

**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.

Requesting Department's Contract Administrator:	Julie L. Flynn	Office/Division/Program of Contract Administrator:	Secretary of State/ Bureau of Corporations, Elections & Commissions
Est. Contract Amount:	NTE \$123,810 in printing costs and \$12,400 in postage/delivery costs	Contract or RQS Number:	29A 20190916*0339
Proposed Start Date:	9/6/19	Proposed End Date:	11/30/19
Vendor/Provider Name, City, State:	Election Systems & Software, LLC. (ES&S) 11208 John Galt Blvd, Omaha, NE 68137		
Short Description of Good or Service:	Printing, packaging and delivery of official and sample candidate ballots for the November 5, 2019 Referendum Election		
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.	<p style="text-align: center;">To be completed by the Division of Procurement Services</p> <p>Posting dates on Division of Procurement Services website: From: <u>9/17/2019</u> To: <u>9/23/2019</u></p>		
Notice of Intent to Waive Competitive Bidding Number:	NOI# 0920191534		
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.			
<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>	<p><i>By signing below, I signify as the Governor's designee there is an emergency that necessitates this non-competitive procurement.</i></p> <p>Signature:</p>		
	Printed Name:	Date:	

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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:	
Please note that the following four points below (#2 through 5) <u>all</u> 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.		
As part of its continuing efforts to meet its federal and state responsibilities for conducting elections, the Bureau issued a vote tabulating system RFP in 2012, which resulted in a 7-year leasing agreement with ES&S (CEC CT#29A-20121005*1487). In entering the agreement with ES&S, the Bureau understood it would be required to utilize the vendor's services (or those of a partner printer authorized by the vendor) to print ballots that work with its proprietary system. While this was not formally part of the RFP scoring, the potential additional cost was considered in evaluating the proposal and it was determined that even with the dedicated printing costs, the lease agreement still offered significant savings over the next lowest bidder.		

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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 other public resources that are capable of printing ballots according to the vendor's proprietary layout. Moreover, the complexity of the printing job and the need to provide printing and delivery of absentee ballots in about 3 weeks from the date final ballot copy is provided to the printing contractor, makes this a job that cannot be handled by this agency or another federal, state or local agency.

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**.

It is misleading to say that competition was not used in pursuing this sole source procurement. As noted in Item 2, an RFP to lease elections equipment was issued and awarded. In evaluating responses prior to award, current printing and related costs were given consideration, but the bidder not chosen was so much higher in cost (in excess of \$2,400,000) that there is no chance of the sole source printing costs exceeding that amount or likely approaching it. Moreover, the per ballot printing costs have decreased under this lease agreement as compared to previous systems use, since the Bureau is leasing the ballot creation software and provides camera-ready ballot copy to the printer.

5. Future Competition

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

The Bureau's lease agreement for the tabulating system expires on December 31, 2019. The Bureau is in the process of preparing an RFP to select the new tabulation equipment to be used after January 1, 2020. Ballot printing will be specifically addressed as part of that RFP.

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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.

As noted in Item 2, the software used to generate the ballots is proprietary and ES&S works only with their own partner print vendors to deliver printing. Given the critical nature of having the ballots function properly with the proprietary tabulation system that we are leasing, and in order to maintain public trust in the elections process while effectively managing elections costs, it is imperative that we utilize the Provider's services.

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:

Julie L. Flynn, Deputy Secretary of State

Date:

9/13/19