

State of Maine Waiver of Competitive Bidding Request Form

Form Instructions: Please provide the requested information in the white boxes below. This form is to precede all contract requests that are not the direct result of a competitive bid process.

Requesting Department's Contract Administrator:	Rick Record	Office/Division/Program of Contract Administrator:	Maine Judicial Branch, Office of Transcript Operations
Est. Contract Amount:	\$ 40,015.67	Contract or RQS Number:	
Proposed Start Date:	July 1, 2019	Proposed End Date:	June 30, 2020
Vendor/Provider Name, City, State	Atherton Electronic Technicians 338 Coburn Hill Road Craftsbury, VT 05826		
Short Description of Good or Service:	Troubleshoot, resolve, and repair For the Record (FTR) digital recording software and programs, and related hardware/software components.		
Please note, for transparency purposes, Waivers of Competitive Bidding will be publicly posted. Public postings are placed on the Division of Procurement Services website for a period of seven consecutive calendar days.		To be completed by the Division of Procurement Services Posting dates on Division of Procurement Services website: From: <u>4/25/2019</u> To: <u>5/1/2019</u>	
Notice of Intent to Waive Competitive Bidding Number:		.NOI#xxxxxxxxxxxxx 0420190513	
1. Statutory Justification			
State of Maine statute (5 M.R.S. §1825-B(2)) allows waivers of competitive bidding only for the specific reasons listed below. Please mark the appropriate box (X) next to the justification which applies to this specific request.			
<input type="checkbox"/>	A. The procurement of goods or services by the State for county commissioners pursuant to Title 30-A, section 124, involves the expenditure of \$2,500 or less, and the interests of the State would best be served;		
<input type="checkbox"/>	B. The Director of the Bureau of General Services is authorized by the Governor, or the Governor's designee, to make purchases without competitive bidding because, in the opinion of the Governor or the Governor's designee, an emergency exists that requires the immediate procurement of goods or services;		
<input type="checkbox"/>	<i>If citing the above justification for this Waiver of Competitive Bidding request, please have the requesting Department's Commissioner or Chief Executive (as the Governor's "designee") sign and date on the right.</i>	By signing below, I signify as the Governor's designee there is an emergency that necessitates this non-competitive procurement. Signature:	
<input type="checkbox"/>		Printed Name:	Date:
<input checked="" type="checkbox"/>	C. After reasonable investigation by the Director of the Bureau of General Services, it appears that any required unit or item of supply, or brand of that unit or item, is procurable by the State from only one source;		
<input type="checkbox"/>	D. It appears to be in the best interest of the State to negotiate for the procurement of petroleum products;		
<input type="checkbox"/>	E. The purchase is part of a cooperative project between the State and the University of Maine System, the Maine Community College System, the Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State involving: (1) An activity assisting a state agency and enhancing the ability of the university system, community college system, Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State to fulfill its mission of teaching, research, and public service; (2) A sharing of project responsibilities and, when appropriate, costs;		
<input type="checkbox"/>	<i>If citing the above justification for this sole source request, please note that the specific approval of the Governor's Office is required, in accordance with Executive Order 26 FY 11/12, "An Order to Enhance Competitive Bidding". The approval must be documented on DAFS/BGS/Division of Procurement Services "GOVCOOP" form, found here: http://www.maine.gov/purchases/info/forms/govcoop.doc.</i>		
<input type="checkbox"/>	F. The procurement of goods or services involves expenditures of \$10,000 or less, in which case the Director of the Bureau of General Services may accept oral proposals or bids;		
<input type="checkbox"/>	G. The procurement of goods or services involves expenditures of \$10,000 or less, and procurement from a single source is the most economical, effective and appropriate means of fulfilling a demonstrated need.		

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If a different authorization specifically allows for this non-competitive procurement, please provide that reference here:

Please note that the following four points below (#2 through 5) all require a response.

2. Description of Specific Need

Please identify, and fully describe, the specific problem, requirement, or need the resulting non-competitive contract would address and which makes the goods or services necessary. Explain how the requesting Department determined that the goods or services are critical and/or essential to agency responsibilities or operations.

Per the Maine Rules of Court and Administrative Orders promulgated by the Chief Justice of the Supreme Court, court hearings are required to be electronically recorded to preserve the record for appeals to the Maine Supreme Court and to protect the rights of the parties. It is critical that the digital recording equipment be properly installed, serviced and maintained, and that when problems arise, there be immediate access to specialized and highly skilled technicians. At this time, the vendor identified in this contract is the only vendor we are aware of that can meet this need.

A technical services contract with the vendor will ensure the sophisticated electronic recording systems used by the courts function properly and in so doing will protect the access to justice rights of the parties.

The service contract provides court staff, located in 39 courthouses across the state, the ability to routinely seek assistance from the vendor by phone, and when necessary, in person. If court staff knows they can freely use a technical resource, they are much more likely to take advantage of that resource. Doing so results in the proper upkeep of systems and ultimately reduces the frequency and severity of technical issues. Keeping technical equipment in a superior state of readiness is necessary for capturing a clear-sounding and accurate record; and ensures that the court is able to keep its tightly scheduled dockets moving smoothly.

3. Availability of other Public Resources

Please explain how the requesting Department concluded that sufficient staffing, resources, or expertise is not available within the State of Maine's government, or other governmental entities (local, other state, or federal agencies) external to the requesting Department, which would be able to address the identified need more efficiently and effectively than the identified vendor.

As a result of a diligent search, we have determined there are no resources available that are familiar with this specialized software and hardware. The court is a unique institution and no other local, state or federal entities are using this software in the same manner, or as part of a statewide enterprise. The Federal Courts do not use electronic recording, as they use court reporters.

FTR is a highly specialized digital recording system that is a proprietary software system designed for recording court proceedings. The troubleshooting, repair, and maintenance of these systems statewide must be handled expeditiously by a provider with the highest degree of technical understanding. The vendor identified here is the sole vendor with this ability.

While staff within the Office of Transcript Operations is trained to handle basic issues at a Tier I level, in no way can staff handle the varied and significant issues that arise throughout the 90 courtrooms in the state of Maine. Similarly, the Judicial Branch's OIT staff are not trained or prepared to troubleshoot or repair these systems.

4. Cost

Since a waiver of competitive bidding is being requested for this procurement, please explain how the requesting Department concluded the negotiated costs, fees, or rates are **fair and reasonable**.

There is one other vendor we are aware of that provides one-year service contracts for FTR systems, Electronic Dictation systems (EDS). They quoted a price of \$495 per device, but also told the Judicial Branch that they are not interested in servicing FTR units in Maine. The Atherton's have quoted a unit price of \$375, a savings of \$120 per unit. With 90+ units statewide, the savings is almost \$11,000 annually.

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5. Future Competition

Please describe potential opportunities which may be available to foster competition for these goods or services in the future.

In order to foster competition in the future, we will continue to submit RFQs when we purchase new FTR systems for the courts. Should we find that there are new contractors with the training and skills able to meet the needs of the courts, we will engage with them as appropriate.

Please note that only one of the two points below ("Uniqueness" or "Timeframe") requires a response. Requesting Departments are not required to respond to both points.

6. Uniqueness

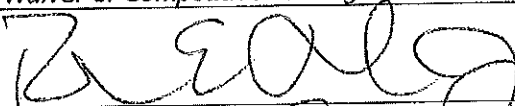
Please explain if the goods or services required are unique to a specific vendor. Describe the unique qualifications, abilities, and/or expertise of the vendor and how those particular unique factors address the specific need identified above. If the vendor has unique equipment, facilities, or proprietary data, also explain the necessity of these particular unique assets.

The services the vendor will provide are unique, as are the needs of the Maine Courts. As previously discussed, FTR is a sophisticated software program built for digitally electronically recording court proceedings. We are not aware of any other vendor that can provide these services, never mind the fact that the services are required to be timely (so that the court's docket can proceed) and statewide (Maine has 39 court locations with 90 courtrooms).

The Atherton's have been providing electronic recording services to the Maine Courts for decades and they have been a family operation for numerous years. Ken and Sue Atherton, the original owners, are slowly transitioning their business to their family, Don and Trish Atherton. The Atherton's have a detailed and extensive inventory of Maine's courtrooms and equipment; photos of each system, including location of the devices; knowledge of sound issues related to each courtroom; and, knowledge and experience with the PA sound systems that complement the ER systems. They are uniquely qualified to troubleshoot problems over the phone, and in person, given this knowledge as well as their knowledge of the capabilities and limitations of FTR. They are also willing to work within normal court hours, or outside of those hours, and have done, and will do, "whatever it takes" to get the job done to the satisfaction of the Maine Courts. Previous RFQs and diligent searches have not yielded any other qualified vendors in this area.

7. Timeframe (Complete only if B. is the Statutory Justification marked on Page 1)

Please explain if time is of the essence and an emergency exists which requires the immediate procurement of goods or services. Describe the nature of this emergency, provide the date by which the goods or services must be delivered, and explain how that date was determined and its significance (i.e. impact if delayed beyond this date). Also, provide information as to how it was determined this vendor is the best option to address this time-sensitive procurement.

Signature of requesting Department's Commissioner or Chief Executive (or designee within the Commissioner's Office):	<i>By signing below, I signify that my Department requests, and I approve of, this Waiver of Competitive Bidding.</i>
Printed Name:	 Richard E. Record, Jr. Director, Court Services
Date:	4-19-2019