

State of Maine Waiver of Competitive Bidding Request Form

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| DHHS/DCM Contract Administrator: | Matt Galletta / Valerie Fredericks | Office/Division/Program of Contract Administrator: | Wendy Waltz, Financial Analyst, RPC |
| Est. Contract Amount: | \$20,000.00 | Contract or RQS Number: | CT 10A 20190520*3496 |
| | | Purchasing Maine ID: | |
| | | DHHS Agreement Number: | RPC-20-1209 |
| Proposed Start Date: | 07/01/2019 | Proposed End Date: | 06/30/2020 |
| Vendor/Provider Name, City, State | Pine Tree Legal Assistance, Inc. Portland, ME 04112 | | |
| Short Description of Good or Service: | Legal Services | | |
| 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>6/8/2019</u> To: <u>6/14/2019</u> | |
| Notice of Intent to Waive Competitive Bidding Number: | | NOI# 0620190907 | |
| 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. | | | |
| 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; | | |
| 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> Signature: | |
| | | Printed Name: | Date: |
| X | 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; | | |
| | D. It appears to be in the best interest of the State to negotiate for the procurement of petroleum products; | | |
| | 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: http://www.maine.gov/purchases/info/forms/govcoop.doc.</i> | | |
| | 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; | | |
| | 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. | | |
| | If a different authorization specifically allows for this non-competitive procurement, please provide that reference here: | | |

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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.

Effective in 2015, Title 15, Chapter 5, § 107 of the Maine Revised Statutes provides an administrative process for the involuntary medication of certain forensics patients under the Commissioner's custody at the State psychiatric hospitals (Riverview Psychiatric Center and Dorothea Dix Psychiatric Center). This process includes that: "The patient is provided counsel at the department's expense at least 7 days prior to the hearing under paragraph E." 15 M.R.S. § 107(3)(F). The department can only satisfy this responsibility by providing outside counsel to the patient given the conflict of interest that would arise if attorneys salaried by the department or Assistant Attorneys General represented the patients in these adversarial proceedings. Pine Tree Legal Assistance has developed an expertise in this area and is equipped to represent the patients' interests pursuant to the department's statutory duties. The Attorney General's Office has authorized Riverview Psychiatric Center each year to retain Pine Tree Legal Assistance for these hearings.

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.

There are no governmental entities that can provide this specific legal representation. The department is required by statute to provide counsel to patients subject to an involuntary medication request. 15 M.R.S. § 107(3)(F). The department can only satisfy this responsibility by providing outside counsel to the patient given the conflict of interest that would arise if attorneys salaried by the department or Assistant Attorneys General represented the patients in these adversarial proceedings.

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**.

The hourly rate for the Legal Services provided under this agreement is \$87.50 which is a reasonable rate for attorney services in the State of Maine. This is the same hourly rate that has been negotiated with Pine Tree Legal Assistance since FY2017. Riverview Psychiatric Center estimates that \$20,000 will be necessary to provide these services at the \$87.50 hourly rate for FY2019. This estimate is based on the FY2017 contract which was originally capped at \$5,000, then increased to \$15,500, once the parties were able to assess the frequency of hearings (approximately 4-6 per year) and the time needed to provide effective representation under the new statutory scheme.

5. Future Competition

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

The Department does not intend to RFP these services.

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.

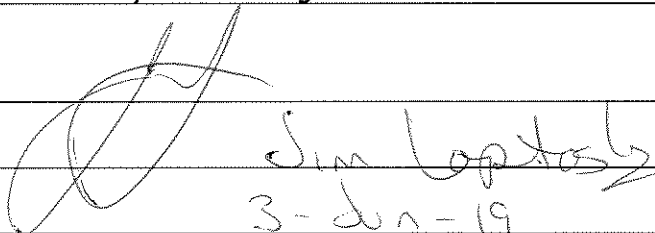
6. Uniqueness

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.

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Pine Tree Legal Assistance has many years of experience representing patients in administrative hearings seeking medication over objection. This includes both experience in representing patients under an older similar regulatory process no longer in effect, and two years of experience in representing patients under 15 M.R.S. § 107. Pine Tree Legal Assistance has familiarity with the level of confidentiality and safety precautions which are necessary to represent involuntarily hospitalized mentally ill patients with potential for violence.

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.

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| 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: |  Jim Lapostola |
| Date: | 3-dun-19 |