHS Agreement Number:	CD0-20-54MA02
Proposed Start Date:	08/01/2019	Proposed End Date:	07/31/2022
Vendor/Provider Name, City, State	Bio-Rad Laboratories Clinical Diagnostics Group 5400 E 2 nd Street Benicia, CA 94510		
Short Description of Good or Service:	Supplies and Reagents (Vendor Master Agreement)		
Please note, for transparency purposes, Waivers of Competitive Bidding will be publicly posted. Public postings are placed on the Division of Procurement Services website for a period of seven consecutive calendar days.		To be completed by the Division of Procurement Services Posting dates on Division of Procurement Services website: From: 7/23/2019 To: 7/29/2019	
Notice of Intent to Waive Competitive Bidding Number:		NOI# 0720191257	
1. Statutory Justification State of Maine statute (5 M.R.S. §1825-B(2)) allows waivers of competitive bidding only for the specific reasons listed below. Please mark the appropriate box (X) next to the justification which applies to this specific request.			
	A. The procurement of goods or services by the State for county commissioners pursuant to Title 30-A, section 124, involves the expenditure of \$2,500 or less, and the interests of the State would best be served;		
	B. The Director of the Bureau of General Services is authorized by the Governor, or the Governor's designee, to make purchases without competitive bidding because, in the opinion of the Governor or the Governor's designee, an emergency exists that requires the immediate procurement of goods or services;		
	<i>If citing the above justification for this Waiver of Competitive Bidding request, please have the requesting Department's Commissioner or Chief Executive (as the Governor's "designee") sign and date on the right.</i>	<i>By signing below, I signify as the Governor's designee there is an emergency that necessitates this non-competitive procurement.</i> Signature:	
		Printed Name:	Date:
X	C. After reasonable investigation by the Director of the Bureau of General Services, it appears that any required unit or item of supply, or brand of that unit or item, is procurable by the State from only one source;		
	D. It appears to be in the best interest of the State to negotiate for the procurement of petroleum products;		
	E. The purchase is part of a cooperative project between the State and the University of Maine System, the Maine Community College System, the Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State involving: (1) An activity assisting a state agency and enhancing the ability of the university system, community college system, Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State to fulfill its mission of teaching, research, and public service; (2) A sharing of project responsibilities and, when appropriate, costs;		
	<i>If citing the above justification for this sole source request, please note that the specific approval of the Governor's Office is required, in accordance with Executive Order 26 FY 11/12, "An Order to Enhance Competitive Bidding". The approval must be documented on DAFS/BGS/Division of Procurement Services "GOVCOOP" form, found here: http://www.maine.gov/purchases/info/forms/govcoop.doc.</i>		

State of Maine Waiver of Competitive Bidding Request Form

	F. The procurement of goods or services involves expenditures of \$10,000 or less, in which case the Director of the Bureau of General Services may accept oral proposals or bids;
	G. The procurement of goods or services involves expenditures of \$10,000 or less, and procurement from a single source is the most economical, effective and appropriate means of fulfilling a demonstrated need.
	If a different authorization specifically allows for this non-competitive procurement, please provide that reference here:
Please note that the following four points below (#2 through 5) all require a response.	
2. Description of Specific Need Please identify, and fully describe, the specific problem, requirement, or need the resulting non- competitive contract would address and which makes the goods or services necessary. Explain how the requesting Department determined that the goods or services are critical and/or essential to agency responsibilities or operations.	
<p>The Maine HETL has equipment from the vendor noted above for the purpose of testing human specimens for a variety of infectious diseases. The instruments provided by Bio-Rad require specific reagents and consumables in order to function appropriately. No other vendor can provide compatible reagents or supplies for our molecular, serology and virology equipment. Our testing protocols are based on our capability of using these particular instruments for determining the presence of specific organisms found within the specimens received in our laboratory. This agreement allows HETL to maintain their rental agreements for the Evolis and Geenius. The commodities purchased from Bio-rad also are utilized for our Bio-plex. The laboratory determined that these services are critical to the nature of the work regarding identification of pathogens of human interest, including Eastern Equine Encephalitis, West Nile Virus, and St. Louis Encephalitis. This work allows physicians and public health workers to make timely and crucial decisions for their patients with an unknown illness and to assist in outbreak detection and disease tracking. The MA allows us to meet all accreditation requirements set forth by the Clinical Laboratory Inspection Amendments, by maintaining proper instrument functionality.</p>	
3. Availability of other Public Resources Please explain how the requesting Department concluded that sufficient staffing, resources, or expertise is not available within the State of Maine's government, or other governmental entities (local, other state, or federal agencies) external to the requesting Department, which would be able to address the identified need more efficiently and effectively than the identified vendor.	
<ul style="list-style-type: none"> a) HETL is the reference contract laboratory that hospitals, physicians and external laboratories count on for performing complex testing in the State of Maine. Use of the appropriate kits, reagents, and supplies with these instruments is necessary in order to comply with and to follow CDC/FDA guidelines. b) HETL is the State Health and Environmental Testing Laboratory and the sole source of the state to provide such services. c) Providing rapid test results to Maine CDC is of the utmost importance in order to allow the epidemiologists to do contact investigations quickly thereby reducing the spread of the disease as well as the disease burden. 	
4. Cost Since a waiver of competitive bidding is being requested for this procurement, please explain how the requesting Department concluded the negotiated costs, fees, or rates are fair and reasonable .	
<ul style="list-style-type: none"> a) The federal CDC/FDA in many cases sets the rules and guidelines in the form of Standard Operating Procedures. In order to provide diagnostic testing to the State of Maine HETL must follow the guidelines instituted by the federal CDC/FDA. Therefore, HETL has purchased and currently maintains the equipment required to run CDC/FDA approved diagnostic tests. b) HETL has asked manufacturers for discounts due to its status as a nonprofit, governmental organization (public health laboratory). 	
5. Future Competition Please describe potential opportunities which may be available to foster competition for these goods or services in the future.	

State of Maine Waiver of Competitive Bidding Request Form

The department does not intend to RFP this service at this time.

Please note that only one of the two points below ("Uniqueness" or "Timeframe") requires a response. Requesting Departments are not required to respond to both points.

6. Uniqueness

Please explain if the goods or services required are unique to a specific vendor. Describe the unique qualifications, abilities, and/or expertise of the vendor and how those particular unique factors address the specific need identified above. If the vendor has unique equipment, facilities, or proprietary data, also explain the necessity of these particular unique assets.

- a) The use of the Bio-Rad equipment is mandated in several Federal CDC/FDA standard operating procedures for the identification of samples or clinical specimens. HETL follows these federal CDC/FDA guidelines.
- b) The federal CDC/FDA is the governing body that sets the standards and regulations. HETL follows these federal CDC guidelines.
- c) While the federal CDC/FDA determines what standard operating procedures to follow, it is up to HETL to purchase and maintain all equipment that is needed to perform said tests.
- d) It must be stated that when performing a specific diagnostic test, the user is immediately 'locked-in' to that one sole source for that specific diagnostic test. A Diagnostic Test from Company A is in no way compatible with a Diagnostic Test from Company B.
- e) HETL is required to use reagents specifically designed to work in conjunction with the instruments otherwise the warranty/guarantee of proper operation is null and void.

7. Timeframe (Complete only if B. is the Statutory Justification marked on Page 1)

Please explain if time is of the essence and an emergency exists which requires the immediate procurement of goods or services. Describe the nature of this emergency, provide the date by which the goods or services must be delivered, and explain how that date was determined and its significance (i.e. impact if delayed beyond this date). Also, provide information as to how it was determined this vendor is the best option to address this time-sensitive procurement.

**Signature of requesting
Department's Commissioner
or Chief Executive
(or designee within the
Commissioner's Office):**

*By signing below, I signify that my Department requests, and I approve of, this
Waiver of Competitive Bidding.*

Printed Name:

Jeff Wiley

Date:

16 July 19