



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
CME90068

PAGE
1

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

RFQ COPY

TYPE NAME/ADDRESS HERE

VENDOR

SHIP TO

HEALTH AND HUMAN RESOURCES  
 VARIOUS LOCALES AS INDICATED  
 BY ORDER

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
01/08/2009				

BID OPENING DATE: 01/22/2009 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>ADDENDUM NO. 1</p> <p>1. QUESTIONS AND ANSWERS ARE ATTACHED.</p> <p>2. ADDENDUM ACKNOWLEDGEMENT IS ATTACHED. THIS DOCUMENT SHOULD BE SIGNED AND RETURNED WITH YOUR BID. FAILURE TO SIGN AND RETURN MAY RESULT IN DISQUALIFICATION OF YOUR BID.</p> <p>EXHIBIT 10</p> <p>REQUISITION NO.: CME90068</p> <p>ADDENDUM ACKNOWLEDGEMENT</p> <p>I HEREBY ACKNOWLEDGE RECEIPT OF THE FOLLOWING CHECKED ADDENDUM(S) AND HAVE MADE THE NECESSARY REVISIONS TO MY PROPOSAL, PLANS AND/OR SPECIFICATION, ETC.</p> <p>ADDENDUM NO.'S:</p> <p>NO. 1 .....</p> <p>NO. 2 .....</p> <p>NO. 3 .....</p> <p>NO. 4 .....</p> <p>NO. 5 .....</p> <p>I UNDERSTAND THAT FAILURE TO CONFIRM THE RECEIPT OF THE ADDENDUM(S) MAY BE CAUSE FOR REJECTION OF BIDS.</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
TITLE	FEIN	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. All quotations are governed by the *West Virginia Code* and the *Legislative Rules* of the Purchasing Division.
4. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
5. 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.
6. Payment may only be made after the delivery and acceptance of goods or services.
7. Interest may be paid for late payment in accordance with the *West Virginia Code*.
8. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
9. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
10. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
11. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
12. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, this Contract may be deemed null and void, and terminated without further order.
14. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) 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.
15. **WEST VIRGINIA ALCOHOL & DRUG-FREE WORKPLACE ACT:** If this Contract constitutes a public improvement construction contract as set forth in Article 1D, Chapter 21 of the West Virginia Code ("The West Virginia Alcohol and Drug-Free Workplace Act"), then the following language shall hereby become part of this Contract: "The contractor and its subcontractors shall implement and maintain a written drug-free workplace policy in compliance with the West Virginia Alcohol and Drug-Free Workplace Act, as set forth in Article 1D, Chapter 21 of the West Virginia Code. The contractor and its subcontractors shall provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free work place policy in compliance with the West Virginia and Drug-Free Workplace Act. It is understood and agreed that this Contract shall be cancelled by the awarding authority if the Contractor: 1) Fails to implement its drug-free workplace policy; 2) Fails to provide information regarding implementation of the contractor's drug-free workplace policy at the request of the public authority; or 3) Provides to the public authority false information regarding the contractor's drug-free workplace policy."

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**INSTRUCTIONS TO BIDDERS**

1. Use the quotation forms provided by the Purchasing Division.
2. **SPECIFICATIONS:** 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. Complete all sections of the quotation form.
4. Unit prices shall prevail in case of discrepancy.
5. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
6. **BID SUBMISSION:** 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



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 Department of Administration  
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<p>VENDOR MUST CLEARLY UNDERSTAND THAT ANY VERBAL REPRESENTATION MADE OR ASSUMED TO BE MADE DURING ANY ORAL DISCUSSION HELD BETWEEN VENDOR'S REPRESENTATIVES AND ANY STATE PERSONNEL IS NOT BINDING. ONLY THE INFORMATION ISSUED IN WRITING AND ADDED TO THE SPECIFICATIONS BY AN OFFICIAL ADDENDUM IS BINDING.</p> <p style="text-align: center;">..... SIGNATURE</p> <p style="text-align: center;">..... COMPANY</p> <p style="text-align: center;">..... DATE</p> <p>REV. 11/96</p> <p style="text-align: center;">END OF ADDENDUM NO. 1</p>						

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**STATE OF WEST VIRGINIA  
PURCHASE CONTINUATION SHEET**

Requisition / P.O. No.:  
CME90068

File: RW22 Acct. No.: 0407-2008-2937-045

Spending Unit:  
DHHR/OCME

Vendor: \_\_\_\_\_ P.O. Date: \_\_\_\_\_

Item No.	Quantity	Description	Unit Price	Amount
		<p><b>VENDOR QUESTION #1:</b></p> <p>In reviewing the solicitation, it indicates that the specifications are to 'establish the acceptable level of quality only and are not intended to reflect a preference or favor any particular brand or vendor,' but they do. The items listed in the RFQ are provided by only one vendor -- Waters Corporation. In addition, there is only one other vendor that can offer the 2 types of mass spectrometers that are being requested. Many other vendors can offer high pressure HPLCs, triple quadrupole and time-of-flight mass spectrometers, but no other vendor can offer these proprietary software and hardware packages. These specifications are directly from Waters' literature.</p> <p><b>RESPONSE:</b></p> <p>The OCME Toxicology Lab stands by the specifications that have been submitted describing our requirements for a (1) LC/MS/MS or LC "tandem MS" instrument and a (2) LC/TOF instrument. We have carefully prepared the specifications based on factors that include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Need to identify a wide range of drug/chemical entities that may be present at low concentrations.</li> <li>• Once a drug has been identified, the need to accurately measure its concentration.</li> <li>• Very limited space available for these instruments in the lab, hence, the maximum footprint has been included in our specifications.</li> <li>• Requirement that the LC part of each instrument be manufactured by the same company that makes the tandem MS or TOF component. Some vendors only manufacture the tandem MS or TOF component, but not the LC. Past experience has proven that having two different companies responsible for a single instrument causes unnecessary difficulty when repair is needed.</li> <li>• Preference to use a single vendor for both instruments, thus eliminating the need for the analyst to master more than one data system.</li> </ul> <p><b>VENDOR QUESTION #2:</b></p> <p>We believe it would be in the State's best interest to include in the solicitation the purpose and goals of the OCME by using functional specifications and informing potential bidders of their technical requirements. To my knowledge, the OCME has not made public their technical requirements, nor have evaluated equipment, had representative samples analyzed by potential vendors, or performed site visits to the vendors to run their samples on their instruments. Best value is a ratio of needs met to the price. We respectfully request to be informed of the needs of the OCME.</p>		

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Item No.	Quantity	Description	Unit Price	Amount
		<p><b>RESPONSE:</b></p> <p>The letter from Mr. Schwarz (Applied Biosystems) is critical of our process in preparing bid specifications stating we have not "evaluated equipment, had representative samples analyzed by potential vendors, or performed site visits to the vendors to run their samples on their instruments." We do not feel that vendors should dictate the steps we take to determine our bid specifications. Our lab has purchased numerous analytical instruments in the past and never visited the vendors (scattered worldwide), or provided the vendors samples to analyze.</p> <p>We have taken the time to meet with representatives from several instrument manufacturers including Agilent, Applied Biosystems, and Waters. In point of fact, all four OCME lab technical staff members (Kristen Bailey, Myron Gebhardt, Dave Clay and Dr. Kraner) met with Mr. Schwarz and an LC/MS specialist from Applied Biosystems for several hours prior to writing the specifications. We have also spoken to numerous scientists including those at AIT and the National Institute of Drug Abuse. It was actually someone that the Applied Biosystems representatives recommended we talk to who felt most definite that the combination of LC/TOF and LC tandem MS, as described in our bid specifications was most advantageous in meeting our needs.</p> <p><b>VENDOR QUESTION #3:</b></p> <p>Applied Biosystems are a world leader in the applications of the OCME. We have instrumentation is the most reputable toxicology labs in the country like the FBI, the National Institute on Drug Abuse, the Georgia Bureau of Investigation, Armed Forces Institute of Pathology, the Department of Defense Drug Testing Lab, and in private labs like National Medical Services and AIT Labs. We have many types of analytical equipment to meet their needs once they are defined. For example, for the triple quadrupole mass spectrometer listed, we have 4 different products that could meet the State's needs.</p> <p>To achieve fair and open competition, we believe that this solicitation at least be broken into 2 solicitation - one for each 'system' The State will receive more responses and a better survey of what is available on the market. If splitting the solicitation is not an option, then based on the information in the notice, I would like to formally request that this RFQ be modified or cancelled.</p>		
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Item No.	Quantity	Description	Unit Price	Amount
		<p><b>RESPONSE:</b></p> <p>The OCME lab staff includes three American Board of Forensic Toxicology-certified scientists who are fully qualified to evaluate the instrumentation under consideration and select the systems that are best suited to our needs. None of the lab staff have any financial interest in any of the companies that manufacturer these instruments. We feel that the bid specifications contained in RFQ CME90068 are appropriate in describing our specifications for these instruments.</p> <p><b>VENDOR QUESTION #4:</b></p> <p>The bid states that the model / brand / specifications listed in the bid are for quality levels only, and that alternate or equivalent proposals will be accepted. However, the requirements listed are Waters system specifications, all the way down to the software and informatics. What requirements will the State use to fairly evaluate the proposal of an alternate brand?</p> <p><b>RESPONSE:</b></p> <p>Vendor must submit pertinent literature on alternate equipment bid which proves that the alternate equipment is comparable to the requested specifications.</p> <p><b>VENDOR QUESTION #5:</b></p> <p>Could those non brand specific requirements be added to the RFQ?</p> <p><b>RESPONSE:</b></p> <p>No, non brand specific requirements can not be added because it is up to the the vendor that is bidding alternate equipment to prove that the equipment is equivalent and will meet the specifications listed.</p> <p><b>VENDOR QUESTION #6:</b></p> <p>In paragraph 2 of the "General T's &amp;C's" , it states that the State may accept in part or in whole any bid, though in "Additional Requirements", page 22, paragraph 3 the bid states that the vendor must manufacture both systems. Are partial awards possible and if not, why must the vendor manufacture both systems?"</p> <p><b>RESPONSE:</b></p> <p>In regard to "partial awards and why the vendor must manufacture both systems", this was previously answered in the response to question #1.</p>		