



Lori A. Shibinette  
Commissioner

Lisa M. Morris  
Director

JUN 25 '20 PM 3:41 DAS  
STATE OF NEW HAMPSHIRE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DIVISION OF PUBLIC HEALTH SERVICES

29 HAZEN DRIVE, CONCORD, NH 03301  
603-271-4501 1-800-852-3345 Ext. 4501  
Fax: 603-271-4827 TDD Access: 1-800-735-2964  
www.dhhs.nh.gov

June 10, 2020

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Health and Human Services, Division of Public Health Services, to amend an existing **Retroactive, Sole Source** contract with Becton, Dickinson and Company (VC#175107), Sparks, MD, for the provision of reagent kits and supplies needed to perform laboratory testing for infectious diseases, by exercising a contract renewal option by increasing the price limitation by \$36,318 from \$285,000 to \$321,318 and by extending the completion date from June 30, 2020 to June 30, 2023 effective retroactive to June 30, 2020 upon Governor and Council approval. 18.5% Federal Funds. 81.5% General Funds.

The original contract was approved by Governor and Council on October 21, 2015, item #11A.

Funds are available in the following accounts for State Fiscal Year 2021, and are anticipated to be available in State Fiscal Years 2022 and 2023, upon the availability and continued appropriation of funds in the future operating budget, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and justified.

**05-95-90-903010-7966 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS, HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF LABORATORY SERVICES, PUBLIC HEALTH LABORATORIES**

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2016	548-500396	Reagents	90059000	\$46,300	\$0	\$46,300
2017	548-500396	Reagents	90059000	\$46,300	\$0	\$46,300
2018	548-500396	Reagents	90059000	\$46,300	\$0	\$46,300
2019	548-500396	Reagents	90059000	\$46,300	\$0	\$46,300
2020	548-500396	Reagents	90059000	\$46,300	\$0	\$46,300
2021	548-500396	Reagents	90059000	\$0	\$9,866	\$9,866
2022	548-500396	Reagents	90059000	\$0	\$9,866	\$9,866
2023	548-500396	Reagents	90059000	\$0	\$9,866	\$9,866
			<b>Subtotal</b>	<b>\$231,500</b>	<b>\$29,598</b>	<b>\$261,098</b>

**05-95-90-902510-5170 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS, HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF INFECTIOUS DISEASE CONTROL, DISEASE CONTROL**

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2016	548-500396	Reagents	90067001	\$1,700	\$0	\$1,700
2017	548-500396	Reagents	90067001	\$1,700	\$0	\$1,700
2018	548-500396	Reagents	90067001	\$1,700	\$0	\$1,700
2019	548-500396	Reagents	90067001	\$1,700	\$0	\$1,700
2020	548-500396	Reagents	90067001	\$1,700	\$0	\$1,700
2021	548-500396	Reagents	90067001	\$0	\$2,240	\$2,240
2022	548-500396	Reagents	90067001	\$0	\$2,240	\$2,240
2022	548-500396	Reagents	90067001	\$0	\$2,240	\$2,240
			<b>Subtotal</b>	<b>\$8,500</b>	<b>\$6,720</b>	<b>\$15,220</b>

**05-95-90-902510-7536 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS, HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF INFECTIOUS DISEASE CONTROL, STD/HIV PREVENTION**

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2016	548-500396	Reagents	90067001	\$9,000	\$0	\$9,000
2017	548-500396	Reagents	90067001	\$9,000	\$0	\$9,000
2018	548-500396	Reagents	90067001	\$9,000	\$0	\$9,000
2019	548-500396	Reagents	90067001	\$9,000	\$0	\$9,000
2020	548-500396	Reagents	90067001	\$9,000	\$0	\$9,000
			<b>Subtotal</b>	<b>\$45,000</b>	<b>\$0</b>	<b>\$45,000</b>
			<b>Total</b>	<b>\$285,000</b>	<b>\$36,318</b>	<b>\$321,318</b>

**EXPLANATION**

This request is **Retroactive** because the Department did not have the fully executed contract documents in time for Governor and Executive Council approval to prevent the current contract from expiring. This request is **Sole Source** because the contract was originally approved as sole source and MOP 150 requires any subsequent amendments to be labelled as sole source. Per the Centers for Disease Control guidelines, the BACTEC MGIT 960 System instrument is required for the culture of tuberculosis samples. The reagent kits and supplies needed to perform this testing are only supplied through the Contractor.

The purpose of this request is ensure continued ability to obtain reagents and supplies needed to test for *Mycobacterium tuberculosis* statewide. The testing is critical because all class B1 immigrants are required, by law, to submit to tuberculosis testing through state or local public health departments within 30 days of entering the country. The Manchester and Nashua Public Health Departments and area hospitals all submit samples to the New Hampshire Public Health Laboratories for testing. Tuberculosis cultures are also routinely submitted by infectious disease doctors and pulmonologists from statewide hospitals on individuals who are in long term care

facilities, those with unresolved lung infections, and individuals who are ventilator dependent. In addition, the State has received a high amount of samples for tuberculosis testing as physicians are testing for this in conjunction with COVID-19 testing.

Tuberculosis is the leading cause of death in the world from a single etiological agent and is extremely infectious. New Hampshire had six (6) positive tuberculosis patients in 2019 and has already had six (6) positive patients to date in 2020. Each positive tuberculosis test requires additional contact investigations, specimen sampling and culturing to rule out tuberculosis for close contacts.

Given it is such a highly infectious disease, the standard of care for tuberculosis includes rapid identification of infection to prevent further spread of the illness. The BACTEC MGIT 960 system quickly cultures all *Mycobacteria*, but especially *Mycobacterium tuberculosis*. This liquid growth medium is recognized as a best practice for culturing *M. tuberculosis* because the rate of growth of the organism in liquid media is exponentially faster than trying to culture the organism on conventional solid media.

As referenced in Exhibit C-1 of the original contract, the parties have the option to extend the agreement for up to three (3) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties and Governor and Council approval. The Department is exercising its option to renew services for three (3) of the three (3) years available.

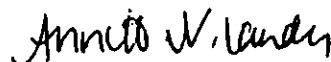
Should the Governor and Council not authorize this request, critical testing for tuberculosis cannot be conducted in New Hampshire, as required by the federal government, and the Department will no longer receive grant funding from Centers of Disease Control for this program.

Area served: Statewide

Source of Funds: CFDA #93.116, FAIN # NU52PS910182

In the event that the Federal Funds become no longer available, additional General Funds will not be requested to support this program.

Respectfully submitted,



For  
Lori A. Shibinette  
Commissioner



**State of New Hampshire  
Department of Health and Human Services  
Amendment #1 to the Reagent Rental Agreement Contract**

This 1<sup>st</sup> Amendment to the Infectious Disease Laboratory Testing contract (hereinafter referred to as "Amendment #1") is by and between the State of New Hampshire, Department of Health and Human Services (hereinafter referred to as the "State" or "Department") and Becton, Dickinson and Company, (hereinafter referred to as "the Contractor"), a corporation with a place of business at 7 Loveton Circle, Sparks, MD 21152.

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor and Executive Council on October 21, 2015, (Item #11A), the Contractor agreed to perform certain services based upon the terms and conditions specified in the Contract and in consideration of certain sums specified; and

WHEREAS, pursuant to Form P-37, General Provisions, Paragraph 18, and Exhibit C-1 Revisions to General Provisions, Paragraph 6, the Contract may be amended upon written agreement of the parties and approval from the Governor and Executive Council; and

WHEREAS, the parties agree to extend the term of the agreement, increase the price limitation, or modify the scope of services to support continued delivery of these services; and

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained in the Contract and set forth herein, the parties hereto agree to amend as follows:

1. Form P-37 General Provisions, Block 1.7, Completion Date, to read:  
June 30, 2023.
2. Form P-37, General Provisions, Block 1.8, Price Limitation, to read:  
\$321,318.
3. Form P-37, General Provisions, Block 1.9, Contracting Officer for State Agency, to read:  
Nathan D. White, Director.
4. Form P-37, General Provisions, Block 1.10, State Agency Telephone Number, to read:  
603-271-9631.
5. Modify Exhibit B, Methods and Conditions of Methods and Conditions Precedent by replacing it in its entirety with Exhibit B, Amendment #1 Methods and Conditions of Methods and Conditions Precedent, which is attached hereto and incorporated by reference herein.

New Hampshire Department of Health and Human Services  
Reagent Rental Agreement

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All terms and conditions of the Contract not inconsistent with this Amendment #1 remain in full force and effect. This amendment shall be effective upon the date of Governor and Executive Council approval.

IN WITNESS WHEREOF, the parties have set their hands as of the date written below,

State of New Hampshire  
Department of Health and Human Services

6/11/20  
Date

AKO  
Name: Ann Landry  
Title: Associate Commissioner

Becton, Dickinson and Company

June 10, 2020  
Date

Julia C Bell  
Name: Julia C Bell  
Title: Sr Mgr Commercial Contracting

New Hampshire Department of Health and Human Services  
Reagent Rental Agreement



The preceding Amendment, having been reviewed by this office, is approved as to form, substance, and execution.

OFFICE OF THE ATTORNEY GENERAL

06/23/20

Date

*Catherine Pinos*

Name:

Title: Catherine Pinos, Attorney

I hereby certify that the foregoing Amendment was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: \_\_\_\_\_ (date of meeting)

OFFICE OF THE SECRETARY OF STATE

Date

Name:

Title:



Exhibit B, Amendment #1

**Method and Conditions Precedent to Payment**

1. The State shall pay the Contractor an amount not to exceed the Form P-37, Block 1.8, Price Limitation for the services provided pursuant to Exhibit A, Scope of Services.
2. This Agreement is funded with general funds and federal funds as follows:
  - 2.1. 4.7% Federal Funds from the Centers for Disease Control and Prevention, Tuberculosis Control Programs, CFDA #93.116, Federal Award Identification Number (FAIN), U52PS004684 & NU52PS910182;
  - 2.2. 14.1% Federal Funds from the Centers for Disease Control and Prevention, Preventive Health Services, Sexually Transmitted Diseases Control, CFDA #93.977, FAIN, H25PS004339.
  - 2.3. 81.2% General Funds
3. Failure to meet the scope of services may jeopardize the funded Contractor's current and/or future funding.
4. The State will purchase reagents and supplies each State Fiscal Year of this Agreement through the State's purchasing system under the Department of Administrative Services (DAS).
5. Payment for said services shall be made monthly as follows:
  - 5.1. It is estimated that the State will purchase up to \$12,106 of product each State Fiscal Year during the contract period, with no minimum purchases guaranteed.
  - 5.2. The State will purchase product at the Kit Price as indicated for each State Fiscal Year below:

**Table 1**  
**BACTEC MGIT 960 System Product Pricing**

Cat. No.	Item Description	Kit Price for SFY 2021 through SFY 2023
245122	BACTEC MGIT Tubes, 7 ml	\$708.00
245124	BACTEC MGIT Supplement, 100 test	\$72.00
245115	Tube Pza Medium, 25 pack	\$216.00
245123	Kit Sire	\$97.00
245125	Kit Streptomycin 4.0 kit	\$50.00

*JCB*

New Hampshire Department of Health and Human Services  
Reagent Rental Agreement



Exhibit B, Amendment #1

245126	Kit Isoniazid 0.4 kit	\$50.00
245128	Kit Drug Pza	\$91.00
245288	BACTEC Myco F Lytic	\$478.00

- 5.3. The Contractor shall submit an invoice in a form satisfactory to the State by the twentieth (20<sup>th</sup>) working day of each month, which identifies and requests reimbursement for authorized expenses incurred in the prior month.
- 5.4. The Contractor shall ensure the invoice is completed, signed, dated and returned to the Department in order to initiate payment.
- 5.5. The State shall make payment to the Contractor within thirty (30) days of receipt of each invoice, subsequent to approval of the submitted invoice and if sufficient funds are available.
6. The Contractor shall keep detailed records of their activities related to Department-funded programs and services and have records available for Department review, as requested.
7. The final invoice shall be due to the State no later than forty (40) days after the contract completion date specified in Form P-37, General Provisions Block 1.7 Completion Date.
8. In lieu of hard copies, all invoices may be assigned an electronic signature and emailed to [PHLAccountsPayable@dhhs.nh.gov](mailto:PHLAccountsPayable@dhhs.nh.gov), or invoices may be mailed to:
- Financial Administrator  
Department of Health and Human Services  
Division of Public Health  
Attn: Public Health Laboratories  
29 Hazen Drive  
Concord, NH 03301
9. Payments may be withheld pending receipt of required reports or documentation as identified in Exhibit A, Scope of Services and in this Exhibit B.
10. Notwithstanding anything to the contrary herein, the Contractor agrees that funding under this agreement may be withheld, in whole or in part, in the event of non-compliance with any Federal or State law, rule or regulation applicable to the services provided, or if the said services or products have not been satisfactorily completed in accordance with the terms and conditions of this agreement.
11. Notwithstanding paragraph 18 of the General Provisions P-37, changes limited to adjusting encumbrances between State Fiscal Years, may be made by written

Becton, Dickinson and Company

Exhibit B, Amendment #1

Contractor Initials

*JCB*

SS-2015-DPHS-03-REAGE-A01

Page 2 of 3

Date 6/11/2020



New Hampshire Department of Health and Human Services  
Reagent Rental Agreement



Exhibit B, Amendment #1

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agreement of both parties and may be made without obtaining approval of the Governor and Executive Council.

*JCB*

# State of New Hampshire

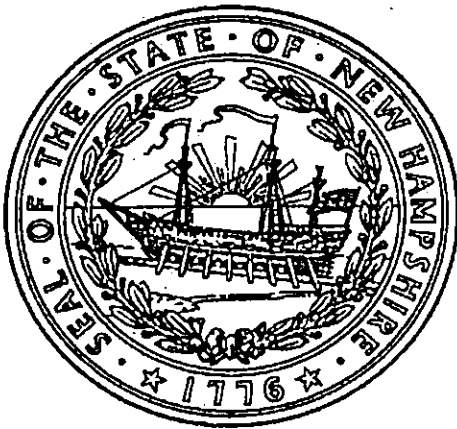
## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that BECTON, DICKINSON AND COMPANY is a New Jersey Profit Corporation registered to do business in New Hampshire as BECTON, DICKINSON AND COMPANY INC. on April 11, 2017. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 768382

Certificate Number: 0004929965



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 12th day of June A.D. 2020.

A handwritten signature in black ink, appearing to read "Wm Gardner".

William M. Gardner  
Secretary of State

## CERTIFICATE OF AUTHORITY

I, Martin Lukowski, hereby certify that:

1. I am a duly elected Clerk/Secretary/Officer of Becton Dickinson and Company.

2. The following is a true copy of a vote taken at a meeting of the Board of Directors/shareholders, duly called and held on June 22, 2020, at which a quorum of the Directors/shareholders were present and voting.

**VOTED:** That Colleen Raiche - Account Executive, & Julia Bell – Sr. Mgr., Customer Contract Administration (may list more than one person)

is duly authorized on behalf of Becton Dickinson and Company to enter into contracts or agreements with the State

of New Hampshire and any of its agencies or departments and further is authorized to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, which may in his/her judgment be desirable or necessary to effect the purpose of this vote.

3. I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of the date of the contract/contract amendment to which this certificate is attached. This authority **remains valid for thirty (30) days** from the date of this Certificate of Authority. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person(s) listed above currently occupy the position(s) indicated and that they have full authority to bind the corporation. To the extent that there are any limits on the authority of any listed individual to bind the corporation in contracts with the State of New Hampshire, all such limitations are expressly stated herein.

Dated: June 22, 2020

Martin Lukowski

Signature of Elected Officer

Name: Martin Lukowski

Title: Director, Diagnostic Capital Contracting

MEMORANDUM OF INSURANCE					DATE 22-Jun-2020	
<p>This Memorandum is issued as a matter of information only to authorized viewers for their internal use only and confers no rights upon any viewer of this Memorandum. This Memorandum does not amend, extend or alter the coverage described below. This Memorandum may only be copied, printed and distributed within an authorized viewer and may only be used and viewed by an authorized viewer for its internal use. Any other use, duplication or distribution of this Memorandum without the consent of Marsh is prohibited. "Authorized viewer" shall mean an entity or person which is authorized by the insured named herein to access this Memorandum via <a href="https://marshdigital.marsh.com/marshconnect/viewMOI.action?clientId=null">https://marshdigital.marsh.com/marshconnect/viewMOI.action?clientId=null</a>. The information contained herein is as of the date referred to above. Marsh shall be under no obligation to update such information.</p>						
PRODUCER Marsh USA Inc. ("Marsh")			COMPANIES AFFORDING COVERAGE			
INSURED Becton, Dickinson and Company Including All Subsidiaries and Divisions One Becton Drive, Franklin Lakes New Jersey 07417 United States			Co. A ACE AMERICAN INSURANCE COMPANY			
			Co. B Beazley Fulonge Ltd			
			Co. C ACE Property and Casualty Insurance Company			
			Co. D ACE Fire Underwriters Ins. Co			
			Co. E			
				Co. F		
COVERAGES						
<p>THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS MEMORANDUM MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS</p>						
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS LIMITS IN USD UNLESS OTHERWISE INDICATED	
A	GENERAL LIABILITY Commercial General Liability Occurrence	HDO G71231197	01-Apr-2020	01-Apr-2021	GENERAL AGGREGATE	25,000,000
					PRODUCTS - COMP/OP AGG	Included in the General Aggregate Limit
					PERSONAL AND ADV INJURY	10,000,000
					EACH OCCURRENCE	10,000,000
					FIRE DAMAGE (ANY ONE FIRE)	500,000
					MED EXP (ANY ONE PERSON)	5,000
A	AUTOMOBILE LIABILITY Any Auto	ISA H25299772	01-Apr-2020	01-Apr-2021	COMBINED SINGLE LIMIT	3,000,000
					BODILY INJURY (PER PERSON)	
					BODILY INJURY (PER ACCIDENT)	
					PROPERTY DAMAGE	
C	EXCESS LIABILITY	XSL G71231239	01-Apr-2020	01-Apr-2021	EACH OCCURRENCE	5,000,000
					AGGREGATE	10,000,000
A D	WORKERS COMPENSATION / EMPLOYERS LIABILITY	WLR C66919560 (CA & MA) SCF C66919602 (WI Only)	01-Apr-2020 01-Apr-2020	01-Apr-2021 01-Apr-2021	WORKERS COMP LIMITS	Statutory
					EL EACH ACCIDENT	2,000,000
					EL DISEASE - POLICY LIMIT	2,000,000
					EL DISEASE - EACH EMPLOYEE	2,000,000
B	Professional Liability & Cyber Liability	B0509FINPB2000042	01-Apr-2020	01-Apr-2021	Each Claim/Aggregate	\$15,000,000 \$2,500,000 SIR
<p>The Memorandum of Insurance serves solely to list insurance policies, limits and dates of coverage. Any modifications hereto are not authorized.</p>						

## MEMORANDUM OF INSURANCE

DATE  
22-Jun-2020

This Memorandum is issued as a matter of information only to authorized viewers for their internal use only and confers no rights upon any viewer of this Memorandum. This Memorandum does not amend, extend or alter the coverage described below. This Memorandum may only be copied, printed and distributed within an authorized viewer and may only be used and viewed by an authorized viewer for its internal use. Any other use, duplication or distribution of this Memorandum without the consent of Marsh is prohibited. "Authorized viewer" shall mean an entity or person which is authorized by the insured named herein to access this Memorandum via <https://marshdigital.marsh.com/marshconnect/viewMOL.action?clientId=null>. The information contained herein is as of the date referred to above. Marsh shall be under no obligation to update such information.

### PRODUCER

Marsh USA Inc.  
("Marsh")

### INSURED

Becton, Dickinson and Company  
Including All Subsidiaries and Divisions  
One Becton Drive, Franklin Lakes  
New Jersey 07417  
United States

### ADDITIONAL INFORMATION

AS RESPECTS GENERAL LIABILITY COVERAGE, INCLUDING PRODUCTS LIABILITY:

ADDITIONAL INSURED WORDING:

ADDITIONAL INSURED STATUS IS GRANTED TO A PARTY GRANTED ACCESS TO THIS MEMORANDUM, BUT ONLY TO THE EXTENT THAT SUCH A STATUS HAS BEEN AGREED TO, AND IS EVIDENCED IN A WRITTEN AGREEMENT FOR SERVICE OR PRODUCTS, BETWEEN SUCH PARTY AND THE INSURED NAMED HEREIN OR ANY SUBSIDIARY THEREOF.

BROAD FORM VENDORS COVERAGE.

WAIVER OF SUBROGATION INCLUDED WHERE REQUIRED BY WRITTEN CONTRACT.

### INSURED ENTITIES:

Bard Access Systems, Inc.  
Bard Medical Division  
Bard Peripheral Vascular, Inc.  
BD Biosciences, Systems and Reagents, Inc.  
BD Diagnostics  
BD Life Sciences  
BD Medical  
BD Preanalytical Systems  
Becton Dickinson & Company  
CareFusion 213 LLC  
CareFusion 2200, Inc.  
CareFusion 2201, Inc.  
CareFusion 302, LLC  
CareFusion 303, Inc.  
CareFusion Corporation  
CareFusion Manufacturing, LLC  
CareFusion Resources, LLC  
CareFusion Solutions, LLC  
Cellular Research, Inc.  
CME America, LLC  
CR Bard Davol Division  
CR Bard, Inc.  
Daval Inc.  
Dymax Corporation  
Enturican, Inc.  
FlowJo LLC  
Liberator Medical Supply, Inc.  
Purewick Corporation  
Rochester Medical Corporation  
Sirigen, Inc.  
Surgical Site Solutions, Inc.  
Tri-County Medical & Ostomy Supplies, Inc.

TriPath Imaging, Inc.

AS RESPECTS BUSINESS AUTOMOBILE COVERAGE:

AUTO COMPREHENSIVE AND COLLISION COVERAGE IS SELF-INSURED BY INSURED FOR VEHICLES.

EXCESS POLICY EVIDENCED SITS EXCESS OF GENERAL LIABILITY/PRODUCTS ONLY

AS RESPECTS WORKERS' COMPENSATION COVERAGE, PLEASE NOTE ADDITIONAL POLICY:

POLICY NUMBER: WLR C66919523 (AOS)

INSURER: INDEMNITY INSURANCE COMPANY OF NORTH AMERICA

POLICY TERM: 04/01/2020 TO 04/01/2021

AS RESPECTS TO PROFESSIONAL LIABILITY & CYBER LIABILITY COVERAGE, THE FOLLOWING IS INCLUDED AS PART OF THE OVERALL LIMIT OF LIABILITY:

- PRIVACY NOTIFICATION COSTS
- REGULATORY DEFENSE AND PENALTIES

The Memorandum of Insurance serves solely to list insurance policies, limits and dates of coverage. Any modifications hereto are not authorized.

[Click here](#) for a printer-friendly version of this document.



Becton, Dickinson and Company  
3750 Torrey View Court  
San Diego, CA 92130  
858.617.2000 tel.

March 20, 2020

Subject: Memorandum of Insurance

Today's technology has given us the opportunity to expand and enhance how we deliver insurance information to you. The Memorandum of Insurance (MOI) has enabled customers and business partners to obtain current information about BD's insurance program at any time by using the web address listed below. Please retain this website address so that you can refer to it in the future.

The BD Memorandum of Insurance (MOI) provides on-line information about the current BD insurance program. This information includes policy numbers, limits, and insurance policy providers. It is available to view at any time, and reduces the paperwork, phone calls and faxes involved in obtaining paper Certificates of Insurance. The MOI can be accessed at the following web site:

<https://online.marsh.com/marshconnectpublic/marsh2/public/moi?client=D409>

The MOI shows insurance information just as a Certificate of Insurance does. The MOI indicates that the policies of insurance provide Additional Insured status to entities that BD has agreed by written contract to include as Additional Insured. Look carefully at the Additional Information section of the MOI for information regarding Additional Insured endorsements to the policies of insurance.

This on-line service is provided through BD's insurance broker, Marsh USA Inc. You will be asked to read and agree to the terms and conditions of service from Marsh prior to printing or viewing our Memorandum of Insurance. Should you have any questions, email the Risk Management Team at [GMB-RiskManagement@bd.com](mailto:GMB-RiskManagement@bd.com)

Thank you for helping us to use the Internet to provide you with coverage information when you need it.

Best Regards,  
*Risk Management*

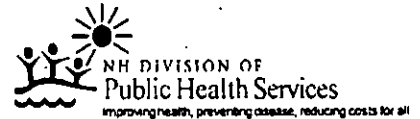


Nicholas A. Toumpas  
Commissioner

Marcella J. Bobinsky  
Acting Director

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

29 HAZEN DRIVE, CONCORD, NH 03301-6527  
603-271-4661 1-800-852-3345 Ext. 4661  
Fax: 603-271-4760 TDD Access: 1-800-735-2964



September 2, 2015

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

Sole Source

**REQUESTED ACTION**

Authorize the Department of Health and Human Services, Division of Public Health Services, to enter into a **sole source** agreement with Becton, Dickinson and Company (Vendor #175107), 7 Loveton Circle, Sparks, MD, 21152, for the purchase of reagents and other consumable system supplies needed to perform laboratory testing of diseases using the BD Probetec and the BACTEC MGIT 960 instrument systems, in an amount not to exceed \$285,000 effective upon Governor and Executive Council approval through June 30, 2020. 18.9% Federal Funds and 81.1% General Funds.

Funds to support this request are anticipated to be available in the following accounts for State FY 2016, State FY 2017, State FY 2018, State FY 2019, and State FY 2020 upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances between State Fiscal Years, through the Budget Office, without further approval from the Governor and Executive Council, if needed and justified.

05-95-90-903010-7966 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS,  
HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF LABORATORY SERVICES, PUBLIC HEALTH  
LABORATORIES

Fiscal Year	Class/Account	Class Title	Job Number	Total Amount
SFY 2016	548-500396	Reagents	90059000	\$46,300
SFY 2017	548-500396	Reagents	90059000	\$46,300
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SFY 2019	548-500396	Reagents	90059000	\$46,300
SFY 2020	548-500396	Reagents	90059000	\$46,300
		<b>Sub-Total</b>		<b>\$231,500</b>



05-95-90-902510-5170 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS,  
HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF INFECTIOUS DISEASE CONTROL, DISEASE  
CONTROL

Fiscal Year	Class/Account	Class Title	Job Number	Total Amount
SFY 2016	548-500396	Reagents	90068000	\$1,700
SFY 2017	548-500396	Reagents	90068000	\$1,700
SFY 2018	548-500396	Reagents	90068000	\$1,700
SFY 2019	548-500396	Reagents	90068000	\$1,700
SFY 2020	548-500396	Reagents	90068000	\$1,700
			<b>Sub-Total</b>	<b>\$8,500</b>

05-95-90-902510-7536 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS,  
HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF INFECTIOUS DISEASE CONTROL, STD/HIV  
PREVENTION

Fiscal Year	Class/Account	Class Title	Job Number	Total Amount
SFY 2016	548-500396	Reagents	90067001	\$9,000
SFY 2017	548-500396	Reagents	90067001	\$9,000
SFY 2018	548-500396	Reagents	90067001	\$9,000
SFY 2019	548-500396	Reagents	90067001	\$9,000
SFY 2020	548-500396	Reagents	90067001	\$9,000
			<b>Sub-Total</b>	<b>\$45,000</b>
			<b>Total</b>	<b>\$285,000</b>

### **EXPLANATION**

This request is **sole source** because the reagent kits and supplies to perform testing for sexually transmitted infections using the BD Probetec System and Tuberculosis Testing using the BACTEC MGIT 960 System are proprietary to Becton, Dickenson, and Company. Testing at the Public Health Laboratories is performed in support of diagnoses and prevention efforts by the Bureau of Infectious Disease Control, local health departments, and healthcare providers.

Funds in this agreement will be used to purchase reagents and other test kit supplies for the BD Probetec Equipment and BACTEC MGIT 960 Systems. Each State Fiscal Year during the term of the Agreement, the Laboratory will submit a requisition to the Department of Administrative Services, and a Purchase Order will be issued, which allows for ordering reagents and supplies as needed throughout each State Fiscal Year.

The BD Probetec System can quickly detect the microorganisms that cause sexually transmitted infections so that healthcare providers can treat patients and reduce further transmission of disease. The Probetec system has been used in the Laboratory, validated, and its performance conforms to regulatory quality assurance requirements. If the Probetec system was no longer available to the Laboratory, the Laboratory would need to suspend testing in order to evaluate and validate other systems, and the public would be put at risk. The Probetec system is on loan from the vendor, saving on the costly acquisition of a new system, and associated costs for preventative service, repair, and software updates.

Tuberculosis is a highly infectious disease and the standard of care for this disease includes rapid identification of infection to prevent further spread of the illness. The BACTEC MGIT 960 system can quickly culture *Mycobacterium tuberculosis* (Mtb) using a liquid growth medium. This liquid growth medium is best practice for culturing Mtb because the rate of growth of the organism in liquid media far exceeds the growth rate of solid culture media. If the BACTEC MGIT 960 were not available the public would be at increased risk of tuberculosis disease due to the highly infectious nature of Mtb. Lack of rapid culture would delay diagnosis, delay the determination of antibiotic resistance of the organism and hence proper treatment, and delay epidemiologic characterization of the organism to identify contagious clusters of disease.

Should Governor and Executive Council not authorize this Request, the Public Health Laboratories would no longer have the BD Probetec or BACTEC MGIT. Systems available to conduct laboratory tests and would have to purchase expensive replacement systems.

As referenced in Exhibit C1, paragraph 6, Extension, this Agreement has the option to extend for three (3) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties and approval of the Governor and Council.

The following performance measures will be used to measure the effectiveness of the agreement:

- Unlimited urgent repair calls, with response within 24 hours.
- Unlimited on-site visits for problems that could not be resolved over the phone for the BD Probetec Equipment System.

Area served: Statewide.

Source of Funds is 18.9% Federal Funds from Centers for Disease Control and Prevention and 81.1% General Funds.

In the event that the Federal Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,



Marcella J. Bobirsky, MPH  
Acting Director

Approved by:



Nicholas A. Toumpas  
Commissioner

Subject: Reagent Rental Agreement**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS****1. IDENTIFICATION.**

1.1 State Agency Name Department of Health and Human Services		1.2 State Agency Address 129 Pleasant St. Concord, NH 03301-3857	
1.3 Contractor Name Becton, Dickinson and Company		1.4 Contractor Address 7 Loveton Circle Sparks, MD 21152	
1.5 Contractor Phone 877-362-2700	1.6 Account Number 05-95-90-903010-7966-548- 500396 05-95-90-902510- 2227-548-500396 05-95-90- 902510-5170-548-500396	1.7 Completion Date <del>June 30, 2021</del> <i>10/12/15</i> June 30, 2020 <i>BSO 10/13/15</i>	1.8 Price Limitation \$285,000
1.9 Contracting Officer for State Agency Brook Dupee, Bureau Chief		1.10 State Agency Telephone Number 603-271-4483	
1.11 Contractor Signature <i>Robin Zybell</i>		1.11 Name and Title of Contractor Signatory Robin Zybell, Contracts Supervisor	
1.13 Acknowledgement: State of <u>Maryland</u> , County of <u>Baltimore</u>  On August 6, 2015, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace <i>Denice L. Huggins</i> (Seal)		<div style="border: 1px solid black; padding: 5px;"> <b>DENICE L. HUGGINS</b>          Notary Public-Maryland          Baltimore County          My Commission Expires  <b>September 26, 2017</b> </div>	
1.13.2 Name and Title of Notary or Justice of the Peace Denice Huggins			
1.14 State Agency Signature <i>Brook S. Dupee</i>		1.15 Name and Title of State Agency Signatory Brook S. Dupee / Bureau Chief	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable)  By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution)  By: <i>Mary A. Kelly</i> On: <i>10/1/15</i> <i>Mary</i> <i>10/13/15</i>			
1.18 Approval by the Governor and Executive Council  By: _____ On: _____			

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement

those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

## 8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

## 9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of

termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

**13. INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

## 14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer

*RM*  
8/6/15

identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**17. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.**

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.



## Exhibit A

### SCOPE OF SERVICES

## 1. General Provisions

The Contractor shall:

- 1.1. Provide one BD Probetec Equipment System to the Department of Health and Human Services (DHHS) to be utilized by the Public Health Laboratories (PHL) to perform testing for Sexual Transmitted Diseases (STD).
- 1.2. Provide one BACTEC MGIT 960 System to DHHS to be utilized by the PHL to perform testing for Tuberculosis (TB).
- 1.3. Maintain ownership and hold exclusive title to the BD Probetec Equipment System and the BACTEC MGIT 960 System (listed in table 1) both to be located at the New Hampshire Public Health Laboratories (PHL), 29 Hazen Dr., Concord New Hampshire.

Table 1  
BD Probetec Equipment System

Qty	System Description	Serial number(s)
1	BD Probetec Equipment System	PT1143 (Instrument already on-site)
2	Lysing Heaters	2682; 3041
2	Power Pipettors	145902018; 165667009
1	Amplification Heater	1086
1	BACTEC MGIT 960 System	445880

- 1.4. Provide unlimited On-Site Repair Services and toll-free telephone support – performed due to an instrument malfunction for each System listed in Table 1.
- 1.5. Provide initial diagnostic services will be available during the Contractor's normal business hours, (Monday through Friday, 8:00 a.m. to 5:00 p.m. EST) via telephone, e-mail or remote access for each System listed in Table 1.
- 1.6. Respond by telephone within 24 hours of the initial call for service. If the problem cannot be resolved over the phone then an on-site visit will be scheduled.
- 1.7. Repair services include labor, parts, travel expenses, telephone assistance and computer software upgrade costs for each System listed in Table 1.
- 1.8. The State Shall:
  - 1.8.1 Utilize and operate the BD Probetec Equipment System and the BACTEC MGIT 960 System according to the User's Manual provided by the Manufacturer.



## Exhibit A

1.8.2. Notify the Contractor immediately if the BD Probetec Equipment System and when the BACTEC MGIT 960 System is in need of maintenance or repair.

1.8.3. Purchase reagents and other consumable supplies from Contractor.

### 2. Performance Measures

The following performance measures will be used to measure the effectiveness of the agreement:

2.1. Unlimited urgent repair calls, with response within 24 hours for each System listed in Table 1.

2.2. Unlimited on-site visits for problems that could not be resolved over the phone for the BD Probetec Equipment System and/or the BACTEC MGIT 960 System.

*PDH*  
8/6/15





## Exhibit B

### Method and Conditions Precedent to Payment

1. Funding Sources:

1.1. This contract is funded with funds from the Following Catalog of Federal Domestic Assistance (CFDA) numbers:

- CFDA #93.116, 3.0% federal funds from the Centers for Disease Control and Prevention, Tuberculosis Control Programs, Federal Award Identification Number (FAIN), U52PS004684;
- CFDA #93.977, 15.9% federal funds from the Centers for Disease Control and Prevention, Preventive Health Services, Sexually Transmitted Diseases Control, FAIN, H25PS004339.
- 81.1% General funds.

2. Funding sources for each State Fiscal Year will vary, and is dependent upon Federal and State support of laboratory testing for Sexually Transmitted Diseases (STD) and Tuberculosis.

2.1. It is estimated that General Funds will support over 81.1% of the cost each State Fiscal Year, with up to 18.9% being funded by a variety of Federal grants.

3. The State will purchase reagents and supplies each State Fiscal Year of this Agreement through the State's purchasing system under the Department of Administrative Services (DAS).

4. Each State Fiscal Year, the State will purchase up to the quantity listed and at the Kit Price stated in the BD Probetec Equipment System Product Pricing Table 1 and BACTEC MGIT 960 System Product Pricing Table 2 below.

4.1. It is estimated that the State will purchase up to \$56,700 of product each State Fiscal Year during the contract period.

4.2. The State reserves the right to purchase a smaller quantity or no product at all, due to changes in State Programs, State and Federal Funding, or a reduction or elimination of testing.

*[Handwritten Signature]*  
8/6/15

**Exhibit B**

**Table 1**  
**BD Probetec Equipment System Product Pricing**

Cat.	Item Description	Year 1 - Kit Price	Year 2 - Kit Price	Year 3 - Kit Price	Year 4 - Kit Price	Year 5 - Kit Price
440705	CT/GC Reagent Kit	\$3,180.00	\$3,180.00	\$3,180.00	\$3,180	\$3,180
440704	CT Reagent Kit	\$2,488.00	\$2,488.00	\$2,488.00	\$2,488	\$2,488
440458	Pipette Tips	\$72.00	\$72.00	\$72.00	\$72	\$72
440476	Endocervical Dry Collection	\$65.00	\$65.00	\$65.00	\$65	\$65
440461	Male Urethral Dry Collection	\$65.00	\$65.00	\$65.00	\$65	\$65
220142	Endocervical Wet Collection	\$120.00	\$120.00	\$120.00	\$120	\$120
220143	Male Urethral Wet Collection	\$120.00	\$120.00	\$120.00	\$120	\$120
440928	Urine Preservative Transport	\$120.00	\$120.00	\$120.00	\$120	\$120
440455	Urine Sample Tubes and Caps	\$120.00	\$120.00	\$120.00	\$120	\$120
440452	Diluent	\$220.00	\$220.00	\$220.00	\$220	\$220
440453	Bulk Diluent (225 ml)	\$190.00	\$190.00	\$190.00	\$190	\$190
440451	Controls	\$144.00	\$144.00	\$144.00	\$144	\$144
440456	Sample Caps	\$44.00	\$44.00	\$44.00	\$44	\$44
440752	Blank Microwell Trays	\$180.00	\$180.00	\$180.00	\$180	\$180
441048	Cap Removal Tool	\$100.00	\$100.00	\$100.00	\$100	\$100
445977	Keyboard Spill Cover	\$110.00	\$110.00	\$110.00	\$110	\$110
440463	Normalizer	\$232.00	\$232.00	\$232.00	\$232	\$232
440457	Accessories (sealers, covers, bags)	\$85.00	\$85.00	\$85.00	\$85	\$85

**Table 2**  
**BACTEC MGIT 960 System Product Pricing**

Cat. No.	Item Description	Year 1 - Kit Price	Year 2 - Kit Price	Year 3 - Kit Price	Year 4 - Kit Price	Year 5 - Kit Price
245122	BACTEC MGIT Tubes, 7 ml	\$708.00	\$708.00	\$708.00	\$708.00	\$708.00
245124	BACTEC MGIT Supplement, 100 test	\$72.00	\$72.00	\$72.00	\$72.00	\$72.00
245115	Tube Pza Medium, 25 pack	\$216.00	\$216.00	\$216.00	\$216.00	\$216.00
245123	Kit Sire	\$97.00	\$97.00	\$97.00	\$97.00	\$97.00
245125	Kit Streptomycin 4.0 kit	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00
245126	Kit Isoniazid 0.4 kit	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00
245128	Kit Drug Pza	\$91.00	\$91.00	\$91.00	\$91.00	\$91.00
245288	BACTEC Myco F Lytic	\$478.00	\$478.00	\$478.00	\$478.00	\$478.00

*[Signature]*  
8/6/15



## Exhibit B

5. A standing/open purchase order will be issued by the State for each State Fiscal Year, allowing the laboratory to purchase amounts, as needed, throughout the contract year.
6. The State shall pay the Contractor an amount not to exceed the Price Limitation, block 1.8, for the services provided by the Contractor pursuant to Exhibit A, Scope of Services.
  - 6.1. The invoice must be submitted to:  
  
NH Public Health Laboratories  
29 Hazen Drive  
Concord, NH 03301  
Attn: Mary Holliday
7. Contractors are accountable to meet the scope of services. Failure to meet the scope of services may jeopardize the funded contractor's current and/or future funding. Corrective action may include actions such as a contract amendment or termination of the contract.
8. Notwithstanding paragraph 18 of the General Provisions P-37, an amendment limited to adjustments to amounts between and among account numbers, within the price limitation, may be made by written agreement of both parties and may be made without obtaining approval of the Governor and Executive Council.



### SPECIAL PROVISIONS

Contractors Obligations: The Contractor covenants and agrees that all funds received by the Contractor under the Contract shall be used only as payment to the Contractor for services provided to eligible individuals and, in the furtherance of the aforesaid covenants, the Contractor hereby covenants and agrees as follows:

1. **Compliance with Federal and State Laws:** If the Contractor is permitted to determine the eligibility of individuals such eligibility determination shall be made in accordance with applicable federal and state laws, regulations, orders, guidelines, policies and procedures.
2. **Time and Manner of Determination:** Eligibility determinations shall be made on forms provided by the Department for that purpose and shall be made and remade at such times as are prescribed by the Department.
3. **Documentation:** In addition to the determination forms required by the Department, the Contractor shall maintain a data file on each recipient of services hereunder, which file shall include all information necessary to support an eligibility determination and such other information as the Department requests. The Contractor shall furnish the Department with all forms and documentation regarding eligibility determinations that the Department may request or require.
4. **Fair Hearings:** The Contractor understands that all applicants for services hereunder, as well as individuals declared ineligible have a right to a fair hearing regarding that determination. The Contractor hereby covenants and agrees that all applicants for services shall be permitted to fill out an application form and that each applicant or re-applicant shall be informed of his/her right to a fair hearing in accordance with Department regulations.
5. **Gratuities or Kickbacks:** The Contractor agrees that it is a breach of this Contract to accept or make a payment, gratuity or offer of employment on behalf of the Contractor, any Sub-Contractor or the State in order to influence the performance of the Scope of Work detailed in Exhibit A of this Contract. The State may terminate this Contract and any sub-contract or sub-agreement if it is determined that payments, gratuities or offers of employment of any kind were offered or received by any officials, officers, employees or agents of the Contractor or Sub-Contractor.
6. **Retroactive Payments:** Notwithstanding anything to the contrary contained in the Contract or in any other document, contract or understanding, it is expressly understood and agreed by the parties hereto, that no payments will be made hereunder to reimburse the Contractor for costs incurred for any purpose or for any services provided to any individual prior to the Effective Date of the Contract and no payments shall be made for expenses incurred by the Contractor for any services provided prior to the date on which the individual applies for services or (except as otherwise provided by the federal regulations) prior to a determination that the individual is eligible for such services.
7. **Conditions of Purchase:** Notwithstanding anything to the contrary contained in the Contract, nothing herein contained shall be deemed to obligate or require the Department to purchase services hereunder at a rate which reimburses the Contractor in excess of the Contractors costs, at a rate which exceeds the amounts reasonable and necessary to assure the quality of such service, or at a rate which exceeds the rate charged by the Contractor to ineligible individuals or other third party funders for such service. If at any time during the term of this Contract or after receipt of the Final Expenditure Report hereunder, the Department shall determine that the Contractor has used payments hereunder to reimburse items of expense other than such costs, or has received payment in excess of such costs or in excess of such rates charged by the Contractor to ineligible individuals or other third party funders, the Department may elect to:
  - 7.1. Renegotiate the rates for payment hereunder, in which event new rates shall be established;
  - 7.2. Deduct from any future payment to the Contractor the amount of any prior reimbursement in excess of costs;

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- 7.3. Demand repayment of the excess payment by the Contractor in which event failure to make such repayment shall constitute an Event of Default hereunder. When the Contractor is permitted to determine the eligibility of individuals for services, the Contractor agrees to reimburse the Department for all funds paid by the Department to the Contractor for services provided to any individual who is found by the Department to be ineligible for such services at any time during the period of retention of records established herein.

**RECORDS: MAINTENANCE, RETENTION, AUDIT, DISCLOSURE AND CONFIDENTIALITY:**

8. **Maintenance of Records:** In addition to the eligibility records specified above, the Contractor covenants and agrees to maintain the following records during the Contract Period:
- 8.1. **Fiscal Records:** books, records, documents and other data evidencing and reflecting all costs and other expenses incurred by the Contractor in the performance of the Contract, and all income received or collected by the Contractor during the Contract Period, said records to be maintained in accordance with accounting procedures and practices which sufficiently and properly reflect all such costs and expenses, and which are acceptable to the Department, and to include, without limitation, all ledgers, books, records, and original evidence of costs such as purchase requisitions and orders, vouchers, requisitions for materials, inventories, valuations of in-kind contributions, labor time cards, payrolls, and other records requested or required by the Department.
  - 8.2. **Statistical Records:** Statistical, enrollment, attendance or visit records for each recipient of services during the Contract Period, which records shall include all records of application and eligibility (including all forms required to determine eligibility for each such recipient), records regarding the provision of services and all invoices submitted to the Department to obtain payment for such services.
  - 8.3. **Medical Records:** Where appropriate and as prescribed by the Department regulations, the Contractor shall retain medical records on each patient/recipient of services.
9. **Audit:** Contractor shall submit an annual audit to the Department within 60 days after the close of the agency fiscal year. It is recommended that the report be prepared in accordance with the provision of Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non Profit Organizations" and the provisions of Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the US General Accounting Office (GAO standards) as they pertain to financial compliance audits.
- 9.1. **Audit and Review:** During the term of this Contract and the period for retention hereunder, the Department, the United States Department of Health and Human Services, and any of their designated representatives shall have access to all reports and records maintained pursuant to the Contract for purposes of audit, examination, excerpts and transcripts.
  - 9.2. **Audit Liabilities:** In addition to and not in any way in limitation of obligations of the Contract, it is understood and agreed by the Contractor that the Contractor shall be held liable for any state or federal audit exceptions and shall return to the Department, all payments made under the Contract to which exception has been taken or which have been disallowed because of such an exception.
10. **Confidentiality of Records:** All information, reports, and records maintained hereunder or collected in connection with the performance of the services and the Contract shall be confidential and shall not be disclosed by the Contractor, provided however, that pursuant to state laws and the regulations of the Department regarding the use and disclosure of such information, disclosure may be made to public officials requiring such information in connection with their official duties and for purposes directly connected to the administration of the services and the Contract; and provided further, that the use or disclosure by any party of any information concerning a recipient for any purpose not directly connected with the administration of the Department or the Contractor's responsibilities with respect to purchased services hereunder is prohibited except on written consent of the recipient, his attorney or guardian.

*[Handwritten Signature]*  
8/16/15



Notwithstanding anything to the contrary contained herein the covenants and conditions contained in the Paragraph shall survive the termination of the Contract for any reason whatsoever.

11. **Reports:** Fiscal and Statistical: The Contractor agrees to submit the following reports at the following times if requested by the Department.
  - 11.1. **Interim Financial Reports:** Written interim financial reports containing a detailed description of all costs and non-allowable expenses incurred by the Contractor to the date of the report and containing such other information as shall be deemed satisfactory by the Department to justify the rate of payment hereunder. Such Financial Reports shall be submitted on the form designated by the Department or deemed satisfactory by the Department.
  - 11.2. **Final Report:** A final report shall be submitted within thirty (30) days after the end of the term of this Contract. The Final Report shall be in a form satisfactory to the Department and shall contain a summary statement of progress toward goals and objectives stated in the Proposal and other information required by the Department.
12. **Completion of Services:** Disallowance of Costs: Upon the purchase by the Department of the maximum number of units provided for in the Contract and upon payment of the price limitation hereunder, the Contract and all the obligations of the parties hereunder (except such obligations as, by the terms of the Contract are to be performed after the end of the term of this Contract and/or survive the termination of the Contract) shall terminate, provided however, that if, upon review of the Final Expenditure Report the Department shall disallow any expenses claimed by the Contractor as costs hereunder the Department shall retain the right, at its discretion, to deduct the amount of such expenses as are disallowed or to recover such sums from the Contractor.
13. **Credits:** All documents, notices, press releases, research reports and other materials prepared during or resulting from the performance of the services of the Contract shall include the following statement:
  - 13.1. The preparation of this (report, document etc.) was financed under a Contract with the State of New Hampshire, Department of Health and Human Services, with funds provided in part by the State of New Hampshire and/or such other funding sources as were available or required, e.g., the United States Department of Health and Human Services.
14. **Prior Approval and Copyright Ownership:** All materials (written, video, audio) produced or purchased under the contract shall have prior approval from DHHS before printing, production, distribution or use. The DHHS will retain copyright ownership for any and all original materials produced, including, but not limited to, brochures, resource directories, protocols or guidelines, posters, or reports. Contractor shall not reproduce any materials produced under the contract without prior written approval from DHHS.
15. **Operation of Facilities: Compliance with Laws and Regulations:** In the operation of any facilities for providing services, the Contractor shall comply with all laws, orders and regulations of federal, state, county and municipal authorities and with any direction of any Public Officer or officers pursuant to laws which shall impose an order or duty upon the contractor with respect to the operation of the facility or the provision of the services at such facility. If any governmental license or permit shall be required for the operation of the said facility or the performance of the said services, the Contractor will procure said license or permit, and will at all times comply with the terms and conditions of each such license or permit. In connection with the foregoing requirements, the Contractor hereby covenants and agrees that, during the term of this Contract the facilities shall comply with all rules, orders, regulations, and requirements of the State Office of the Fire Marshal and the local fire protection agency, and shall be in conformance with local building and zoning codes, by-laws and regulations.
16. **Equal Employment Opportunity Plan (EEOP):** The Contractor will provide an Equal Employment Opportunity Plan (EEOP) to the Office for Civil Rights, Office of Justice Programs (OCR), if it has received a single award of \$500,000 or more. If the recipient receives \$25,000 or more and has 50 or

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more employees, it will maintain a current EEOP on file and submit an EEOP Certification Form to the OCR, certifying that its EEOP is on file. For recipients receiving less than \$25,000, or public grantees with fewer than 50 employees, regardless of the amount of the award, the recipient will provide an EEOP Certification Form to the OCR certifying it is not required to submit or maintain an EEOP. Non-profit organizations, Indian Tribes, and medical and educational institutions are exempt from the EEOP requirement, but are required to submit a certification form to the OCR to claim the exemption. EEOP Certification Forms are available at: <http://www.ojp.usdoj/about/ocr/pdfs/cert.pdf>.

17. **Limited English Proficiency (LEP):** As clarified by Executive Order 13166, Improving Access to Services for persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, Contractors must take reasonable steps to ensure that LEP persons have meaningful access to its programs.

18. **Pilot Program for Enhancement of Contractor Employee Whistleblower Protections:** The following shall apply to all contracts that exceed the Simplified Acquisition Threshold as defined in 48 CFR 2.101 (currently, \$150,000)

CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF  
WHISTLEBLOWER RIGHTS (SEP 2013)

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

19. **Subcontractors:** DHHS recognizes that the Contractor may choose to use subcontractors with greater expertise to perform certain health care services or functions for efficiency or convenience, but the Contractor shall retain the responsibility and accountability for the function(s). Prior to subcontracting, the Contractor shall evaluate the subcontractor's ability to perform the delegated function(s). This is accomplished through a written agreement that specifies activities and reporting responsibilities of the subcontractor and provides for revoking the delegation or imposing sanctions if the subcontractor's performance is not adequate. Subcontractors are subject to the same contractual conditions as the Contractor and the Contractor is responsible to ensure subcontractor compliance with those conditions.

When the Contractor delegates a function to a subcontractor, the Contractor shall do the following:

- 19.1. Evaluate the prospective subcontractor's ability to perform the activities, before delegating the function
- 19.2. Have a written agreement with the subcontractor that specifies activities and reporting responsibilities and how sanctions/revocation will be managed if the subcontractor's performance is not adequate
- 19.3. Monitor the subcontractor's performance on an ongoing basis

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8/6/15



- 19.4. Provide to DHHS an annual schedule identifying all subcontractors, delegated functions and responsibilities, and when the subcontractor's performance will be reviewed
- 19.5. DHHS shall, at its discretion, review and approve all subcontracts.

If the Contractor identifies deficiencies or areas for improvement are identified, the Contractor shall take corrective action.

#### DEFINITIONS

As used in the Contract, the following terms shall have the following meanings:

**COSTS:** Shall mean those direct and indirect items of expense determined by the Department to be allowable and reimbursable in accordance with cost and accounting principles established in accordance with state and federal laws, regulations, rules and orders.

**DEPARTMENT:** NH Department of Health and Human Services.

**FINANCIAL MANAGEMENT GUIDELINES:** Shall mean that section of the Contractor Manual which is entitled "Financial Management Guidelines" and which contains the regulations governing the financial activities of contractor agencies which have contracted with the State of NH to receive funds.

**PROPOSAL:** If applicable, shall mean the document submitted by the Contractor on a form or forms required by the Department and containing a description of the Services to be provided to eligible individuals by the Contractor in accordance with the terms and conditions of the Contract and setting forth the total cost and sources of revenue for each service to be provided under the Contract.

**UNIT:** For each service that the Contractor is to provide to eligible individuals hereunder, shall mean that period of time or that specified activity determined by the Department and specified in Exhibit B of the Contract.

**FEDERAL/STATE LAW:** Wherever federal or state laws, regulations, rules, orders, and policies, etc. are referred to in the Contract, the said reference shall be deemed to mean all such laws, regulations, etc. as they may be amended or revised from the time to time.

**CONTRACTOR MANUAL:** Shall mean that document prepared by the NH Department of Administrative Services containing a compilation of all regulations promulgated pursuant to the New Hampshire Administrative Procedures Act. NH RSA Ch 541-A, for the purpose of implementing State of NH and federal regulations promulgated thereunder.

**SUPPLANTING OTHER FEDERAL FUNDS:** The Contractor guarantees that funds provided under this Contract will not supplant any existing federal funds available for these services.

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8/6/15





Exhibit C-1

REVISIONS TO GENERAL PROVISIONS

1. Subparagraph 4 of the General Provisions of this contract, Conditional Nature of Agreement, is replaced as follows:

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including without limitation, the continuance of payments, in whole or in part, under this Agreement are contingent upon continued appropriation or availability of funds, including any subsequent changes to the appropriation or availability of funds affected by any state or federal legislative or executive action that reduces, eliminates, or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope of Services provided in Exhibit A, Scope of Services, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of appropriated or available funds. In the event of a reduction, termination or modification of appropriated or available funds, the State shall have the right to withhold payment until such funds become available, if ever. The State shall have the right to reduce, terminate or modify services under this Agreement immediately upon giving the Contractor notice of such reduction, termination or modification. The State shall not be required to transfer funds from any other source or account into the Account(s) identified in block 1.6 of the General Provisions, Account Number, or any other account, in the event funds are reduced or unavailable.

2. Subparagraph 10 of the General Provisions of this contract, Termination, is amended by adding the following language;

10.1 The State may terminate the Agreement at any time for any reason, at the sole discretion of the State, 30 days after giving the Contractor written notice that the State is exercising its option to terminate the Agreement.

10.2 In the event of early termination, the Contractor shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement, including but not limited to, identifying the present and future needs of clients receiving services under the Agreement and establishes a process to meet those needs.

10.3 The Contractor shall fully cooperate with the State and shall promptly provide detailed information to support the Transition Plan including, but not limited to, any information or data requested by the State related to the termination of the Agreement and Transition Plan and shall provide ongoing communication and revisions of the Transition Plan to the State as requested.

10.4 In the event that services under the Agreement, including but not limited to clients receiving services under the Agreement are transitioned to having services delivered by another entity including contracted providers or the State, the Contractor shall provide a process for uninterrupted delivery of services in the Transition Plan.

10.5 The Contractor shall establish a method of notifying clients and other affected individuals about the transition. The Contractor shall include the proposed communications in its Transition Plan submitted to the State as described above.

4. Subparagraph 10 of the General Provisions of this contract, Termination, is amended by adding the following language;

The State shall retain the option to terminate this agreement for any reason including the following:

1. Reduction in testing volume
2. Termination of testing

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8/16/15



Exhibit C-1

3. Reduction in funding
4. Condition of Probetec Instrument System is un-repairable
5. Becton Dickenson shall not be liable for consequential, incidental, special or any other indirect damages sustained by the State from the use of its products or services. The aforementioned special provision does not constitute a waiver of the indemnification requirements in the Form P-37, Subparagraph 13 of the General Provisions.
6. Extension:  
This agreement has the option for a potential extension of up to three (3) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties and approval of the Governor and Council.



**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**ALTERNATIVE I - FOR GRANTEEES OTHER THAN INDIVIDUALS**

**US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS**

**US DEPARTMENT OF EDUCATION - CONTRACTORS**

**US DEPARTMENT OF AGRICULTURE - CONTRACTORS**

This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.). The January 31, 1989 regulations were amended and published as Part II of the May 25, 1990 Federal Register (pages 21681-21691), and require certification by grantees (and by inference, sub-grantees and sub-contractors), prior to award, that they will maintain a drug-free workplace. Section 3017.630(c) of the regulation provides that a grantee (and by inference, sub-grantees and sub-contractors) that is a State may elect to make one certification to the Department in each federal fiscal year in lieu of certificates for each grant during the federal fiscal year covered by the certification. The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment. Contractors using this form should send it to:

Commissioner  
NH Department of Health and Human Services  
129 Pleasant Street,  
Concord, NH 03301-6505

1. The grantee certifies that it will or will continue to provide a drug-free workplace by:
  - 1.1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - 1.2. Establishing an ongoing drug-free awareness program to inform employees about
    - 1.2.1. The dangers of drug abuse in the workplace;
    - 1.2.2. The grantee's policy of maintaining a drug-free workplace;
    - 1.2.3. Any available drug counseling, rehabilitation, and employee assistance programs; and
    - 1.2.4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - 1.3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
  - 1.4. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will
    - 1.4.1. Abide by the terms of the statement; and
    - 1.4.2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
  - 1.5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 1.4.2 from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency

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8/6/95

New Hampshire Department of Health and Human Services  
Exhibit D



- has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- 1.6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 1.4.2, with respect to any employee who is so convicted.
    - 1.6.1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
    - 1.6.2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
  - 1.7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6.
2. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

Place of Performance (street address, city, county, state, zip code) (list each location)

Check ☐ if there are workplaces on file that are not identified here.

Contractor Name: Becton, Dickinson and Company

8/6/15  
Date

Robin Rybicki  
Name: Robin Rybicki  
Title: Contract Supervisor

Contractor Initials RR  
Date 8/6/15



**CERTIFICATION REGARDING LOBBYING**

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS  
US DEPARTMENT OF EDUCATION - CONTRACTORS  
US DEPARTMENT OF AGRICULTURE - CONTRACTORS

Programs (indicate applicable program covered):

- \*Temporary Assistance to Needy Families under Title IV-A
- \*Child Support Enforcement Program under Title IV-D
- \*Social Services Block Grant Program under Title XX
- \*Medicaid Program under Title XIX
- \*Community Services Block Grant under Title VI
- \*Child Care Development Block Grant under Title IV


The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, grant, loan, or cooperative agreement, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor).
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor), the undersigned shall complete and submit Standard Form LLL, (Disclosure Form to Report Lobbying, in accordance with its instructions, attached and identified as Standard Exhibit E-1.)
3. The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Contractor Name: Becton, Dickinson and Company

8/6/15  
Date

  
Name: Robin Zybelle  
Title: Contracts Supervisor



**CERTIFICATION REGARDING DEBARMENT, SUSPENSION  
AND OTHER RESPONSIBILITY MATTERS**

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Executive Office of the President, Executive Order 12549 and 45 CFR Part 76 regarding Debarment, Suspension, and Other Responsibility Matters, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this proposal (contract), 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. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the NH Department of Health and Human Services' (DHHS) 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 a material representation of fact upon which reliance was placed when DHHS 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, DHHS may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the DHHS agency to whom this proposal (contract) is submitted if at any time the prospective primary participant learns that 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: 45 CFR Part 76. See the attached definitions.
6. The prospective primary participant agrees by submitting this proposal (contract) 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 DHHS.
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 DHHS, 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 involuntarily 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 Nonprocurement List (of excluded parties).
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

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8/6/15



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, DHHS may terminate this transaction for cause or default.

#### PRIMARY COVERED TRANSACTIONS

11. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- 11.1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - 11.2. have not within a three-year period preceding this proposal (contract) 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 a contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - 11.3. are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (11)(b) of this certification; and
  - 11.4. 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.
12. 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 (contract).

#### LOWER TIER COVERED TRANSACTIONS

13. By signing and submitting this lower tier proposal (contract), the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:
- 13.1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  - 13.2. where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal (contract).
14. The prospective lower tier participant further agrees by submitting this proposal (contract) that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Contractor Name: Becton, Dickinson and Company

8/6/15  
Date

Robin Rybell  
Name: Robin Rybell  
Title: Contract Supervisor



**CERTIFICATION OF COMPLIANCE WITH REQUIREMENTS PERTAINING TO  
FEDERAL NONDISCRIMINATION, EQUAL TREATMENT OF FAITH-BASED ORGANIZATIONS AND  
WHISTLEBLOWER PROTECTIONS**

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

Contractor will comply, and will require any subgrantees or subcontractors to comply, with any applicable federal nondiscrimination requirements, which may include:

- the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. Section 3789d) which prohibits recipients of federal funding under this statute from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act requires certain recipients to produce an Equal Employment Opportunity Plan;
- the Juvenile Justice Delinquency Prevention Act of 2002 (42 U.S.C. Section 5672(b)) which adopts by reference, the civil rights obligations of the Safe Streets Act. Recipients of federal funding under this statute are prohibited from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act includes Equal Employment Opportunity Plan requirements;
- the Civil Rights Act of 1964 (42 U.S.C. Section 2000d, which prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in any program or activity);
- the Rehabilitation Act of 1973 (29 U.S.C. Section 794), which prohibits recipients of Federal financial assistance from discriminating on the basis of disability, in regard to employment and the delivery of services or benefits, in any program or activity;
- the Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12131-34), which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation;
- the Education Amendments of 1972 (20 U.S.C. Sections 1681, 1683, 1685-86), which prohibits discrimination on the basis of sex in federally assisted education programs;
- the Age Discrimination Act of 1975 (42 U.S.C. Sections 6106-07), which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. It does not include employment discrimination;
- 28 C.F.R. pt. 31 (U.S. Department of Justice Regulations – OJJDP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination, Equal Employment Opportunity, Policies and Procedures); Executive Order No. 13279 (equal protection of the laws for faith-based and community organizations); Executive Order No. 13559, which provide fundamental principles and policy-making criteria for partnerships with faith-based and neighborhood organizations;
- 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations); and Whistleblower protections 41 U.S.C. §4712 and The National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013) the Pilot Program for Enhancement of Contract Employee Whistleblower Protections, which protects employees against reprisal for certain whistle blowing activities in connection with federal grants and contracts.

The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Exhibit G

Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations  
and Whistleblower protections

Contractor Initials

*[Signature]*  
8/6/15



New Hampshire Department of Health and Human Services  
Exhibit G



In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, to the applicable contracting agency or division within the Department of Health and Human Services, and to the Department of Health and Human Services Office of the Ombudsman.

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this proposal (contract) the Contractor agrees to comply with the provisions indicated above.

Contractor Name: Becton, Dickinson and Company

8/6/15  
Date

Robert Rybell  
Name: Robert Rybell  
Title: Contracts Supervisor

Exhibit G

Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations and Whistleblower protections

Contractor Initials

Date

RR  
8/6/15



**CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE**

Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Contractor identified in Section 1.3 of the General Provisions agrees, by signature of the Contractor's representative as identified in Section 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this contract, the Contractor agrees to make reasonable efforts to comply with all applicable provisions of Public Law 103-227, Part C, known as the Pro-Children Act of 1994.

Contractor Name: Becton, Dickinson and Company

8/6/15  
Date

Robin Rybell  
Name: Robin Rybell  
Title: Contracts Supervisor

RRB  
8/6/15



Exhibit I

**HEALTH INSURANCE PORTABILITY ACT**  
**BUSINESS ASSOCIATE AGREEMENT**

Exhibit I – Health Insurance Portability and Accountability Act, Business Associate Agreement does not apply to this contract.

*DRH*

*8/16/13*



**CERTIFICATION REGARDING THE FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY  
ACT (FFATA) COMPLIANCE**

The Federal Funding Accountability and Transparency Act (FFATA) requires prime awardees of individual Federal grants equal to or greater than \$25,000 and awarded on or after October 1, 2010, to report on data related to executive compensation and associated first-tier sub-grants of \$25,000 or more. If the initial award is below \$25,000 but subsequent grant modifications result in a total award equal to or over \$25,000, the award is subject to the FFATA reporting requirements, as of the date of the award.

In accordance with 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information), the Department of Health and Human Services (DHHS) must report the following information for any subaward or contract award subject to the FFATA reporting requirements:

1. Name of entity
2. Amount of award
3. Funding agency
4. NAICS code for contracts / CFDA program number for grants
5. Program source
6. Award title descriptive of the purpose of the funding action
7. Location of the entity
8. Principle place of performance
9. Unique identifier of the entity (DUNS #)
10. Total compensation and names of the top five executives if:
  - 10.1. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25M annually and
  - 10.2. Compensation information is not already available through reporting to the SEC.

Prime grant recipients must submit FFATA required data by the end of the month, plus 30 days, in which the award or award amendment is made.

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of The Federal Funding Accountability and Transparency Act, Public Law 109-282 and Public Law 110-252, and 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

The below named Contractor agrees to provide needed information as outlined above to the NH Department of Health and Human Services and to comply with all applicable provisions of the Federal Financial Accountability and Transparency Act.

Contractor Name: Becton, Dickinson and Company

8/6/15  
Date

Robin Rybell  
Name: Robin Rybell  
Title: Contracts Supervisor



**FORM A**

As the Contractor identified in Section 1.3 of the General Provisions, I certify that the responses to the below listed questions are true and accurate.

1. The DUNS number for your entity is: 122561087
2. In your business or organization's preceding completed fiscal year, did your business or organization receive (1) 80 percent or more of your annual gross revenue in U.S. federal contracts, subcontracts, loans, grants, sub-grants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?

X NO        YES

If the answer to #2 above is NO, stop here

If the answer to #2 above is YES, please answer the following:

3. Does the public have access to information about the compensation of the executives in your business or organization through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

       NO        YES

If the answer to #3 above is YES, stop here

If the answer to #3 above is NO, please answer the following:

4. The names and compensation of the five most highly compensated officers in your business or organization are as follows:

Name: _____	Amount: _____
Name: _____	Amount: _____
Name: _____	Amount: _____
Name: _____	Amount: _____
Name: _____	Amount: _____

RyB  
8/6/13