



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER
 MMB11041

PAGE
 1

ADDRESS CORRESPONDENCE TO ATTENTION OF
 ROBERTA WAGNER
 304-558-0067

VENDOR
 *709063149 502-364-1610
 LABORATORY SUPPLY COMPANY
 250 OTTAWA AVE
 LOUISVILLE KY 40209

SHIP TO
 HEALTH AND HUMAN RESOURCES
 MILDRED MITCHELL-BATEMAN
 HOSPITAL
 1530 NORWAY AVENUE
 HUNTINGTON, WV
 25705 304-525-7801

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
11/23/2010				

BID OPENING DATE: 12/23/2010 BID OPENING TIME 01:30PM

LINE	QUANTITY	UQP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	EA	193-12		\$17,500	\$17,500
IMMONUASSAY CHEMISTRY ANALYZER, TOSOH AIA 360 OR TO PROVIDE ONE CHEMISTRY ANALYZER AND ONE HEMATOLOGY ANALYZER FOR MILDRED MITCHELL-BATEMAN HOSPITAL LOCATED AT 1530 NORWAY AVENUE IN HUNTINGTON, WEST VIRGINIA 25705, PER THE ATTACHED SPECIFICATIONS. CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN. BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THE STATE MAY DEEM THE CONTRACT NULL AND VOID, AND TERMINATE SUCH CONTRACT WITHOUT FURTHER ORDER. INQUIRIES WRITTEN QUESTIONS SHALL BE ACCEPTED THROUGH CLOSE OF BUSINESS ON 12/7/2010. QUESTIONS MAY BE SENT VIA USPS, FAX, COURIER OR E-MAIL. IN ORDER TO ASSURE NO VENDOR RECEIVES AN UNFAIR ADVANTAGE, NO SUBSTANTIVE QUESTIONS WILL BE ANSWERED ORALLY. IF POSSIBLE, E-MAIL QUESTIONS ARE PREFERRED. ADDRESS INQUIRIES TO:						

RECEIVED
 2010 DEC 15 AM 9:37
 WV PURCHASING

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>[Signature]</i>	TELEPHONE 502-363-1891	DATE 12/13/2010
TITLE V.P. Sales	FEIN 61-0732657	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

GENERAL TERMS & CONDITIONS REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
4. All services performed or goods delivered under State Purchase Order/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods this Purchase Order/Contract becomes void and of no effect after June 30.
5. Payment may only be made after the delivery and acceptance of goods or services.
6. Interest may be paid for late payment in accordance with the *West Virginia Code*.
7. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
8. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
9. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
10. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern the purchasing process.
11. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
12. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, the State may deem this contract null and void, and terminate such contract without further order.
13. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at www.state.wv.us/admin/purchase/vrc/hipaa.htm and is hereby made part of the agreement. Provided that the Agency meets the definition of a Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
14. **CONFIDENTIALITY:** The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/noticeConfidentiality.pdf>.
15. **LICENSING:** Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, and the West Virginia Insurance Commission. The vendor must provide all necessary releases to obtain information to enable the director or spending unit to verify that the vendor is licensed and in good standing with the above entities.
16. **ANTITRUST:** In submitting a bid to any agency for the State of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will convey, sell, assign or transfer to the State of West Virginia all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to the bidder.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, or person or entity submitting a bid for the same material, supplies, equipment or services and is in all respects fair and without collusion or fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division. Complete all sections of the quotation form.
2. Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Unit prices shall prevail in case of discrepancy. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
4. All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications: Department of Administration, Purchasing Division, 2019 Washington Street East, P.O. Box 50130, Charleston, WV 25305-0130
5. Communication during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited (W.Va. C.S.R. §148-1-6.6).



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 Purchasing Division
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ADDRESS CORRESPONDENCE TO ATTENTION OF:
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VENDOR

*709063149 502-364-1610
 LABORATORY SUPPLY COMPANY
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 LOUISVILLE KY 40209

SHIP TO

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11/23/2010				

BID OPENING DATE: 12/23/2010 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>ROBERTA WAGNER DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25311</p> <p>FAX: 304-558-4115 E-MAIL: ROBERTA.A.WAGNER@WV.GOV</p> <p>.....</p> <p>THE MODEL/BRAND/SPECIFICATIONS NAMED HEREIN ESTABLISH THE ACCEPTABLE LEVEL OF QUALITY ONLY AND ARE NOT INTENDED TO REFLECT A PREFERENCE OR FAVOR ANY PARTICULAR BRAND OR VENDOR. VENDORS WHO ARE BIDDING ALTERNATES SHOULD SO STATE AND INCLUDE PERTINENT LITERATURE AND SPECIFICATIONS. FAILURE TO PROVIDE INFORMATION FOR ANY ALTERNATES MAY BE GROUNDS FOR REJECTION OF THE BID. THE STATE RESERVES THE RIGHT TO WAIVE MINOR IRREGULARITIES IN BIDS OR SPECIFICATIONS IN ACCORDANCE WITH SECTION 148-1-4(F) OF THE WEST VIRGINIA LEGISLATIVE RULES AND REGULATIONS.</p> <p>VENDOR PREFERENCE CERTIFICATE</p> <p>THIS TEAM EXHIBIT HAS BEEN REPLACED BY THE ONLINE VERSION WHICH IS AVAILABLE HERE: HTTP://WWW.STATE.WV.US/ADMIN/PURCHASE/VRC/VENPREF.PDF</p> <p>NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
	502-363-1891	12/13/2010
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE
VP Sales	61-0732657	

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LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0002	1	EA		193-12	\$35,500	\$35,500
HEMATOLOGY ANALYZER, SYSMEX XS1000I OR EQUAL						
0003	2	EA		193-12	\$5608.00/yr	\$22,432.00
EXTENDED ON-SITE REPAIR SERVICE FOR FIVE (5) YEARS						
0004	1	JB		193-12	-0-	-0-
SHIPPING CHARGES, INSTALLATION AND ON-SITE TRAINING						
***** THIS IS THE END OF RFQ MMB11041 ***** TOTAL:						\$57,932

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE: *[Signature]* TELEPHONE: 502-363-1891 DATE: 12/13/2010
 TITLE: VP Sales FEIN: 61-0732657 ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

**STATE OF WEST VIRGINIA
PURCHASE CONTINUATION SHEET**

Page <u>2</u> of <u>4</u> Pages		Requisition / P.O. No.: MMB11041
File: RW22	Acct. No.: 5156-2011-2927-335-072 (3133)	
Spending Unit: WVDHHR/BHMF/MMBH		

Vendor: _____ P.O. Date: _____

Item No.	Quantity	Description	Unit Price	Amount
#1	1 EA	<p>Tosoh AIA 360 Immunoassay Chemistry Analyzer or equal</p> <p>METHOD *Analyzer must use Fluorescence Enzyme Immunoassay</p> <p>DETECTION *Analyzer must have LED illuminant *Analyzer must use non-flow cell/TOP-TOP photometry method</p> <p>THROUGHPUT *Must process 36 tests per hour</p> <p>REACTION TIME *Analyzer must have an Antigen antibody reaction within 10 minutes</p> <p>SAMPLE LOADING CAPACITY *Analyzer must allow 25 samples maximum</p> <p>REAGENT LOADING CAPACITY *Analyzer must allow 25 test maximum</p> <p>TEST FOR EACH SAMPLE *Analyzer must allow 4 Tests per sample</p> <p>SAMPLING *Analyzer must have a Fixed probe with Clot Detection function</p> <p>SAMPLE VESSEL *The Sample Vessel must have a minimum 2mL sample cup *The Sample Vessel must have a Primary tube 12 x 75/100mm, 16 x 75/100mm (diameter & length) maximum</p> <p>INTERFACE RS232C or Equal THE SYSTEM MUST INTERFACE TO ANY LIS SYSTEM. (LABORATORY INFORMATION SYSTEM)</p> <p>CURRENTLY INTERFACED WITH DATA INNOVATIONS</p> <p>MUST ANALYZE FULL TESTING LISTED BELOW: *Thyroid - TSH (Thyroid-Stimulating Hormone, Thyrotropin), TT3 (Total Triiodothyronine), T4 (Total Thyroxine), FT3 (Free Triiodothyronine), FT4 (Free Thyroxine), T-UPTAKE (Level of Thyroid-binding Globulin) *Cardiac Markers - CKMB (Creatine Kinase Isoenzyme Mb), Troponin I 2nd Gen, Myoglobin *Reproductive - Beta-HCG, Estradiol, FSH (Follicle-stimulating hormone), LH II (Luteinizing hormone), Prolactin, Progesterone, Testosterone Antigen 27.29), CA 19-9 (Carbohydrate Antigen 19-9 or Sialylated Lewis (a) antigen)</p>		

**STATE OF WEST VIRGINIA
PURCHASE CONTINUATION SHEET**

Vendor: _____ P.O. Date: _____

Spending Unit:
WVDHHR/BHMF/MMBH

Item No.	Quantity	Description	Unit Price	Amount
#2	1	<p>*Tumor Markers - AFP (Alphafetoprotein Testing) CEA (Carcinoembryonic Antigen) , PSA (Prostate-Specific Antigen), CA 125 (Carcinoembryonic Antigen), 27.29 (Cancer Antigen 27.29), CA 19-9 (Carbohydrate Antigen 19-9 or Sialylated Lewis (a) antigen) *Anemia - Ferritin *Metabolic - Cortisol, C-Peptide, HGH, Insulin, IPTH (Intact Parathyroid Hormone) *Others - Beta-2 Microglobulin, IgE II (Immunoglobulin E), PAP</p> <p>ANALYZER MUST BE COMPACT (TABLE TOP) IN SIZE</p> <p>SYSMEX XS1000i Hematology Analyzer or Equal</p> <p>MODEL *Vendor shall bid an analyzer without an Auto Sampler</p> <p>SYSTEM TO INCLUDE *System shall include All-in-one computer/monitor *System shall include a Bar Code Reader *System shall include a Laser Printer</p> <p>MEASUREMENT PRINCIPLES *System shall provide RBC (Red Blood Cell)/PLT(Platelet) *System shall use Sheath flow direct current, Semiconductor laser flow cytometry and/or Colorimetric methodologies.</p> <p>MUST ANALYZE THE FOLLOWING PARAMETERS:</p> <p>TESTING PARAMETERS *Testing parameters must provide CBC & 5-part Differential *Testing parameters must be all of the following 21 Parameters: WBC (White Blood Cell), RBC (Red Blood Cell), HCG (Human Chorionic Gonadotrophin), HCT (Hematocrit), MCV (Mean Corpuscular Volume), MCH (Mean Corpuscular Hemoglobin), MCHC (Mean Corpuscular Hemoglobin Concentration), RDW-SD (Red Blood Cell Distribution Width - Standard Deviation), RDW-CV (Red Blood Cell Distribution Width - Coefficient Variation), PLT (Platelet Count), MPV (Mean Platelet Volume), NEUT% (Neutrophil%), NEUT# (Neutrophil#), LYMPH% (Lymphocytes%), LYMPH# (Lymphocytes#), MONO% (Monocyte%), MONO#(Monocyte#), EOS% (Eosinophil%), EOS# (Eosinophil#), BASO% (Basophil%), BASO# (Basophil#).</p> <p>THROUGHPUT *Systems must allow a Single Sample Mode 60 samples/hr</p>		

**STATE OF WEST VIRGINIA
PURCHASE CONTINUATION SHEET**

File: RW22	Acct. No.: 5156-2011-2927-335-072 (3133)
Spending Unit: WVDHHR/BHMF/MMBH	

Vendor: _____ P.O. Date: _____

Item No.	Quantity	Description	Unit Price	Amount
		<p>QUALITY CONTROL *System must process 20 files *System must allow L-J (Levy Jennings Graph) OR XbarM Measurement *System must accommodate Common Quality Control material</p> <p>MACHINE SPECIFICATIONS *Machine must have a Windows XP or equal, operating system. *Machine must allow for storage of 10,000 records with scattergrams *Machine must allow Testing Volumes of up to 60 CBC +DIFF/24hr *Machine must provide Discrete test options for CBC or CBC +DIFF *Machine must use common reagents and quality control material</p> <p>ANALYZER MUST BE COMPACT (TABLE TOP) IN SIZE</p>		
#3	2 EA	<p>Vendor shall provided Extended On-Site Repair Service for Five (5) years to cover the following:</p> <p>CHEMISTRY ANALYZER - Service shall be 100% and will include all parts and labor.</p> <p>HEMATOLOGY ANALYZER - Service shall be 100% and will include parts and labor.</p>		
#4	1 EA	<p>SHIPPING CHARGES</p> <p>Vendor will ship and install analyzers at the Facility. Vendor will ship and install within 4-6 weeks ARO. Vendor shall provide all on-site training within 14 days of installation.</p> <p>AGENCY RESERVES THE RIGHT TO SPLIT THE AWARD.</p> <p>AWARD WILL BE MADE TO THE LOWEST BID, MEETING SPECIFICATIONS, FOR EACH MACHINE .</p> <p>VENDOR MAY INVOICE FOR EQUIPMENT ONCE ALL EQUIPMENT HAS BEEN PROVIDED, INSTALLED AND TRAINING COMPLETED AND ACCEPTED BY THE FACILITY.</p>		

State of West Virginia

VENDOR PREFERENCE CERTIFICATE

Certification and application* is hereby made for Preference in accordance with West Virginia Code, §5A-3-37. (Does not apply to construction contracts). West Virginia Code, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the West Virginia Code. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

- 1. Application is made for 2.5% resident vendor preference for the reason checked: Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; or, Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or, Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; or,
2. Application is made for 2.5% resident vendor preference for the reason checked: Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,
3. Application is made for 2.5% resident vendor preference for the reason checked: Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,
4. Application is made for 5% resident vendor preference for the reason checked: Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; or,
5. Application is made for 3.5% resident vendor preference who is a veteran for the reason checked: Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; or,
6. Application is made for 3.5% resident vendor preference who is a veteran for the reason checked: Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: _____ Signed: _____

Date: _____ Title: _____

*Check any combination of preference consideration(s) indicated above, which you are entitled to receive.

RFQ No. mmB11041

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

West Virginia Code §5A-3-10a states: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

EXCEPTION: The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

Under penalty of law for false swearing (*West Virginia Code §61-5-3*), it is hereby certified that the vendor affirms and acknowledges the information in this affidavit and is in compliance with the requirements as stated.

WITNESS THE FOLLOWING SIGNATURE

Vendor's Name: LABSCO (Laboratory Supply Company)

Authorized Signature: [Signature] Date: 12-13-2010

State of Kentucky

County of Jefferson, to-wit:

Taken, subscribed, and sworn to before me this 13 day of December, 2010.

My Commission expires July 18, 2014.


AFFIX SEAL HERE

NOTARY PUBLIC [Signature]

ATTACHMENT
P.O.# _____

This agreement constitutes the entire agreement between the parties, and there are no other terms and conditions applicable to the licenses granted hereunder.

Agreed

 12-13-2010
Signature Date

V.P. Sales
Title

LABSCO
Company Name

Signature Date

Title

Agency/Division

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** - Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
7. **RECOUPMENT** - Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **ATTORNEY FEES** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:

STATE OF WEST VIRGINIA

VENDOR

Spending Unit: _____

Company Name: LABSCO

Signed: _____

Signed: [Signature]

Title: _____

Title: V.P. Sales

Date: _____

Date: 12-13-2010