

## 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.

<b>Requesting Department's Contract Administrator:</b>	Nick Zaharchuk/Joan Bolduc	<b>Office/Division/Program of Contract Administrator:</b>	DAFS/OIT/IBM Services
<b>Est. Contract Amount:</b>	\$139,048.80	<b>Contract or RQS Number:</b>	RQS 18B 20190423*1120
<b>Proposed Start Date:</b>	7/1/2019	<b>Proposed End Date:</b>	6/30/2020
<b>Vendor/Provider Name, City, State</b>	INTERNATIONAL BUSINESS MACHINES CORP PO BOX 676673 Dallas, TX 75267-6673		
<b>Short Description of Good or Service:</b>	IBM z/OS Operating System software licensing, maintenance and support		
<b>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.</b>		<b>To be completed by the Division of Procurement Services</b> Posting dates on Division of <i>Procurement Services</i> website: From: <u>5/9/2019</u> To: <u>5/15/2019</u>	
<b>Notice of Intent to Waive Competitive Bidding Number:</b>		NOI# 0520190595	
<b>1. Statutory Justification</b>			
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;		
	<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>	<i>By signing below, I signify as the Governor's designee there is an emergency that necessitates this non-competitive procurement.</i> <b>Signature:</b>	
		<b>Printed Name:</b>	<b>Date:</b>
<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;		
	<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: <a href="http://www.maine.gov/purchases/info/forms/govcoop.doc">http://www.maine.gov/purchases/info/forms/govcoop.doc</a>.</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.		
<input type="checkbox"/>	If a different authorization specifically allows for this non-		

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competitive procurement, please provide that reference here:	
<b>Please note that the following four points below (#2 through 5) all require a response.</b>	
<p><b>2. Description of Specific Need</b> 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.</p>	
<p>This expenditure is to license and use the IBM operating system and related software, which together with the actual the IBM Enterprise Server, provide the IBM mainframe application hosting environment for State of Maine applications. Per terms of the system usage/license agreement, without an active software license the machine cannot be operational.</p> <p>The State of Maine produces a bi-weekly payroll to pay its employees. The computer system on which the payroll application runs is an IBM Enterprise Server (mainframe). The mainframe Operating System is called z/OS; it is a Licensed Program owned by International Business Machines (IBM) Corporation. Licensed Programs are available only under an IBM Customer Agreement, International Program License Agreement, or any equivalent agreement in effect between the customer and IBM.</p> <p>The State of Maine's IBM mainframe and its z/OS Operating System provide the Information Technology platform, or application hosting environment, for the State of Maine Office of the State Controller's Human Resources Payroll application, which is both critical and essential to the operation of Maine State Government.</p>	
<p><b>3. Availability of other Public Resources</b> 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.</p>	
<p>There are no resources within Maine State Government, or any local, state or federal agencies external to the requesting Department which create proprietary computer Operating Systems to manage and control the resources of an IBM mainframe Enterprise Server.</p>	
<p><b>4. Cost</b> 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 <b>fair and reasonable</b>.</p>	
<p>The cost represents a 4% annual increase and is in line with prior year increases. Annual rate increases are effective on the first day of the calendar year. For State and local government customers: The new annual and monthly charges will be effective at the beginning of the fiscal year that starts on or after January 1, 2019.</p>	
<p><b>5. Future Competition</b> Please describe potential opportunities which may be available to foster competition for these goods or services in the future.</p>	
<p>OIT contacted the NASPO software reseller for the State of Maine (SHI) to identify if SHI could offer/license the IBM z/OS software and they could not.</p> <p>IBM invoices the State monthly for the software license. The State may discontinue the software license (or hardware support) with 30-days' notice to IBM. The server/software license will be decommissioned, at a date to be determined, after the new State of Maine Workday Maine Human Resources/payroll application goes live, estimated at 1/1/2020.</p> <p>If required, future replacement, or modernization, of existing IBM enterprise hardware will be competitively bid using the Request for Proposal process, following the rules and procedures established by the State of Maine Division of Procurement Services and in compliance of all applicable State of Maine Statutes.</p>	

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**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.**

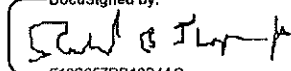
**6. Uniqueness**

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 IBM z/OS Operating System is proprietary software licensed by the IBM Corporation. It was specifically designed and created to manage the hardware resources of an IBM mainframe, which also is designed and created by IBM Corp. Licensed Programs are available only under an IBM Customer Agreement, International Program License Agreement, or any equivalent agreement in effect between the customer and IBM.

**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.

<b>Signature of requesting Department's Commissioner or Chief Executive (or designee within the Commissioner's Office):</b>	<i>By signing below, I signify that my Department requests, and I approve of, this Waiver of Competitive Bidding.</i>
<b>Printed Name:</b>	DocuSigned by:  F10B257DB10B4AC...
<b>Date:</b>	Richard B. Thompson 5/2/2019

DocuSigned by:  5/2/2019  
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