

## 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>	Melissa Hinkley	<b>Office/Division/Program of Contract Administrator:</b>	Department of Professional and Financial Regulation
<b>Est. Contract Amount:</b>	\$ 30,000.00	<b>Contract or RQS Number:</b>	20190906*0767
<b>Proposed Start Date:</b>	10/01/19	<b>Proposed End Date:</b>	09/30/21
<b>Vendor/Provider Name, City, State:</b>		F. Mark Terison, Esq. 135 Field Road Falmouth, ME 04102	
<b>Short Description of Good or Service:</b>		Independent hearing officer 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.		<b>To be completed by the Division of Procurement Services</b> Posting dates on Division of <i>Procurement Services</i> website: From: <u>9/16/2019</u> To: <u>9/22/2019</u>	
<b>Notice of Intent to Waive Competitive Bidding Number:</b>		NOI# 0920191529	
<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 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>	
<input type="checkbox"/>		<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 of Maine Waiver of Competitive Bidding Request Form

	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: <ul style="list-style-type: none"> <li>(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;</li> <li>(2) A sharing of project responsibilities and, when appropriate, costs;</li> </ul> <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>
	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:

**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.

The underlying mission of state regulatory agencies is to provide meaningful due process to individuals who have a property interest in a license issued by the State. The adjudicatory hearing process is the outward sign of due process in action and forms the basis of due process in the administrative law process. The regulatory agencies and licensing programs within the Department of Professional and Financial Regulation conduct many adjudicatory hearings during the course of a year. The integrity of the PFR adjudicatory hearing process rests on the Department's ability to provide independent impartial hearing officers to preside over these adjudicatory hearings. The Department's process was questioned recently during discussions with stakeholders and legal counsel. It was noted that the Department had a single hearing officer to handle the 60 – 100 hearings conducted each calendar year. At that time, the Department agreed to make efforts to increase the number of available hearing officers. This justification addresses the need to add another individual with the required administrative law background to the existing roster of independent hearing officers available to the Department.

It is not an easy task to identify appropriate candidates for this specialized legal work. Although we have tried other ways of providing this service, the Department has found that attorneys with the required administrative

**State of Maine  
Waiver of Competitive Bidding Request Form**

law and procedural experience provide the highest quality service to state agencies. More importantly, we see an individual who is completely independent of any agency within the Department in order to reinforce the concept that regulatory matters must be resolved in a setting in which the presiding officer has no bias or allegiance to either party to the dispute.

**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.

To avoid the perception of a conflict of interest or lack of objectivity, a hearing officer must be independent of the Department and the regulatory agencies within it.

Although borrowing staff from another agency or department may have been an option in the past, current economic conditions and the streamlining of the state workforce make this option unrealistic even if it were determined that staff from other departments or agencies possessed the necessary legal background and experience.

**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 Department compared the costs over time since we entered into the first multiyear contract with the primary hearing officer. This contract is for two years and the hourly charge for the service is not unreasonable given the increases in overall expenses of licensing programs.

**5. Future Competition**

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

Although it may be desirable that all services provided to state agencies should be awarded on a competitive basis, our efforts to generate interest in this service have not been successful. This is not full-time work; as such, the compensation does not meet the needs of most practicing attorneys. We are fortunate, frankly, to have attracted a competent attorney with excellent experience who has been vetted by the Attorney General's Office and who has provided high quality services during the course of past contracts.

**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.

## State of Maine Waiver of Competitive Bidding Request Form

Mr. Terison has significant experience working in the administrative law arena, as well as experience as an Assistant Attorney General, Assistant District Attorney and an Assistant U.S. Attorney. He has also served as the Administrative Hearing Officer for the Maine Public Employees Retirement System since 2011.

**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.

The department conducts between 60 – 100 hearings annually. That docket requires the availability of multiple hearing officers in the event that two agencies hold hearings simultaneously or if one hearing officer is unavailable when the service is needed on short notice. Retaining this individual on the qualified hearing officer roster will allow the department to be more efficient in scheduling and conducting these hearings in a timely fashion.

Adjudicatory hearings are scheduled as needed by either an agency head or the complaint committee of a licensing board or program. Hearings are scheduled throughout the year and a hearing officer must be able to accommodate the professional schedules of board members.

Delaying these hearings could be viewed as a delay in providing licensees with meaningful due process. Delays have a negative impact on the health and safety of Maine consumers, and could cause business disruptions in the event of a case involving a business entity.

It is estimated that an attorney without administrative law experience, hearing experience and familiarity with licensing statutes and rules would have at least a one-year learning curve. An inexperienced attorney would drive up the cost of the service by increasing the number of hours spent in preparation for a hearing, drafting a recommended decision and creating the administrative record.

**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.*

*Anne L. Head*

**Printed Name:**

Anne L. Head, Commissioner

**Date:**

*9/6/19*