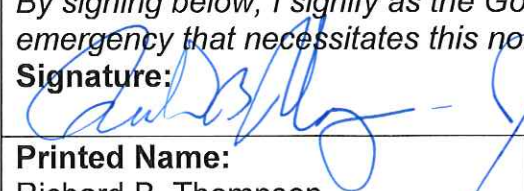


## State of Maine Waiver of Competitive Bidding Request Form

**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>	Joseph Ostwald	<b>Office/Division/Program of Contract Administrator:</b>	DAFS/BGS(BREM)
<b>Est. Contract Amount:</b>	\$ 150,000	<b>Contract or RQS Number:</b>	20190731*0375 CT 18A 2019*****
<b>Proposed Start Date:</b>	7/31/2019	<b>Proposed End Date:</b>	1/31/2020
<b>Vendor/Provider Name, City, State:</b>	McGrath & Company, LLC, Construction Management Services, 11 Washington Avenue, Scarborough, ME 04074		
<b>Short Description of Good or Service:</b>	Construction project cost control, schedule analysis, and related services.		
<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>7/31/2019</u> To: <u>8/6/2019</u>	
<b>Notice of Intent to Waive Competitive Bidding Number:</b>	NOI# 0720191305		
<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;		
<input checked="" 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>	<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> Richard B. Thompson <b>Date:</b> 7/31/19	
<input 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;		

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<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:</p> <p>(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;</p> <p>(2) A sharing of project responsibilities and, when appropriate, costs;</p>	
<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: <a href="http://www.maine.gov/purchases/info/forms/govcoop.doc">http://www.maine.gov/purchases/info/forms/govcoop.doc</a>.</i></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>	
<p>If a different authorization specifically allows for this non-competitive procurement, please provide that reference here:</p>	
<p><b>Please note that the following four points below (#2 through 5) <u>all</u> require a response.</b></p>	
<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>The Legislature has authorized Maine Governmental Facility Authority (MGFA) funds for the expansion of the Maine Correctional Center in Windham. DAFS/BGS manages design and construction contracts, and interactions with MGFA. The Department of Corrections is the owner/operator of the facility. \$141,000,000 was allowed for the project, of which approximately \$116,000,000 was expected to be applied to construction. Due to reasons beyond BGS' control, the project commenced before the design was complete or the full budget established. As a result, the project has encountered program and budget challenges since the April 2017 design start and April 2018 construction start, risking a reduction in the scope of the project. BGS wishes to implement the requisite project controls to assure responsible and accountable progress. A third-party construction project cost control and schedule analysis consultant will assist the State, and design and construction partners to minimize delays and maximize efficient use of project funds.</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,</p>	

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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 expertise for detailed critical path construction schedule evaluation, and construction cost control services are not available in this department of State of Maine government. BGS/BREM has applied significant resources from a small staff of two Architects to this project. No other state agencies are able to assist.

**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 proposed hourly rates, not-to-exceed fee contract has been judged fair based on past experience with the same consultants on the Riverview Psychiatric Center and Department of Corrections and other agencies' projects, and based on rates for Architects, Engineers, and Construction project managers doing similar work, and based on the projected cost savings to be generated by the contract. The chosen vendor has a proven ability to recoup costs which more than exceed their fee.

**5. Future Competition**

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

The proposed contract is due to an immediate need on an active construction project to integrate optimal construction project cost and schedule management. BGS/BREM plans to issue an RFP for construction project cost control and schedule control services for this project on or about October 31, 2019, or for a prequalified vendor list, similar to what is now in place for property surveyors, commissioning agents, and others.

**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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**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.

This proposed contract is justified by an immediate need, without which management of funds and project schedules would be negatively impacted. The services should proceed immediately because invitations for bids for construction work are currently in effect, with bids due August 2<sup>nd</sup>, 2019. A decision on awarding construction contracts will follow shortly thereafter. This scope of work represents tens of millions of dollars. The chosen consultant has positive past experience with State of Maine projects, including on Department of Corrections projects, and other State of Maine projects, their special expertise in construction cost control and schedule analysis, and their availability were the factors in the selection of this vendor.

**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:**

Richard B. Thompson

**Date:**

7/31/19