

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:	Mark Nadeau	Office/Division/Program of Contract Administrator:	Maine Revenue Services
Est. Contract Amount:	\$10,000.00	Contract or RQS Number:	
Proposed Start Date:	09/01/2019	Proposed End Date:	08/31/2021
Vendor/Provider Name, City, State:	Fusselman Law Firm, PC 1616 South Voss Rd., Ste. 775 Houston, TX 04332		
Short Description of Good or Service:	Legal representation in the courts of other states for the collection of overdue taxes.		
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>To be completed by the Division of Procurement Services</p> <p>Posting dates on Division of Procurement Services website: From: <u>9/18/2019</u> To: <u>9/24/2019</u></p>		
Notice of Intent to Waive Competitive Bidding Number:	NOI# 0920191543		
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;		
<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>	<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>	
<input type="checkbox"/>		Printed Name:	Date:
<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;		

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	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"> (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><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:</i> http://www.maine.gov/purchases/info/forms/govcoop.doc.</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.

People and businesses located outside Maine's borders owe approximately \$17,100,000.00 in unpaid taxes. Since the State's administrative powers for the collection of taxes are limited to the territory within its borders, Maine Revenue Services (MRS) pursues such debts through the courts of the states in which those persons reside or where the businesses are located. Warrants and judgments are secured from Kennebec County Superior Court and sent to attorneys in the appropriate states for domestication and enforced collection. There is no alternate method for forcing involuntary payment of overdue taxes.

Title 36, the Maine statute that governs Maine State Taxes, charges the State Tax Assessor with the administration and collection of taxes imposed under that title.

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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.

Neither Maine Revenue Services' nor any other governmental agencies are available or authorized to collect Maine tax debts outside Maine's borders, making it necessary to retain attorneys in those states. Legal representation for Maine Revenue Services' must be provided by attorneys authorized to practice law in those states.

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 has determined that the cost of these services is fair and reasonable. Through the bureau's investigation it was determined the average contingency fee of an attorney ranges from 33% to 40%. The costs specified in the contract are the standard amounts paid to all out-of-state collection attorneys under contract with the State of Maine.

If this contract is put out for competitive bidding with a subsequent change in law firms, the State must expect to pay Fusselman Law Firm, PC for the withdrawal of cases at the rate of \$200.00 per billable hour. It is likely that the total will exceed \$12,800.00 for the current inventory. In addition to the costs for withdrawal, reassignment of cases will unnecessarily disrupt ongoing negotiations and litigation.

5. Future Competition

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

Cases placed for collection with attorneys in other states must be litigated by attorneys licensed to practice in those states. Since MRS currently pursues debtors in more than 20 states, it appears impractical to conduct competitive bidding in each state where a significant number of tax debtors reside. If circumstances related to these services should change, the department will obtain said services by the most appropriate means, including a competitive process such as releasing a RFP. Maine Revenue Services' continues to monitor the successfulness and case load with the above-mentioned law firm.

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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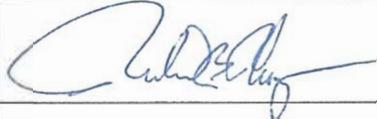
The law firm has represented the State in collection cases in Texas for approximately 11 years. They currently have 8 cases under negotiation, in litigation or being collected. The contract, the vendor and the methodology used by MRS have been approved by the Attorney General. Cases are sent throughout the period of the contract and require one or more years to resolve. The continuity of legal services in any given state has been maintained through sole-source contracting usually with the same law firm selected repeatedly. MRS requires representation in 20 different states which makes having more than one firm per state extremely burdensome if not totally unworkable. Also, there can be efficiencies in having one firm cover a Disclosure Hearing for more than one tax debtor.

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:

Richard B. Thompson, Jr., Deputy Commissioner

Date:

9-9-2019