

State of Arkansas
OFFICE OF STATE PROCUREMENT
1509 West Seventh Street, Room 300 72201-4222
Little Rock, Arkansas
Phone: (501) 324-9316

CONTRACT AWARD

THIS IS A TERM CONTRACT ISSUED BY THE OFFICE OF STATE PROCUREMENT. THIS IS NOT AUTHORITY TO SHIP. A SEPARATE PURCHASE ORDER WILL BE ISSUED. THIS CONTRACT CONSTITUTES ACCEPTANCE OF YOUR PROPOSAL ALONG WITH ALL TERMS AND CONDITIONS THEREIN AND SIGNIFIES THE OFFERER'S KNOWLEDGE AND ACCEPTANCE OF ALL TERMS AND CONDITIONS SET FORTH WITHIN THE REQUEST FOR PROPOSAL.

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BUYER: JUDY SHIRLEY	CONTRACT/BID NO.: SP-07-0437R
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DESCRIPTION: MULTI-STATE DRUG TESTING KIT(S) – SP-07-0437R

CONTRACT PERIOD: DECEMBER 17, 2007 – DECEMBER 16, 2008

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DELIVERY REQUIREMENTS: ROUTINE ITEMS DELIVERY WITHIN 72 HOURS ARO

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PRICES ARE F.O.B. DESTINATION, INSIDE DELIVERY, UNLESS OTHERWISE SPECIFIED.

INVOICE AND DELIVER TO: AS SPECIFIED ON AGENCY PURCHASE ORDER.

CONTRACT AWARD TO:

VENDOR NO: 100113678

Germaine Laboratories, Inc.
4139 Gardendale Center, Ste 101
San Antonio, TX 78229-3130

Phone: (800) 854-8446
Fax: (210) 692-4198

(Group 5: (Single Drug Testing Cup)

STATE OF ARKANSAS OFFICE OF STATE PROCUREMENT

BY: _____ DATE: _____

SCOPE: The Contractor will provide drug testing kits for Participating States and cooperative purchasing participants at the price established in this contract. At no time shall the ordering entity pay more than the price indicated in the contract. This contract does not include Laboratory Analysis or Laboratory Services Fees. This contract is for drug testing product only.

AWARDING INSTRUCTIONS: This Invitation for Bid will be awarded BY GROUP TOTALS to the lowest responsible responsive bidder. [Vendors may bid any or all items, as they desire. However, ALL items within a group must be bid in order to be considered.](#)

CONTRACT TYPE: Term

CONTRACT PERIOD: Any contract awarded from the offering of these specifications will be subject to, after the original one year term, an option to renew for six (6) additional one-year periods or a portion thereof. Any extension must be mutually agreed upon by the Office of State Procurement and the contractor. The Office of State Procurement will notify the contractor before expiration of this contract if an extension is requested.

PRICE CHANGE CLAUSE: Prices must remain firm for the initial contract period. For any extension period, in the event a price increase is required due to the increase of Labor/Material (not inclusive of profit margin), with proper documentation, The Office of State Procurement will consider the request. The Arkansas Office of State Procurement reserves the right to accept or reject any price increases proposed and may elect to not renew a Contractor's portion of the contract in the event the prices proposed are not acceptable to the Arkansas Office of State Procurement.

Prices decreases will be accepted any time during the term of the contract.

MINIMUM ORDERS: A minimum of \$50.00 per order(s) must be acceptable to contractors. Shipping charges are to be included in that minimum dollar amount. Less than \$50.00 order(s) will not include shipping with shipping total(s) acknowledged at time of order(s) by contractor to the purchasing entity.

VENDOR RESPONSIBILITIES: Contractors must supply at the time of bid submission or prior to contract award:

- (1) Established experience with regards to years of operation of business.
- (2) Technical approach provided to maintain the highest levels of business integrity.
- (3) The logistics management approach to shipping nationwide locations.
- (4) Ordering procedures through on-line and/or electronic commerce along with the reporting of purchases on a quarterly basis.
- (5) Customer Service quality assurance procedures.

SAMPLES: Prior to contract award, samples of items bid may be requested by Arkansas Office of State Procurement for evaluation. The responsibility and expense will be that of the bidder. Requested samples must be provided within five (5) days of receipt of request.

ORDERING PROCEDURE: Contractors shall furnish a toll-free telephone number and a remote on-line or Internet based order system for purposes of order placement, order inquiry and current contract pricing. The ordering system shall also display order status, product availability, and shall allow order tracking and order history.

QUALITY: All items must be first class quality. All items must be packaged to arrive in an undamaged and unsoiled condition. Any items received that do not meet this criteria will be returned and replaced by the contractor.

The Contractors will assign a contact person to provide assistance to the participating States and their purchasing entities. The contact person will be at a management/administrative level and have the responsibility experience, knowledge, and authority to respond to questions and solve operational problems presented by the facilities. The contact person will be empowered to serve as an advocate for the participating states. The contact person's office will be readily accessible to the purchasing entities via a toll-free phone line, fax, or e-mail during the business day. The contact person will respond to any question, problem, request, etc. within twenty-four (24) hours of request. The Office of State Procurement will reserve the right to request a replacement if contact person proves unsuitable.

DELIVERY SCHEDULE: The State of Arkansas requests delivery within 72 hours (orders for participating within the continuous forty-eight (48) state area) after receipt of order on routine consumable items.

Financial obligations of participating states are limited to the order placed by the department or other state agencies and institutions having available funds. Participating states incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, any resulting contract will be permissive.

FREIGHT CHARGE INFORMATION:

The prices offered shall be the delivered price to any ordering facility or political subdivision of a participating state within the continuous forty-eight (48) state area meeting the minimum ordering amount (see "Minimum Orders", page 4). All delivered items shall be F.O.B. destination with all transportation and handling charges paid by the Contractors. Because of the geographic location of several NASPO participants, shipping charges to Hawaii, Alaska, Puerto Rico, Virgin Islands or other remote States/regions must be negotiated separately between the vendors and State authorities. Responsibility and liability for loss or damage shall remain the Contractors until final inspection and acceptance when responsibility shall pass to the ordering facility except as to latent defects, fraud and Contractor's warranty obligations.

Backorders will be allowed only when authorized by the ordering entity.

The Contractors will have sufficient inventory and distribution centers/warehouse locations to assure prompt and effective delivery of standard and emergency product deliveries to all participating states and purchasing entities, regardless of their location

and volume ordered. The Contractors will take every available precaution to prevent back-orders, out-of-stock items that are necessary for the successful operation of the purchasing entities. Contractors will provide an order and delivery schedule (Monday through Friday) for the ordering agencies. Agencies will be notified at time of order placement when items cannot be shipped within 48 hours; the ordering facility reserves the right to cancel orders for those items without penalty and procure elsewhere, or agree to accept partial delivery with delivery of the remainder of the product on back-order status, accept partial delivery and/or cancel the remainder of the order or procure the product to best meet the needs of the purchasing entity. At a minimum, the Contractors should be able to complete delivery of the most frequently used/required items within 72 hours after receipt of order. The Contractors will establish an emergency ordering procedure that the facilities can utilize to secure drug testing kits by the most expeditious means available.

DELIVERY LOCATIONS: Deliveries may be to any State, ordering facility, purchasing entity, or political subdivision within the State of Arkansas or any state that has executed a “Participating Addendum” with the Contractors and submitted a copy to the Arkansas Office of State Procurement. Agencies will be encouraged to consolidate orders to Contractors to defray Contractor’s shipping costs.

INVOICING: The Contractor is to send all invoices to the Agency/Department shown in the “Mail Invoice To” block on the purchase order. Contract and purchase order numbers are to be shown on all invoices. In no case are invoices to be sent to the Arkansas Office of State Procurement. Ordering facilities may, for items received and accepted, make partial payment on a purchase order.

AGENCY CONTACT:

Judy Shirley
Office of State Procurement
PHONE: (501) 324-9316
FAX: (501) 324-9311

E-MAIL: Judy.Shirley@dfa.state.ar.us

NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. The procurement strategy adopted for this Invitation for Bid has been approved by the NASPO Cooperative Purchasing Committee. NASPO is comprised of the directors of the central purchasing offices in each of the 50 states, the District of Columbia and the territories of the United States. NASPO is an organization through which member purchasing officials provide leadership in professional public purchasing, and improving the quality of purchasing and procurement, by exchanging information and cooperation to attain greater efficiency and economy.

The NASPO Cooperative Purchasing Drug Testing Contract is a cooperative group-contracting consortium for state government departments, institutions and political subdivisions (i.e. colleges, school districts, counties, cities, etc.) for the various states. The purpose of establishing a drug testing contract is to enable participating states and the

purchasing entities within those participating states, to join together in a cooperative multi-state contracting alliance, to achieve cost effective and efficient acquisition of quality products.

A state may elect to execute a “Participating Addendum” with the Contractors and submit a copy of the executed agreement to the Arkansas Office of State Procurement. The initial intent is to develop a drug testing kit contract for use by the following states that have submitted an Intent to Participate with NASPO: Those states: include Arkansas, Alaska, Hawaii, Louisiana, Massachusetts, Nevada, Oklahoma, South Carolina, South Dakota, and Washington.

Participation by any state, regardless of geographic location, or specific NASPO region, is permitted at any time during the term of the contract and upon any contract extensions by executing a “Participating Addendum” with the Contractors and submitting a copy to the Arkansas Office of State Procurement. Contractor must accept orders from and extend the contract prices to all participating states. The Contractors must allow qualified new state agencies, participating states facilities and political subdivisions joining the NASPO Cooperative Purchasing Drug Testing Contract to be added to the current participants list and access contract prices throughout the term of the contract. The Arkansas Office of State Procurement reserves the right to add and delete other members, states, and political subdivision facilities during the term of this contract at the request of the Participating State and/or purchasing entity.

The laws of the State of Arkansas in accordance with the Uniform Commercial Code (UCC) as adopted by the State of Arkansas shall govern this procurement and any resulting contract. The laws of each participating state shall govern for purchases made by each respective participating state. A copy of the State of Arkansas Procurement Law and Regulations can be found at:

www.state.ar.us/dfa/purchasing

REPORTS :

QUARTERLY REPORTS: Not later than 15 business days after the close of each contract calendar quarter the Contractor will furnish to the Arkansas Office of State Procurement reports indicating procurement activity of all purchasing activities by State and purchasing entity. These reports will include, at a minimum, a listing of all items purchased during the quarter, the item number and description, the unit prices, and the total dollar amount procured by each State and each State’s purchasing entity. The Contractor’s quarterly report shall include the names of the accounts with complete addresses noted and corresponding account numbers. Contractor may be required to establish and maintain a relational database or other sales tracking system from which to generate quarterly reports to the Arkansas Office of State Procurement electronically.

THE CONTRACTORS WILL PROVIDE THE REPORTS AND ADMINISTRATIVE FEE PROMPTLY WITHIN THIRTY (30) DAYS FOLLOWING THE END OF EACH QUARTER. FAILURE TO DO SO MAY

RESULT IN BREACH OF CONTRACT AND MAY BE CAUSE FOR CANCELLATION OF CONTRACT FOR DEFAULT.

Quarterly reports are to be sent to the following:

**Arkansas Office of State Procurement
1509 West 7th Street, Room 300
Little Rock, AR 72201
E-mail Address: judy.shirley@dfa.state.ar.us**

Administrative Service Fee of 0.1% of total sales for the previous quarter will be sent to the following:

**Lee Ann Pope
NASPO Cooperative Purchasing Venture Revolving Fund
Direct Deposit Account to Be Established**

THE ADMINISTRATIVE FEE MUST BE SUBMITTED AND PAID WITHIN 30 DAYS AFTER THE END OF EACH QUARTER.

NOTE: FAILURE OF THE CONTRACTORS TO SUBMIT QUARTERLY USAGE REPORTS TO THE ARKANSAS OFFICE OF STATE PROCUREMENT, AND/OR FAILURE TO REMIT ADMINISTRATIVE FEE TO THE “NASPO COOPERATIVE PURCHASING VENTURE REVOLVING FUND” ON A QUARTERLY BASIS MAY BE CONSIDERED CONTRACT DEFAULT. FAILURE TO SUBMIT REMITTANCE OF EITHER ARTICLE WITHIN THIRTY- (30) DAYS AFTER THE END OF EACH QUARTER MAY BE CAUSE FOR CONTRACT CANCELLATION BY THE ARKANSAS OFFICE OF STATE PROCUREMENT.

The Contractor shall pay the administration fee in accordance with the Terms and Conditions of this contract. The NASPO Board of Directors and the NASPO Cooperative Purchasing Committee approved the administration fee. **The administration fee is not negotiable.** Some States may require an additional fee be paid directly to the participating States on purchases made by the purchasing entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in the **“Participating Addendum”** that is made a part of the contract. **All such agreements shall have no effect on the administrative fees or prices associated with the resulting primary contract.**

PROPOSAL PRICING SHEET

ALL PRODUCTS SHIPPED MUST BE OF MOST CURRENT MANUFACTURE, DESIGN, AND VERSION AVAILABLE AT TIME OF ORDER PLACEMENT, UNLESS OTHERWISE INDICATED BY ORDERING FACILITY

1. \$ __.85__ PRICE PER EACH SINGLE TESTING CUP

GROUP 5 TOTAL: \$.85

ITEM SPECIFICATIONS – GROUP 5 (SINGLE DRUG TESTING CUP)

The contractor must have available, as a purchase when needed, a Single Testing Cup.

- a. Cup must be of clear plastic with a screw top lip
- b. Cup will not leak during air/ground shipping
- c. Cup's mount 2 ¼" diameter and at least 3" high
- d. Cup must have minimum fill line/mark at least 30 ml clearly displayed on the outside of the cup
- e. Cup must have temperature label installed horizontally at the bottom portion of the cup which provides color coded indication for temperatures ranging from 90F/32C to 100F/38C in 1 or 2 degree increments
- f. The test panel results must be covered by a label
- g. The test results must appear within five minutes and remain stable up to a minimum of 30 minutes
- h. Cup must be FDA approved for commercial distribution with an active 510K notification document
- i. Contractor will provide, at their expense, the following samples upon request (prior to award):
 - a. Shipping bag
 - b. Shipping container that will hold 2 specimen cups
 - c. Chain of custody

STANDARD TERMS AND CONDITIONS

1. **GENERAL:** Any special terms and conditions included in the invitation for bid override these standard terms and conditions. The standard terms and conditions and any special terms and conditions become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.
2. **ACCEPTANCE AND REJECTION:** The state reserves the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the state.
3. **BID SUBMISSION:** Bids must be submitted to the Office of State Procurement on this form, with attachments when appropriate, on or before the date and time specified for bid opening. If this form is not used, the bid may be rejected. The bid must be typed or printed in ink. The signature must be in ink. Unsigned bids will be disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Each bid should be placed in a separate envelope completely and

properly identified. Late bids will not be considered under any circumstances.

4. **PRICES:** Quote F.O.B. destination. Bid the unit price. In case of errors in extension, unit prices shall govern. Prices are firm and not subject to escalation unless otherwise specified in the bid invitation. Unless otherwise specified, the bid must be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the bid invitation.
5. **QUANTITIES:** Quantities stated in term contracts are estimates only, and are not guaranteed. Bid unit price on the estimated quantity and unit of measure specified. The state may order more or less than the estimated quantity on term contracts. Quantities stated on firm contracts are actual requirements of the ordering agency.
6. **BRAND NAME REFERENCES:** Any catalog brand name or manufacturer's reference used in the bid invitation is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the bid must show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustrations and complete descriptions of the product offered. The state reserves the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the state may require the bidder to supply additional descriptive material. The bidder guarantees that the product offered will meet or exceed specifications identified in this bid invitation. If the bidder takes no exception to specifications or reference data in this bid he will be required to furnish the product according to brand names, numbers, etc., as specified in the invitation.
7. **GUARANTY:** All items bid shall be newly manufactured, in first-class condition, latest model and design, including, where applicable, containers suitable for shipment and storage, unless otherwise indicated in the bid invitation. The bidder hereby guarantees that everything furnished hereunder will be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it will conform thereto and will serve the function for which it was furnished. The bidder further guarantees that if the items furnished hereunder are to be installed by the bidder, such items will function properly when installed. The bidder also guarantees that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The bidder's obligations under this paragraph shall survive for a period of one year from the date of delivery, unless otherwise specified herein.
8. **SAMPLES:** Samples or demonstrators, when requested, must be furnished free of expense to the state. Each sample should be marked with the bidder's name and address, bid number and item number. If samples are not destroyed during reasonable examination they will be returned at bidder's expense, if requested, within ten days following the opening of bids. All demonstrators will be returned after reasonable examination.
9. **TESTING PROCEDURES FOR SPECIFICATIONS COMPLIANCE:** Tests may be performed on samples or demonstrators submitted with the bid or on samples

taken from the regular shipment. In the event products tested fail to meet or exceed all conditions and requirements of the specifications, the cost of the sample used and the reasonable cost of the testing shall be borne by the bidder.

10. **AMENDMENTS:** The bid cannot be altered or amended after the bid opening except as permitted by regulation.
11. **TAXES AND TRADE DISCOUNTS:** Do not include state or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.
12. **AWARD:** Term Contracts: A contract award will be issued to the successful bidder. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency.
Firm Contracts: A written state purchase order authorizing shipment will be furnished to the successful bidder.
13. **LENGTH OF CONTRACT:** The invitation for bid will show the period of time the term contract will be in effect.
14. **DELIVERY ON FIRM CONTRACTS:** The invitation for bid will show the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the bidder cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Office of State Procurement has the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere and any additional cost will be borne by the vendor.
15. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery shall be made during agency work hours only 8:00 a.m. to 4:30 p.m., unless prior approval for other delivery has been obtained from the agency. Packing memoranda shall be enclosed with each shipment.
16. **STORAGE:** The ordering agency is responsible for storage if the contractor delivers within the time required and the agency cannot accept delivery.
17. **DEFAULT:** All commodities furnished will be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications authorize the Office of State Procurement to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting contractor. The contractor must give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the bidders list or suspension of eligibility for award.
18. **VARIATION IN QUANTITY:** The state assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the agency's

purchase order.

19. **INVOICING:** The contractor shall be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the invitation for bid, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary state agencies. Invoices must be sent to the "Invoice To" point shown on the purchase order.
20. **STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for use hereunder shall remain property of the state, be kept confidential, be used only as expressly authorized and returned at the contractor's expense to the F.O.B. point properly identifying what is being returned.
21. **PATENTS OR COPYRIGHTS:** The contractor agrees to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.
22. **ASSIGNMENT:** Any contract entered into pursuant to this invitation for bid is not assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.
23. **OTHER REMEDIES:** In addition to the remedies outlined herein, the contractor and the state have the right to pursue any other remedy permitted by law or in equity.
24. **LACK OF FUNDS:** The state may cancel this contract to the extent funds are no longer legally available for expenditures under this contract. Any delivered but unpaid for goods will be returned in normal condition to the contractor by the state. If the state is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, the contractor may file a claim with the Arkansas Claims Commission. If the contractor has provided services and there are no longer funds legally available to pay for the services, the contractor may file a claim.
25. **DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the bidder agrees that: (a) the bidder will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the bidder will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the bidder will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the bidder to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause shall be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the bidder will include the provisions of items (a) through (d) in

every subcontract so that such provisions will be binding upon such subcontractor or vendor.

26. **CONTINGENT FEE:** The bidder guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the bidder for the purpose of securing business.
27. **ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this invitation for bid, the bidder named on the front of this invitation for bid, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this state for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.
28. **DISCLOSURE:** Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.