

# 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.

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|--|--|--|---|
| <b>Requesting Department's Contract Administrator:</b>   | Megan Patterson  | <b>Office/Division/Program of Contract Administrator:</b>  | Board of Pesticides Control             |
| <b>Est. Contract Amount:</b>   | \$143,800 (incr \$114,800)   | <b>Contract or RQS Number:</b>   | <b>MA</b><br><b>1708280000000000027</b> |
| <b>Proposed Start Date:</b>  | September 1, 2017  | <b>Proposed End Date:</b>  | December 31, 2019                       |
| <b>Vendor/Provider Name, City, State</b>   | Montana Department of Agriculture, Laboratory Bureau<br>Bozeman, MT  |  |   |
| <b>Short Description of Good or Service:</b>   | Pesticide residue and water quality analysis   |  |   |
| <b>Please note, for transparency purposes, Waivers of Competitive Bidding will be publicly posted. Public postings are placed on the Division of Purchases' website for a period of seven consecutive calendar days.</b>             |  | <b>To be completed by the Division of Purchases</b><br>Posting dates on Division of Purchases' website:<br>From: <u>3/21/2019</u> To: <u>3/27/2019</u> |   |
| <b>Notice of Intent to Waive Competitive Bidding Number:</b>   |  | NOI# 0320190342  |   |
| <b>1. Statutory Justification</b>  |  |  |   |
| 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. |  |  |   |
| <input type="checkbox"/>   | 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;   |  |   |
| <input type="checkbox"/>   | 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>  | By signing below, I signify as the Governor's designee there is an emergency that necessitates this non-competitive procurement.<br><b>Signature:</b>  |   |
|  |  | <b>Printed Name:</b>   | <b>Date:</b>                            |
| <input checked="" type="checkbox"/>  | 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;  |  |   |
| <input type="checkbox"/>   | D. It appears to be in the best interest of the State to negotiate for the procurement of petroleum products;  |  |   |
| <input type="checkbox"/>   | 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:<br>(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;<br>(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 Purchases "GOVCOOP" form, found here: <a href="http://www.maine.gov/purchases/info/forms/govcoop.doc">http://www.maine.gov/purchases/info/forms/govcoop.doc</a>.</i>  |  |   |
| <input type="checkbox"/>   | 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;   |  |   |
| <input type="checkbox"/>   | 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.   |  |   |
| <input type="checkbox"/>   | If a different authorization specifically allows for this non-competitive procurement, please provide that reference here:   |  |   |

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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.

- a) The BPC is obligated to analyze pesticide residue and formulation samples as part of its responsibilities related to enforcing pesticide law. The BPC must contract with a laboratory that has a current, EPA-approved Quality Assurance Project Plan (QAPP) and has the capability to analyze virtually any of the nearly 1,000 pesticide active ingredients in use. Very few laboratories meet these requirements and are willing to contract with other states.
- b) The BPC is charged with enforcing state and federal pesticide laws in the state. This responsibility requires the collection and analysis of pesticide residue samples from a variety of media including soil, vegetation, sediment, and various sources of water with differing levels of organic and synthetic solutes.
- c) Under 7 M.R.S. §607-A. REVIEW OR REREGISTRATION 2-A, the BPC is charged with conducting water residue surveys of domestic wells and bodies of water in areas of possible contamination in order to profile the kinds and amounts of pesticides present. Specific to this amendment, Groundwater monitoring is reinstated and new surface water monitoring projects are added, which will increase funding needed.

## 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.

- a) Neither the BPC nor the Department of Agriculture, Conservation and Forestry has staff or a laboratory capable of conducting pesticide analysis.
- b) The Health and Environmental Laboratory (HETL) is the only in-state laboratory potentially capable of meeting the BPC's analytical needs. A work plan and timeline for HETL to develop the pesticide residue analytical capability required by the BPC and to assume the analyses was developed a few years ago. However, the BPC has not seen any evidence indicating that HETL is ready to assume any of the BPC sample analysis needs.
- c) In-state labs (private and public) are only capable of analyzing for a very small fraction of the pesticides used in Maine and the sample media that are important. These labs would have to send samples out of state for the required analyses and costs would be prohibitive. In addition, the lab must offer quick turnaround of results so that investigations are not prolonged unnecessarily.
- d) No laboratory in Maine has a current, EPA-approved QAPP.

## 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**.

The BPC has used a variety of laboratories over the last thirty years. For small sample numbers, residue analysis costs generally run between \$150 and \$500/sample depending on the complexity of the analysis and noise within the media. The analysis fee rate charged by the MT lab is comparable or less than the rates for the same service provided by labs for which the BPC currently or has contracted with. MT also provides quantity discounts which other labs do not. The BPC has contracted with the MT lab since 2013 and currently contracts with the Massachusetts Analytical Laboratory for enforcement analyses. The BPC did have a contract with APT labs in Pennsylvania, but the lab does not have plans to submit a current QAPP.

## 5. Future Competition

Please describe potential opportunities which may be available to foster competition for these goods or services in the future.

- 1) The BPC continues to work with EPA Region 1 staff to expand capabilities of state labs in neighboring states. The MA lab is within EPA Region 1.
- 2) The BPC is currently exploring cost-sharing partnerships with USGS for water quality monitoring projects.
- 3) The BPC continues to seek other qualified private labs within reasonable shipping distance that meet BPC & EPA requirements.
- 4) The BPC will support an in-state public laboratory if it develops its methods and proficiency in pesticide analyses required by the BPC and in accordance with EPA standards for pesticide analysis.

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**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. Specific to this amendment, Groundwater monitoring is reinstated and new surface water monitoring projects are added, which will increase funding needed.

a/b) The Montana Department of Agriculture, Laboratory Bureau, is unique in that it is the only laboratory that is willing to process out of state samples and has the capability to: 1) provide a multi-residue screen for pesticides and their metabolites in water, 2) analyze for newer chemistries, 3) analyze for almost all of the hundreds of pesticides frequently used in Maine, 4) analyze samples at sub-parts per billion or sub-parts per trillion, depending on the pesticide and medium, and 5) provide a multi-pyrethroid screen for sediments. The MT lab is a leader in pesticide analysis and is one of two labs used by the USDA Pesticide Data Program for the national municipal drinking water testing program.

c) The BPC requires a lab capable of analyzing samples from a variety of media, collected as part of the compliance and water monitoring programs, for which valid and timely results are required. The MT laboratory has a reputation of producing valid analytical reports reliably and quickly. The lab maintains a current QAPP for pesticides approved by EPA Regions 1 and 8.

**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.*

*Amanda Beal*

**Printed Name:**

*Amanda Beal*

**Date:**

*3/19/19*