

MODIFICATION

**State of Maine****Master Agreement****Effective Date:** 09/01/17**Expiration Date:** 06/30/19**Master Agreement Description:** Laboratories for Enforcement and Water Quality Monitoring**Buyer Information**

Donny Crockett

207-624-7336 **ext.**

Donny.Crockett@maine.gov

**Issuer Information**

Betty Farr

207-287-5662 **ext.**

betty.farr@maine.gov

**Requestor Information**

Cory Daigneault

207-287-7701 **ext.**

cory.m.daigneault@maine.gov

**Authorized Departments**

01A AGRICULTURE

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

VC0000197775

**Vendor Name**

STATE OF MONTANA

**Alias/DBA****Vendor Address Information**

PO BOX 173620

BOZEMAN, MT 59717-3620

US

**Vendor Contact Information**

HEIDI HICKES

406-994-3383 **ext.**

## Commodity Information

**Vendor Line #:** 1

**Vendor Name:** STATE OF MONTANA

**Commodity Line #:** 1

**Commodity Code:** 96103

**Commodity Description:** laboratories for enforcement and water quality monitoring

**Commodity Specifications:**

**Commodity Extended Description:** As per the contract attached and made part of this MA

**Quantity**

0.00000

**UOM**

**Unit Price**

\$0.00

**Delivery Days**

**Free on Board**

**Contract Amount**

\$0.00

**Service Start Date**

09/01/17

**Service End Date**

06/30/19

**Catalog Name**

**Discount**

0.0000 %

**Discount Start Date**

**Discount End Date**

## Terms and Conditions

### **Agreement Terms and Conditions**

**T&C #:** 165

**T&C Name:** Payment Terms

**T&C Details:** Net 30

# 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.

<b>Requesting Department's Contract Administrator:</b>	Mary Tomlinson	<b>Office/Division/Program of Contract Administrator:</b>	Board of Pesticides Control
<b>Est. Contract Amount:</b>	\$ 52,500	<b>Contract or RQS Number:</b>	01A 20170822*708
<b>Proposed Start Date:</b>	<b>September 1, 2017</b>	<b>Proposed End Date:</b>	June 30, 2018
<b>Vendor/Provider Name, City, State</b>	Montana Department of Agriculture, Laboratory Bureau 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> Posting dates on Division of Purchases' website: From: 09/20/2017 To: 09/26/2017	
<b>Notice of Intent to Waive Competitive Bidding Number:</b>		NOI# 0920171482	
<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. <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: (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 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:		

# State of Maine Waiver of Competitive Bidding Request Form

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 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.
- b) The BPC is obligated to analyze pesticide residue and formulation samples as part of its responsibilities related to enforcing state and federal pesticide laws. 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. The BPC is also charged with conducting water quality surveys which includes both water and sediment media.

## 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 \$300/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 HETL if it develops its methods and proficiency in pesticide analyses required by the BPC and in accordance with EPA standards for pesticide analysis.

## State of Maine Waiver of Competitive Bidding Request Form

**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/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.*

*Walter E. Whitcomb*

**Printed Name:**

Walter E. Whitcomb

**Date:**

9/19/17

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY  
Agreement to Purchase Services

THIS AGREEMENT, made this twenty-eighth day of August 2017, is by and between the State of Maine, Department of Agriculture, Conservation and Forestry, hereinafter called "Department," and the Montana Department of Agriculture, Agricultural Sciences Division, Laboratory Bureau, located at McCall Hall, Room 10, Montana State University, Bozeman, Montana, 59717, telephone number (406) 994-3383, hereinafter called "Provider", for the period of Start Date September 1, 2017 End Date June 30, 2018.

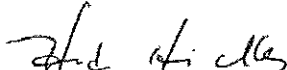
The AdvantageME Vendor/Customer number of the Provider is VC0000197775.

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

- Rider A - Specifications of Work to be Performed
- Rider B - Payment and Other Provisions
- Rider C - Exceptions to Rider B
- Rider D - Debarment
- Rider G - Identification of Country in Which Contracted Work will be Performed

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in one original copy.

Provider: **MONTANA DEPARTMENT OF  
AGRICULTURE AGRICULTURAL SCIENCES  
DIVISION, LABORATORY BUREAU**

By:   
Heidi Hickes, Bureau Chief

Date: 9.8.17

and

**DEPARTMENT OF AGRICULTURE,  
CONSERVATION AND FORESTRY**

By:   
(Walter E. Whitcomb, Commissioner)

Date: 9/19/17

Total Agreement Amount: \$52,500.00

The approval and encumbrance of this Agreement by the Chair of the State Procurement Review Committee and the State Controller is evidenced only by a stamp affixed to this page or by a Case Details Page from the Division of Purchases.

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AdvantageME ACCOUNT CODING

VC NUMBER	DOC TOTAL	FND	DEPT	UNIT		SUB UNIT		OBJ		JOB NO.	PROGRAM
0000197775	\$42,000.00	013	01A	3968		01		4006			0065

VC NUMBER	DOC TOTAL	FND	DEPT	UNIT		SUB UNIT		OBJ		JOB NO.	PROGRAM
0000197775	\$10,500.00	013	01A	3958		01		4006			0065

RIDER A  
SPECIFICATIONS OF WORK TO BE PERFORMED

The provider agrees to provide a list of pesticides it is capable of analyzing. The provider further agrees to conduct the requested pesticide residue analyses, using EPA approved QAPP, and to submit a report detailing the analysis results and the quality control measures within 20 business days of receipt of the sample. More than 20 business days will be permitted if the provider is experiencing a heavy sample load or conducting pyrethroid testing. Analyses for the following matrices are to be performed as listed below.

- Water using MT universal method
- Sediment using the pyrethroid screen and/or updated methods as available
- Compliance related residue samples (single or multiple residues) for water, soil, vegetation, and filter paper (wipes)

**The provider has the authority to:**

- Release analytical results to the Department and no other entity unless subpoenaed.
- Reject samples if written documentation is incomplete and/or inaccurate.
- Reject samples that are suspected to contain dangerously high amounts of pesticide that may contaminate the laboratory or compromise the safety of the laboratory.
- Reject samples if sample integrity is compromised in any way upon arrival to the laboratory after notifying the Department prior to rejection.

**The provider agrees to:**

- Accept samples for pesticide testing that are routinely performed by the provider. Refer to listing in Appendix 1. Request for testing not listed in Appendix 1 shall be negotiated between the Department and Provider.
- Accept samples for pesticide testing in matrices familiar and routine for the provider. Refer to matrices listed in Rider B. Request for testing in matrices not listed in Rider B shall be negotiated between the Department and Provider.

**The Department agrees to:**

- Provide a minimum of two days' notice to the provider prior to sample arrival at the laboratory to ensure appropriate sample turn around.
- Ship samples in a safe manner to arrive overnight to the laboratory and will not ship samples on a Friday, holiday or weekend.
- Sample and ship samples in such a way as to preserve sample integrity.
- Detail, in writing, information needed to process samples through the laboratory including but not exclusive of:
  - Sample description
  - Field unique identifier
  - Testing requested
  - Custody transfer information
  - Sampling information
  - Notice of any sample suspected to contain levels of pesticide residue >10 ppm.
- Follow USDA procedures when shipping soil samples. These procedures include the following:
  - Enclose the Montana USDA Soil Compliance Agreement.
  - Double bag soil samples in waterproof containers.
  - Use a bonded carrier that guarantees delivery (e.g. FedEx or UPS).



**TERM OF AGREEMENT**

The term of this agreement is for a period of 10 months.

The Department will pay for all costs including wages, travel, lodging, and per diem should the Provider be deposed, subpoenaed or required to testify in a case involving the Department.

**RIDER B**  
**METHOD OF PAYMENT AND OTHER PROVISIONS**

1. **AGREEMENT AMOUNT** FY18 not to exceed \$52,500.00
2. **INVOICES AND PAYMENTS** The Department will pay the Provider as follows:

The Department will pay the provider upon receipt of an itemized invoice and in accordance with the analysis fees described below.

Matrix	Individual Analyte	Multiple Analyte Method
Water	\$150.00	\$400.00
Soil	\$200.00	\$250.00
Vegetation	\$250.00	\$300.00
Filter Paper (Wipe)	\$150.00	\$400.00

**To be eligible for the discount, samples must be submitted at the same time for the same test with the same matrix**

Samples	Discount
1	No Discount
2 - 5	15% Discount
6 - 20	20% Discount
> 21	Contact Provider

Pyrethroid screen of sediments: \$500.00 per sample

- Lab will store pyrethroid samples frozen and combine samples into one analysis set whenever feasible
- Pyrethroid samples are to be collected in one quart paint cans

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Department will process approved payments within 30 days.

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Department will process approved payments within 30 days.

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY** In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

5. **DEPARTMENT'S REPRESENTATIVE** The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

6. **AGREEMENT ADMINISTRATOR** All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name: Mary Tomlinson  
Title: Pesticides Registrar/Water Quality Specialist  
Address: Maine Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-002

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.

7. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUB-AGREEMENTS** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

9. **SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Agreement Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

10. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider agrees as follows:

a. The Provider 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 Provider 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

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Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider 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 Provider 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 Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Provider 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 Provider 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 Provider 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.

11. **EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider 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.

12. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the

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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.

13. **WARRANTY** The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, 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 Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **ACCESS TO RECORDS** As a condition of accepting a contract for services under this section, a contractor must agree to treat all records, other than proprietary information, relating to personal services work performed under the contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the contractor and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the contract and information concerning employee and contract oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

15. **TERMINATION** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of 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 equitably adjusted to compensate for such termination, and modified accordingly.

16. **GOVERNMENTAL REQUIREMENTS** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.

17. **GOVERNING LAW** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or

other legal entity (hereinafter in this paragraph referred to as “person”) providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim that results solely and directly from (i) the Department’s negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

19. **NOTICE OF CLAIMS** The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.

20. **APPROVAL** This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

21. **LIABILITY INSURANCE** The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a “risk retention group” insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

22. **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.

23. **SEVERABILITY** The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

24. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

25. **FORCE MAJEURE** The Department 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 Department 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.

26. **SET-OFF RIGHTS** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

27. **ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

RIDER C  
EXCEPTIONS TO RIDER B

The Provider may vary from the price list in Rider A of this contract when unusual or difficult sample matrices are submitted to the lab, when litigation samples are requested, or when analyzing for compounds not covered by the price list. The Provider agrees to obtain clearance from the Department when requested analysis costs vary from the price list.



RIDER D  
DEBARMENT

**Vendor Name:** Montana Department of Agriculture, Agricultural Sciences Division, Laboratory Bureau  
**PO #:** \_\_\_\_\_ **Date:** August 28, 2017

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Certification Regarding  
Debarment, Suspension and Other Responsibility Matters  
Primary covered Transactions

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This Certification is required by the Regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' Responsibilities. The Regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

(BEFORE SIGNING THIS CERTIFICATION, PLEASE READ THE ATTACHED INSTRUCTIONS WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)

1. The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1.b of this Certification; and
  - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
  
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Heidi Hickes Bureau Chief

Name and Title, Authorized Representative

Heidi Hickes

Signature

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the Certification set out below.
2. The inability of a person to provide the Certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the Certification set out below. The Certification or explanation will be considered in connection with the Department of Agriculture, Conservation & Forestry - Maine Board of Pesticides Control determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a Certification or an explanation shall disqualify such person from participation in this transaction.
3. The Certification in this clause is material representation of fact upon which reliance was placed when the Department of Agriculture, Conservation & Forestry - Maine Board of Pesticides Control determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous Certification, in addition to other remedies available to the Federal Government, the Department of Agriculture, Conservation & Forestry - Maine Board of Pesticides Control may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the Department of Agriculture, Conservation & Forestry - Maine Board of Pesticides Control if at any time the prospective primary participant learns its Certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms “covered transaction”, “debarred”, “suspended”, “ineligible”, “lower tier covered transaction”, “participant”, “person”, “primary covered transaction”, “principal”, “proposal”, and “voluntarily excluded”, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department of Agriculture, Conservation & Forestry - Maine Board of Pesticides Control for assistance in obtaining a copy of these regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department of Agriculture, Conservation & Forestry - Maine Board of Pesticides Control.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions” provided by the Department of Agriculture, Conservation & Forestry - Maine Board of Pesticides Control, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Lists of Parties Excluded from Procurement or Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
  
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department of Agriculture, Conservation & Forestry - Maine Board of Pesticides Control may terminate this transaction for cause or default.

RIDER G  
IDENTIFICATION OF COUNTRY  
IN WHICH CONTRACTED WORK WILL BE PERFORMED

**Please identify the country in which the services purchased through this contract will be performed:**

**United States. Please identify state: MT**

**Other. Please identify country: \_\_\_\_\_**

**Notification of Changes to the Information**

The Provider agrees to notify the Division of Purchases of any changes to the information provided above.

**APPENDIX 1: Montana List of Pesticide Compounds**

**NOTE:** Not every pesticide and/or metabolite is available for testing in every matrix. This list is not inclusive of all the pesticides the laboratory can test.

2,4-D	Butylate	Diazinon
2,4-DP	Carbaryl	Dicamba
Acetamiprid	Carbofuran	Dicofol p,p'
Acetochlor	Carbofuran-3-OH	Dicrotophos
Acetochlor ESA	Chlorantraniliprole	Dieldrin
Acetochlor OA	Chlordane-alpha	Difenoconazole
Alachlor	Chlordane-cis	Dimethenamid
Alachlor ESA	Chlordane-gamma	Dimethenamid OA
Alachlor OA	Chlordane-trans	Dimethoate
Aldicarb	Chlorfenvinphos	Disulfoton
Aldicarb sulfone	Chlorimuron ethyl	Disulfoton sulfone
Aldicarb sulfoxide	Chlorothalonil	Diuron
Aldrin	Chlorpyrifos	Endrin
Allethrin	Chlorpyrifos oxon	Epoxiconazole
AMBA (mesotrione metab)	Chlorsulfuron	EPTC
Aminocyclopyrachlor	Clodinafop-propargyl acid	Ethametsulfuron methyl
Aminopyralid	Clopyralid	Ethion
AMPA (glyphosate met)	Cloransulam	Ethion mono oxon
Atrazine	Clothianidin	Ethofumesate
Azinphos methyl	Coumaphos	Ethoprop
Azinphos methyl oxon	Coumaphos oxon	Fenamiphos sulfone
Azoxystrobin	Cyanazine	Fenamiphos sulfoxide
Benfluralin	Cycloate	Fenbuconazole
Bensulfuron methyl	Cyfluthrin	Fenitrothion
Bentazon	Cyhalothrin, Total	Fenitrothion oxon
BHC-alpha	Cypermethrin	Fenpropathrin
BHC-beta	Cyproconazole	Fenthion
Bifenthrin	DBCP	Fenvalerate
Bromacil	DCEPA (dacthal)	Fipronil
Bromoxynil	DEA (atrazine met)	Flucarbazone
Bromuconazole-46	DEDIA (atrazine met)	Flucarbazone sulfonamide
Bromuconazole-47	Deltamethrin	Flumetsulam
Butachlor	DIA (atrazine met)	Fluometuron

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Fluroxypyr	Metsulfuron methyl	Propiconazole
Fluvalinate	Mirex	Prosulfuron
Glutaric acid	Myclobutanil	Pyrasulfotole
Glyphosate	Neburon	Pyroxsulam
HA (atrazine met)	Nicosulfuron	Resmethrin
Halosulfuron methyl	NOA 407854 (pinoxaden met)	Rimsulfuron
HCB	NOA 447204 (pinoxaden met)	Saflufenacil
Heptachlor	Norflurazon	Siduron
Heptachlor epoxide-cis	Norflurazon desmethyl	Simazine
Heptachlor epoxide-trans	Omethoate	Sulfentrazone
Hexaconazole	Oxadixyl	Sulfometuron methyl
Hexazinone	Oxamyl	Sulfosulfuron
Imazamethabenz acid	Oxychlorane	Tebuconazole
Imazamethabenz ester	Oxydemeton methyl	Tebuthiuron
Imazamox	Oxydemeton methyl sulfone	Tefluthrin
Imazapic	p,p'-DDD	Tembotrione
Imazapyr	p,p'-DDE	Terbacil
Imazaquin	p,p'-DDT	Terbufos
Imazethapyr	Parathion ethyl	Terbufos sulfone
Imidacloprid	Parathion methyl	Terbufos sulfone
Isoxaflutole	Parathion methyl oxon	Tetrachlorvinphos
Lindane	Permethrin-cis	Tetraconazole
Linuron	Permethrin-trans	Tetradifon
Malathion	Phenothrin	Tetramethrin
Malathion oxon	Phorate	Thiamethoxam
MCPA	Phorate sulfone	Thifensulfuron
MCPP	Phorate sulfoxide	Thiobencarb
Mesosulfuron methyl	Picloram	Tralkoxydim
Metalaxyl	Piperonyl butoxide	Tralkoxydim acid
Methomyl	Prallethrin	Triadimefon
Methoxychlor olefin	Primisulfuron methyl	Triadimenol
Methoxychlor-p,p	Prometon	Triallate
Methoxyfenozide	Prometryn	Triasulfuron
Metolachlor	Propachlor	Triclopyr
Metolachlor ESA	Propanil	Triflusulfuron methyl
Metolachlor OA	Propazine	Triticonazole

STATE OF MAINE  
Department of Agriculture, Conservation and Forestry  
CONTRACT FOR SPECIAL SERVICES - AMENDMENT

BY AGREEMENT of both parties this 8 day of, August 2018, the Contract for Special Services between the State of Maine, Department of Agriculture, Conservation and Forestry hereinafter called "Department," and the Montana Department of Agriculture, Agricultural Sciences Division, Laboratory Bureau hereinafter called "Provider," is hereby amended as follows:

1. The termination date is adjusted from June 30, 2018 to June 30, 2019  
(old service to date) (new service to date)

**Reason:** Continued need for the unique analyses methodology only provided by this laboratory.

2. The dollar amount of the contract is adjusted from \$52,500 to \$29,000

**Reason:** This contract does not include groundwater monitoring.

3. The Scope of Services in Rider A is amended as follows:

USDA procedures for shipping soil samples is no longer required and has been deleted.

All other terms and conditions of the original contract dated August 28, 2017 remain in full force and effect.

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this amendment in one original copy.

Provider: Montana Dept. of Agriculture, ASD, Laboratory Bureau

By: Jana Veneky, Bureau Chief  
(Name & Title, Provider Representative)

Signature: [Signature] Date: 8-20-18

and

Department of: Agriculture, Conservation and Forestry

By: Walter E. Whitcomb, Commissioner  
(Name & Title, Department Representative)

Signature: [Signature] Date: 8/27/18

The approval and encumbrance of this Agreement by the Chair of the State Procurement Review Committee and the State Controller is evidenced only by a stamp affixed to this page or by a Case Details Page from the Division of Procurement Services.

*(note: this section must be completed by using agency)*

Department number and Contract number (CT #): MA 01A 1708280000000000027

Vendor Code: VC0000197775 New Service Date: September 1, 2017 - June 30, 2019

Old Contract Amount: \$52,500 Account Codes: 013-01A-3958-01-4006; 013-01A-3968-01-4006

Amount of Adjustment \$23,500

New Contract Amount \$29,000

Revised 10/2017

# 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.

<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>	Ongoing Master Agreement	<b>Contract or RQS Number:</b>	MA 170828000000000027
<b>Proposed Start Date:</b>	September 1, 2017	<b>Proposed End Date:</b>	June 30, 2019
<b>Vendor/Provider Name, City, State</b>	Montana Department of Agriculture, Laboratory Bureau 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> Posting dates on Division of Purchases' website: From: <u>8/28/2018</u> To: <u>9/3/2018</u>	
<b>Notice of Intent to Waive Competitive Bidding Number:</b>		NOI# <u>0820181393</u>	
<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;		
<input type="checkbox"/>	<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> <b>Signature:</b>	
<input type="checkbox"/>		<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: (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;		
<input type="checkbox"/>	<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:		



# State of Maine Waiver of Competitive Bidding Request Form

**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.

## **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 \$300/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 HETL if it develops its methods and proficiency in pesticide analyses required by the BPC and in accordance with EPA standards for pesticide analysis.

## State of Maine Waiver of Competitive Bidding Request Form

**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/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.

<b>Signature of requesting Department's Commissioner or Chief Executive (or designee within the Commissioner's Office):</b>	<i>By signing below, I signify that my Department requests, and I approve of, this Waiver of Competitive Bidding.</i>
<b>Printed Name:</b>	 Walter E. whitcomb
<b>Date:</b>	8/27/18