

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.

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| Requesting Department's Contract Administrator: | Peter Moulton | Office/Division/Program of Contract Administrator: | Department of Env. Prot. BRWM Div. of Technical Services |
| Est. Contract Amount: | \$ See the attached list | Contract or RQS Number: | |
| Proposed Start Date: | 1 July 2019 | Proposed End Date: | 30 June 2020 |
| Vendor/Provider Name, City, State | See the attached list for the 8 Community Action Programs (CAPs), also called Community Action Agencies. | | |
| Short Description of Good or Service: | Administration and implementation of the DEP Home Heating Oil Tank Replacement Program. This involves the upgrade of aboveground home heating oil tanks not meeting State standards and posing a high risk of an oil spill. | | |
| 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>06/12/2019</u> To: <u>06/18/2019</u> | |
| Notice of Intent to Waive Competitive Bidding Number: | | NOI# 0620190953 | |
| 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. | | | |
| <p>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;</p> <p>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;</p> <p>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;</p> <p>D. It appears to be in the best interest of the State to negotiate for the procurement of petroleum products;</p> <p>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;</p> <p>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;</p> <p>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.</p> | | | |
| <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: _____ | |
| <p><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></p> | | | |

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| X | If a different authorization specifically allows for this non-competitive procurement, please provide that reference here: | 38 MRSA § 551.5.O requires that the local Community Action Agency (See attached list.) be the contractor for the DEP Home Heating Oil Tank Replacement Program for the counties that they serve. |
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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.

Object of contract is to prevent heating oil contamination of drinking water supplies by heating oil supply tanks and piping not meeting State regulations and standards and that are at a high risk of failure and causing an oil spill. In contrast the estimated statewide average (including personnel costs) to remediate such a long term remediation site if a spill occurs is \$20,000; a potential benefit (avoided costs) to cost ratio of over 5:1.

This contract is needed to implement requirements of 38 MRSA § 551.5.O.

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.

a. Sufficient staffing or expertise is not available within the department because we do not deal regularly with the LIHEAP (Low Income Heating Energy Assistance Program) clients located throughout the state. This contract limits the home heating oil tanks replaced to those in homes owned by LIHEAP clients. The list of LIHEAP clients is both produced by the local CAP and accessible to the local CAP, not the DEP.

b. The requested sole source is, in fact, a local "government resource" external to the department. The local CAP is the requested sole source because the work (home heating oil tank installations) will take place within the homes of the CAP's LIHEAP clients, and it is - therefore - the only logical choice.

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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 CAP will be hiring other companies (heating contractors and oil delivery/heating service companies) to perform the actual home heating oil tank installations. The contract between the Department and the CAP contains language to assure competition. Specifically, the contract states,

“CAA” stands for Community Action Agency. There are 9 CAA’s (CAP’s) spread throughout Maine, but one CAP (Opportunity Alliance) is not participating this contract year.

“The CAA will solicit at least three (3) bids for the home heating oil tank replacement work from heating contractors. If there is a heating oil company of record, it shall be offered the opportunity to submit a bid. In the event of a heating oil discharge or similar emergency, the CAA project manager may select a technician from the CAA’s list of qualified heating contractors.”

5. Future Competition

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

The language shown in section #4 (directly above) provides ample competition, both now and in the future, for the heating contractors bidding on the home heating oil tank replacement work.

This section is not applicable as far as the contractor, the local CAP is concerned. The local CAP is the desired sole source contractor for reasons explained in sections #1 and #3 (above). Further, the local CAP needs to be the contractor to comply with the statute that established the DEP Home Heating Oil Tank Replacement Program, 39 MRSA § 569 -A (5) (N) and the current statute 38 MRSA § 551.5.O.

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 requested sole source is unique in the following:

1. 38 MRSA § 551.5.O requires that the local Community Action Agency be the contractor for the DEP Home Heating Oil Tank Replacement Program.
2. The local CAP is the organization that deals the most with LIHEAP clients, the recipients of the tanks to be installed.
3. The dealings of the local CAP is not limited to LIHEAP. Each CAP also runs the Central Heat Improvement Program (CHIP) and the Weatherization program. The administration of these two programs means the CAP is constantly involved in building construction and maintenance and heating system construction and maintenance. The result is that they are constantly dealing with and evaluating the work of heating contractors, the contractors who will be installing the oil tanks called for in this contract. Their knowledge of the availability and the level of expertise of local contractors is probably unmatched by any other organization.

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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.

Not applicable. Time is NOT of the essence in this contract.

Signature of requesting Department's Commissioner or Chief Executive (or designee within the Commissioner's Office):

By signing below, I signify that my Department requests, and I approve of, this Waiver of Competitive Bidding.



Printed Name:

Gerald D. Reid, Commissioner

Date:

6/2/19

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8 Community Action Programs Involved in the DEP Home Heating Oil Tank Replacement Program
July 2019 through June 2020

| CAP Name and Address | Contract Amount |
|---|-----------------|
| Aroostook County Action Program, Inc PO Box 1116 Presque Isle, ME 04769 | \$ 92,900 |
| Community Concepts, Inc. 17 Market Square South Paris, ME 04281 | \$115,900 |
| Downeast Community Partners 248 Bucksport Road Ellsworth, ME 04605 | \$ 69,100 |
| Kennebec Valley Community Action Program 97 Water Street Waterville, ME 04901 | \$165,300 |
| PenQuis Community Action Program PO Box 1162 Bangor, ME 04401 | \$177,600 |
| Waldo CAP PO Box 130 Belfast, ME 04915 | \$ 34,500 |
| Western Maine Community Action, Inc. PO Box 200, 20a Church St. E. Wilton, ME 04234 | \$ 35,300 |
| York County Community Action Corporation PO Box 72 Sanford, ME 04073 | \$ 59,200 |
| Statewide Total | \$749,800 |

