



State of Utah

GARY R HERBERT  
Governor

SPENCER J. COX  
Lieutenant Governor

Utah Department of Health  
Executive Director's Office

Joseph K. Miner, M.D., M.S.P.H., F.A.C.P.M.  
Executive Director

Marc E. Babitz, M.D.  
Deputy Director

Nate Checketts  
Deputy Director  
Director, Medicaid and Health Financing

To: State Purchasing

From: Shari Watkins *Shari A. Watkins*

Subject: Emergency Procurement 4/10/2020

The Forensic Toxicology program within the Utah Public Health Laboratory (UPHL) uses a Waters LCMSMS to perform opiates analysis and over the counter drug analysis. This machine was broken and needed immediate repairs to avoid massive delays in performing analysis at the lab. The UPHL asked for authorization to use the Executive Director's Emergency Procurement LPD to procure the repair from Waters. The estimated cost of the repair was \$12,000. As a designee of the Executive Director, I reviewed and approved the request the same day. I determined that the situation met the requirements of an emergency procurement, specifically R33-8-401(3)(a)(vi):

(3) An emergency procurement may only be used when circumstances create harm or risk of harm to public health, welfare, safety, or property.

(a) Circumstances that may create harm or risk to health, welfare, safety, or property include:  
(vii) events that impair the ability of a public entity to function or perform required services.

The UPHL is currently working on a contract that will cover these repair costs in the future.

Deki Kelsang  
Utah Dept of Health  
Unified State Laboratories  
4431 S 2700 W  
Taylorsville UT 84129-8600

Telephone : 801 860 8945  
Email : dkelsang@utah.gov

Sales Proposal

Please reference this Quotation when Purchase Order is issued

**Quotation No: 22280382 - Expiration Date: 05/08/2020**

Dear Deki Kelsang,

Thank you for your interest in Waters. Enclosed is the Service Quotation for the products and services you inquired about. We look forward to working with you and your team for all of your laboratory needs.

To place an order for the products and services on this quotation, please contact Waters Field Service Logistics Department at 800 252 4752 , X8016, or email your purchase order to [Service\\_pos@waters.com](mailto:Service_pos@waters.com).

If you have any questions regarding this quotation, please contact Victor Griganavicius at 800 252 4752, or via email at [VICTOR\\_K\\_GRIGANAVICIUS@WATERS.COM](mailto:VICTOR_K_GRIGANAVICIUS@WATERS.COM).

Waters Field Service Logistics Department  
800 252 4752, X8016  
[Service\\_pos@waters.com](mailto:Service_pos@waters.com)

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Creation date : 04/08/2020  
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Quote for the estimate of the cost of an on-site service visit, referencing service ticket USAKBNERHH20. Invoiced amount will reflect the actual parts, labor and travel hours, as well as any part(s) needed. If parts are required and or more diagnosis time the cost of this estimate will increase accordingly and be priced at Waters existing prices.

System Type: Xevo TQD  
Serial Number(s): QCA042

Important Note: This quote represents an estimate for the cost to repair a (instrument type) serial number (\*\*\*).

THIS IS AN ESTIMATE AND FINAL COSTS MAY VARY.

Discounted pricing only applies to parts and services directly purchased by the customer listed on the quotation.

Item	Product#	Qty	Description	Unit Price	Net Price
1	WAT098660	1	Troubleshoot & Repair	12,000.00	12,000.00

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Total Quotation in USD	<b>12,000.00</b>
(Excludes Shipping and Applicable Taxes)	

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## Waters Standard Terms and Conditions

Freight Terms: FOB Shipping Point  
Prepaid & Added  
Payment Terms: NET 30 DAYS  
Payment Terms Subject to Credit Review

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## Waters General Sales Terms and Conditions

THIS TRANSACTION IS EXPRESSLY CONDITIONED UPON AND SUBJECT TO ALL OF THE FOLLOWING TERMS AND CONDITIONS:

1. Acceptance - Buyer's acceptance of the offer to purchase the products and/or services set forth on the front page made by Waters Technologies Corporation d/b/a Waters Corporation (Waters) of this quotation shall create a contract subject to and expressly limited by the terms and conditions contained on this form. Acceptance of this quotation may only be made on the exact terms and conditions set forth on this quotation; if additional or different terms are proposed by Buyer, such additional or different terms shall not become a part of the contract formed by Buyer's acceptance of the quotation. Receipt of the products sold hereunder or commencement of the services provided hereunder shall be deemed acceptance of the terms and conditions of this quotation.
2. Taxes and Payment - Any tax, duty, custom or other fee of any nature imposed upon this transaction by any federal, state or local governmental authority shall be paid by Buyer in addition to the price quoted. In the event Waters is required to prepay any such tax or fee, Buyer will reimburse Waters. Payment terms shall be net thirty (30) days after shipment and are subject to credit approval. An interest charge equal to 1 1/2% per month (18% per year) will be added to quotations outstanding beyond 30 days after shipment. In addition, Waters reserves the right, in its sole discretion, to require C.O.D. payment terms from any Buyer. Waters may also refuse to sell to any person until all prior overdue accounts are paid in full.
3. Delivery and Shipment - Delivery terms shall be F.O.B. Waters shipping point; identification of the products shall occur when they leave Waters shipping point at which time title and risk of loss shall pass to Buyer. All shipment costs shall be paid by Buyer and if prepaid by Waters the amount thereof shall be reimbursed to Waters. Waters will make reasonable commercial efforts to ship the products or provide the services hereunder in accordance with the delivery date set forth on the reverse side hereof provided, that Waters accepts no liability for any losses or for general, indirect special or consequential damages arising out of delays in delivery.
4. Warranty - The products and/or services shall be covered by the applicable Waters standard warranty, a copy of which is supplied with the products and/or services or upon request. NO OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED, IS MADE WITH RESPECT TO THE PRODUCTS AND/OR SERVICES. WATERS EXPRESSLY EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. Any model or sample furnished to the Buyer is merely illustrative of the general types and quality of goods and does not represent that the products will conform to the model or sample. Buyer's remedies under Waters warranty shall be limited to repair or replacement of the product or component which failed to conform to Waters applicable standard warranty. WATERS SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR ANY OTHER INDIRECT DAMAGES RESULTING FROM ECONOMIC LOSS OR PROPERTY DAMAGE SUSTAINED BY BUYER FROM THE USE OF ITS PRODUCTS OR SERVICES.
5. Returned Goods - Waters may, in its sole discretion, authorize product returns in appropriate circumstances, subject to such conditions as Waters may specify. Any such return shall be subject to the express prior authorization of Waters and payment by Buyer of a restocking charge. No returns will be authorized after one hundred twenty (120) days following shipment to Buyer.
6. Technical Advice - Waters may, at Buyer's request furnish technical assistance, advice and information with respect to the products if and to the extent that such advice, assistance and information is conveniently available. It is expressly agreed that there is no obligation to provide such information, which is provided without charge at the Buyer's risk, and which is PROVIDED WITHOUT WARRANTY OF ANY KIND AND IS SUBJECT TO THE WARRANTY DISCLAIMERS AND LIMITATION OF LIABILITY SET FORTH IN PARAGRAPH 4.
7. Waters Right of Possession, etc. - Buyer hereby grants Waters a purchase money security interest in the goods offered by this quotation to secure the due and punctual payment of the purchase price specified in this quotation. In the event of default by Buyer in any payment due Waters, Waters shall have the right, in addition to any other remedies it may have at law or in equity, to withhold shipment, to recall goods in transit and retake the same, to repossess any goods which may be stored with Waters for Buyer's account without the necessity of Waters initiating any other proceedings. In addition, Waters shall have all of the rights and remedies of a secured party under the Massachusetts Uniform Commercial Code and may exercise all such rights and remedies in accordance therewith. Buyer shall execute such documents as Waters may request to effectuate the foregoing security interest.
8. Agents, etc. - No agent, employee or other representative has the right to modify or expand Waters standard warranty applicable to the products and/or services or to make any representations as to the products other than those set forth in the applicable user or operator's guide delivered with the products, and any such affirmation, representation or warranty, if made, should not be relied upon by Buyer and shall not form a part of contract between Waters and Buyer for the purchase of the products or services.
9. Fair Labor Standards - The products or services provided hereunder were produced and/or performed in compliance with the requirements of all sections of the Fair Labor Standards Act of 1938 as amended.
10. Equal Employment - Waters is an Equal Opportunity Employer. It does not discriminate in any phase of the employment process against any person because of race, color, creed, religion, national origin, sex, age, veteran or handicapped status.
11. Modifications, Waiver, Termination - The contract formed by Buyer's acceptance of this quotation may be modified and any breach thereunder may be waived only by a written and signed document by the party against whom enforcement thereof is sought.
12. Governing Law - The contract formed by Buyer's acceptance of this quotation shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, U.S.A.
13. Compliance with Laws - Buyer shall at all times comply with all applicable federal, state and local laws and regulations, including, without limitation, the provisions of the United States Export Control Laws as may be in effect for any of the products or services, and, if products or services hereunder are used in clinical applications, all applicable rules and regulations of the United States Food and Drug Administration and/or other domestic or international agencies with respect to the application of, as the case may be, Good Clinical Practices ("GCP"), Good Laboratory Practices ("GLP") or good Manufacturing Practices ("GMP").
14. Additional Terms and Conditions - This quotation is also subject to any Waters Special Terms and Conditions applicable to the products or services offered by this quotation, which appear on the front of this quotation. Any variance from the terms and conditions of this quotation in any order or other written notification from Buyer, will be of no effect. Should Buyer order products or services through a Waters office located outside of the United States, the terms and conditions of the quotation issued by the office outside of the United States shall govern such order.
15. Arbitration - Any and all disputes or controversies arising in connection with the contract formed by Buyer's acceptance of this quotation or the sale of products and/or performance of the services shall be resolved by final and binding arbitration in Boston, Massachusetts, under the rules of the American Arbitration Association then obtaining. The arbitrators shall have no power to add to, subtract from or modify any of these terms or conditions of this contract. Any award rendered in such arbitration may be enforced by either party in either the courts of the Commonwealth of Massachusetts or in the United States District Court for the District of Massachusetts, to whose jurisdiction for such purposes Waters and Buyer each hereby irrevocably consents and submits.
16. Software - To the extent there is any software included with the products, the software is being licensed, not sold and all rights, title and interest therein shall remain with Waters. Use of the software shall be in accordance with the applicable software license delivered with the products. U.S. Government Restricted Rights - RESTRICTED RIGHTS LEGEND. Use, duplication or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights clause at 48 CFR 52.227-19, as applicable.
17. Force Majeure - Waters shall have no liability for failure to perform, or delay in performance, in the delivery of any and all equipment manufactured or sold by Waters including instruments, supplies, components, systems, chemistry, accessories, replacement spare parts, or any and all services provided by Waters, caused by circumstances beyond its reasonable control including, but not limited to, acts of God, acts of nature, floods, fire, explosions, war or military mobilization, United States governmental action or inaction, request of governmental authority, delays of any kind in transportation or inability to obtain material or equipment, acts of other governments, strikes, or labor disturbances.
18. Diagnostic Products - Buyer acknowledges and agrees that only those products which are labeled and identified as in vitro diagnostic ("IVD")

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devices are intended to be used for IVD purposes. Buyer acknowledges and agrees that any products that are not labeled and identified as IVDs are general laboratory products intended for research and other general scientific uses and are not for use in IVD procedures.