

# 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>	Stacey Bean	<b>Office/Division/Program of Contract Administrator:</b>	Department of Education Special Services
<b>Est. Contract Amount:</b>	\$ 386,000.00	<b>Contract or RQS Number:</b>	20190418*3020
<b>Proposed Start Date:</b>	<b>07/01/2019</b>	<b>Proposed End Date:</b>	06/30/2020
<b>Vendor/Provider Name, City, State</b>	MaineHealth DBA Maine Behavioral Health One Riverfront Plaza Westbrook, ME 04092		
<b>Short Description of Good or Service:</b>	<b>Provide special education services to children with disabilities who are State Agency Clients</b>		
<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>06/28/2019</u> To: <u>07/04/2019</u>	
<b>Notice of Intent to Waive Competitive Bidding Number:</b>		NOI# 0620191107	
<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>	By signing below, I signify as the Governor's designee there is an emergency that necessitates this non-competitive procurement. <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		

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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:

**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.

- a. **Maine Behavioral Health is a special purpose private school that serves children with disabilities who are not successful in public schools.**
- b. **IDEA, CFR, §1400 (d) (1) – (4); MRSA 20-A §7001 (2a), (6) both statutes provide that children identified as receiving special education services are entitled to a free and appropriate education. MRSA 20-A §15689-A 1. A.B.C.D. determines that the special educations costs for State Agency Clients must be paid by the department in the allocation year at 100% of the actual costs.**

## 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.

**The Maine Department of Education does not provide direct services to children with disabilities.**

## 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**.

**Students are placed at Maine Behavioral Health by their IEP team. The DOE does not make decisions as to where the students receive the educational services. Therefore, the DOE must make funds available to this vendor for the services provided to State Agency Clients.**

**The DOE has a yearly approval process and rate setting process for each special purpose private school in the State of Maine.**

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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.

**Students are placed at Maine Behavioral Health by their IEP team. The DOE does not make decisions as to where the students receive their educational services. Therefore, this procurement does not lend itself to the use of a formal competitive process.**

**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.

**Each special purpose private school operates and specializes in supporting children with learning disabilities in their special educational program.**

**\*\* Please see attached justification**

**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):**

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



**Printed Name:**

Danie A. Chisholm

**Date:**

26 June 2019

May 1, 2018

### **Special Purpose Private School (SPPS)-Justification for Sole Source Authorization:**

The Maine DOE, State Agency Client Program (SACP) is responsible (See Statutory) for paying for special education costs associated with students who are in the custody or care of DHHS/OCFS. There are two different situations in which these students are placed at the SPPS.

1. Special education costs for students in State custody who are placed (by their IEP Team) in a SPPS for full day special education purposes are paid for through the State Agency Client Program.
2. Special education costs for students who are authorized to be placed residentially (in the care of the State) by OCFS for purposes other than educational are also paid through the State Agency Client Program.

Each year, private schools approved by the Maine DOE for provision of special education services, Special Purpose Private Schools (SPPS), submit financial documentation for the Maine DOE to determine a daily education rate for each SPPS. To be clear, DOE sets this rate for each SPPS, based on the calculations defined in Chapter 101, XVJII.3. c. Tuition Computation: Private Special Purpose Schools.

To summarize, the Maine DOE SACP must, by law, pay for the education costs at any approved SPPS to which the DHHS/OCFS/ IEP Team chooses to send their Clients and State Wards. The DOE has no control over what SPPS they will need to contract with in order to make these payments, nor the total dollar amount of this contract. Daily rates are set according to statutory provisions and are essentially rates based on the expenses of the SPPS. Therefore SPPS contracts could never be awarded on a competitive basis without considerable changes in law and DHHS procedures.

Below please find the definition of State Agency Client/State Ward and Special Education Finance: Private School Tuition Computations, Approval Procedures directly from the Maine Unified Special Education Regulation (MUSER) Chapter 101 regulations.

MUSER Chapter 101 Definition of State Agency Client and State Ward:

**State Agency Client** *State agency client means a child of eligible school age who is:*

*A. In the care or custody, or both, of the Department of Health and Human Services;*

*B. Placed by a caseworker from the Department of Health and Human Services or an authorized agent of Children's Behavioral Health Services, Department of Health and Human Services, for reasons other than educational reasons, with a person who is not the child's parent, legal guardian or relative.*

*C. Attending a public or private school while still a resident of a state-operated institution; or*

*D. In the custody or under the supervision of the Department of Corrections, including, but not limited to, a juvenile on conditional release, an informally adjusted juvenile, a probationer or a juvenile on community reintegration status from the Long Creek Youth Development Center or the Mountain View Youth Development Center and who is placed, for reasons other than educational reasons, pursuant to a court order or with the agreement of an authorized agent of the Department of Corrections, outside the juvenile's home. [20-A MRSA §1(34-A)]*

A state agency client is a child who has been identified as a child with a disability in accordance with this rule. State agency client also means a child who is under 6 years of age who meets one of the criteria in A-D above.

**State Ward.** *State ward means a person under the age of 18, or an older person of eligible school age, for whom the State of Maine is legal guardian by court order. The term does not include residents of Maine's correctional facilities.*

### **MUSER Chapter 101 Special Education Finance: Private School Tuition Computations, Approval Procedures**

#### **A. General Principles**

*Special purpose private schools and general purpose private schools may, in accordance with this rule, provide special education services to children with disabilities and receive tuition payments for such services from SAUs or the Department. In order to receive public funds, a private school shall comply with 20-A MRSA Chapter 117, subchapter 2.*

#### **B. Annual Year-End Reports**

*Each special purpose private school shall file an EF-S-10 Year-End Report with the Department in the format required by the Commissioner. All requested information pertaining to actual revenues, expenditures, and enrollments and, where applicable, estimates shall be provided within the specified time limits.*

#### **C. Tuition Computation: Special Purpose Private Schools**

The daily tuition rate at a special purpose private school shall be the sum of allowable expenditures divided by the number of student days. For purposes of this computation:

(1) Allowable expenditures, calculated for the fiscal year (July 1 to June 30) immediately before the fiscal year for which the tuition rate is computed, include only the following:

- (a) Compensation of employees for the time spent on, and specifically identified as related to, the development and/or implementation of individualized educational programs;
- (b) Costs of materials acquired, consumed, or expended specifically for the development and/or implementation of individualized educational programs;
- (c) Equipment and other approved capital expenditures necessary for the development and/or implementation of individualized educational programs;
- (d) Travel expenses incurred specifically for the development and/or implementation of individualized educational programs; and
- (e) Indirect costs necessary for the development and/or implementation of individualized educational programs;

(2) The number of student days, calculated for the fiscal year immediately before the fiscal year for which the tuition rate is computed, is the sum of the actual days of student attendance for the year;

(3) The allowable expenditures calculated in accordance with paragraph (1) shall be divided by the number of student days calculated in accordance with paragraph (2);

The allowable expenditures calculated in accordance with paragraph (1) shall be divided by the number of student days calculated in accordance with paragraph (2);

(4) For each year, the tuition rate for each special purpose private school shall be capped at its rate for the previous fiscal year plus the median change in the sum of allowable expenditures of all State of Maine approved special purpose private schools for the 2 fiscal years immediately before the year for which the tuition rate is computed; this is known as the adjustment factor.

- (a) In a year in which the median change is negative, the special purpose private schools with rates more than one standard deviations lower than the mean, will not be subject to a further negative adjustment;
- (b) In a year in which the median change is positive, the special purpose private schools with rates more than one standard deviation higher than the mean shall be capped at the rate for the previous fiscal year plus one half of the adjustment factor;
- (c) The adjustment factor shall be no more than 6%.

(5) Operating fund balances. General operating fund balances at the end of a special purpose private school's fiscal year must be carried forward to meet the school's needs in the next year. Net revenues in excess of 103% of the fiscal year's net expenses must be used to reduce the net expenditures in the following year.

(6) Chargeable rate. The maximum rate of tuition that may be charged by a special purpose private school is the rate computed under this subsection unless the school presents sufficient evidence to the Commissioner that a hardship will exist if a higher rate is not approved.

#### **D. Exempted Private Agencies**

This section shall not apply to, and the Commissioner shall have no authority over, tuition rates charged for special education programs by private agencies where the tuition is not paid, reimbursed or otherwise funded in whole or in part by this State.

#### **E. General Purpose Private Schools with Exclusive Contracts or A Child Enrollment With Greater Than 60% Public Tuition Children.**

A general purpose private school that has a contract with a SAU for the provision of elementary and/or secondary education or enrollment of greater than 60% publicly tuition children shall establish a tuition rate for special education services based on actual per child costs. The special education tuition rate shall be determined by dividing the sum of the allowable costs (based on the prior year expenditures) by the average daily enrollment of children. The allowable expenditures used in computing tuition of an on-going special education service in a general purpose private school shall be based on the prior year expenditures and the average daily enrollment of children shall be based on the actual number of children receiving special education services enrolled in the school for the prior school year.

#### **F. General Purpose Private Schools with Tuition Children**

A general purpose private school that does not have a contract with a school administrative unit for the provision of elementary and/or secondary education shall charge a tuition rate that does not exceed the State elementary or secondary per child tuition rate as computed under 20-A MRSA §§ 5804 and 5806.

If additional information is required, please contact Mary Adley, State Agency Client Coordinator at 624-6671 or mary.adley@maine.gov