

# State of Maine Waiver of Competitive Bidding Request Form (Formerly Sole Source Authorization 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.

<b>Requesting Department's Contract Administrator:</b>	Ann Gibbs	<b>Office/Division/Program of Contract Administrator:</b>	Agriculture, Conservation and Forestry. Division of Animal and Plant Health
<b>Est. Contract Amount:</b>	\$ 31,500.00	<b>Contract or RQS Number:</b>	CT 01A 20190321*2658
<b>Proposed Start Date:</b>	4/1/2019	<b>Proposed End Date:</b>	6/30/21
<b>Vendor/Provider Name, City, State</b>	Maine Potato Board, Presque Isle, Maine		
<b>Short Description of Good or Service:</b>	Utilize these contract funds to help maintain the availability of a USDA/APHIS certified plant disease diagnostician in the Maine Potato Board's laboratory to perform testing of potato foliage and tubers so that Maine potato growers may meet North American Seed Certification Standards for the major potato diseases including Potato Virus Y, Potato Leafroll Virus, Late Blight, and Bacterial Ring Rot.		

<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> Posting dates on Division of Purchases' website: From: <u>4/10/2019</u> To: <u>4/16/2019</u>
<b>Notice of Intent to Waive Competitive Bidding Number:</b>	NOI# 0420190436

**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;		
		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;"><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></td> <td style="width: 70%;"> <p><i>By signing below, I signify as the Governor's designee there is an emergency that necessitates this non-competitive procurement.</i></p> <p><b>Signature:</b></p> <p><b>Printed Name:</b></p> <p><b>Date:</b></p> </td> </tr> </table>	<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>	<p><i>By signing below, I signify as the Governor's designee there is an emergency that necessitates this non-competitive procurement.</i></p> <p><b>Signature:</b></p> <p><b>Printed Name:</b></p> <p><b>Date:</b></p>
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<b>X</b>	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.	<p>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:</p> <p>(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;</p> <p>(2) A sharing of project responsibilities and, when appropriate, costs;</p> <p><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></p>		
	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.		

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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.

The Department has funding in its baseline budget to provide financial support annually to the Maine Potato Board to assist with maintaining USDA/APHIS certification for its Seed Certification lab. In the past, the State has made these annual payments through 3-year MOUs with the Maine Potato Board. This contract replaces the MOU process (a copy of the most recent MOU is attached for reference).

## 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.

Only lab available to do this testing – it is state owned but was transferred to the Maine Potato Board to manage with this agreement in place.

## 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**.

\$5,000 payment was agreed upon in the original agreement by the Commissioner of Agriculture, Conservation and Forestry and the Maine Potato Board. The new agreement would pay \$10,500/year to pay for added space that is needed to accommodate the increased volume of testing and the added expenses to run the facility.

## 5. Future Competition

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

N/A

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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.

The Department transferred the lab to the Maine Potato Board with an understanding that the Department would provide annual support to the lab to maintain its USDA certification

**7. Timeframe**

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 E. Beal*

**Printed Name:**

*Amanda E. Beal*

**Date:**

*4/9/19*

General Services Agreement – Memorandum of Understanding  
April 1, 2016 through June 30, 2018

Department of Agriculture, Conservation & Forestry

AND

Maine Potato Board

COPY

**I. PURPOSE, OBJECTIVE AND EXPECTED OUTCOMES OF THIS AGREEMENT**

The purpose of this Agreement – Memorandum of Understanding (MOU) is to set forth the terms and conditions agreed upon by the Maine Potato Board and the Department of Agriculture, Conservation & Forestry with regard to this agreement.

This MOU primarily defines the type, quality and quantity of service to be provided to the Department. The objectives are to:

- A. assist the Maine Potato Board in maintaining the lab in Presque Isle as a USDA certified lab, as well as assisting with the operating costs of the lab
- B. keep the Presque Isle lab available for use by our Seed Certification Program
- C. maintain an employee as a certified lab technician, as is required in order for the lab to operate as a USDA certified lab.

The Maine Potato Board is responsible for the overall operation/supervision of the lab and all maintenance and financial issues.

**II. RESPONSIBILITIES OF EACH PARTY**

The Department will pay the Maine Potato Board \$10,500 per year to assist the Maine Potato Board in maintaining the lab in Presque Isle as a USDA certified lab.

**III. FUNDING**

The Department agrees to pay upon receipt of detailed invoices within 30 days of receipt.

**IV. AMENDMENTS**

This MOU may be amended by any of the parties with the concurrence of all parties.

**V. RENEWALS and TERMINATION**

The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Department shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be

General Services Agreement – Memorandum of Understanding  
April 1, 2016 through June 30, 2018

equitably adjusted to compensate for such termination, and modified accordingly; and may be terminated only by mutual consent.

**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.

**EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Maine Potato Board agrees as follows:

a. The Maine Potato Board shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Maine Potato Board shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Maine Potato Board agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

b. The Maine Potato Board shall, in all solicitations or advertising for employees placed by or on behalf of the Maine Potato Board relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

c. The Maine Potato Board shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Maine Potato Board's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

General Services Agreement – Memorandum of Understanding  
April 1, 2016 through June 30, 2018

- d. The Maine Potato Board shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.
- e. The Maine Potato Board shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.
- f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.
- g. The Maine Potato Board shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

SIGNATURES

Reviewed and approved by:

Walter E. Whitcomb, Commissioner  
Department of Agriculture, Conservation & Forestry

Walter E. Whitcomb DATE 3/17/16

Reviewed and approved by:

Donald Flannery, Executive Director  
Maine Potato Board

Donald Flannery DATE 4/13/16