

## 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>	Barry J. Hobbins, Public Advocate	<b>Office/Division/Program of Contract Administrator:</b>	Public Advocate Office
<b>Est. Contract Amount:</b>	\$ 25,465.25	<b>Contract or RQS Number:</b>	#201808280000000710
<b>Proposed Start Date:</b>	<b>August 27, 2018</b>	<b>Proposed End Date:</b>	<b>June 30, 2020</b>
<b>Vendor/Provider Name, City, State:</b>	Berry Dunn McNeil & Parker, LLC – 100 Middle Street, Portland, ME 04101		
<b>Short Description of Good or Service:</b>	Consulting Services for on-going forensic audit and additional funds are needed for active CMP cases (MPUC Docket Nos. 2018-00194 and 2019-00015)		
<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>	<p style="text-align: center;"><b>To be completed by the Division of Procurement Services</b></p> <p>Posting dates on Division of <b>Procurement Services</b> website:          From: <u>11/19/19</u> To: <u>11/26/19</u></p>		
<b>Notice of Intent to Waive Competitive Bidding Number:</b>	NOI# 1120191900		
<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>	<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><b>Signature:</b></p>	
<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 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: (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>	
	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:	
<b>Please note that the following four points below (#2 through 5) <u>all</u> require a response.</b>		
<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.		
Initially the original contract was for the Public Utilities Commission (PUC) initiated investigation into CMP's metering, billing and customer communications, Docket No. 2018-00052. This case evolved so that the PUC divided it into two additional on-going dockets (2018-00194 & 2019-00015). Thus, additional work has resulted into extending the schedule to include an investigation of a forensic audit. The Provider has the expert consulting services which the Department needs for pursuing the dockets.		
<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, 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.		
This matter includes a review of billing, metering and a forensic audit. Berry Dunn McNeil & Parker, LLC, the awarded bidder from RFP #201806133, is already familiar with the specific details of the dockets referenced above.		

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**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**.

Because we are currently working with Berry Dunn McNeil & Parker, LLC in these matters, the Office of the Public Advocate (OPA) has concluded that the rate we have negotiated with them is fair and reasonable. Due to our ongoing working relationship, the consultant is discounting their rate by 50% for the upcoming November hearing(s), briefs, and data requests.

**5. Future Competition**

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

The Office of the Public Advocate (OPA) is always seeking out new consultants. Nevertheless, when it comes to the financial and operational expertise required in the above-referenced cases before the PUC, the OPA will continue to be in a position where it must hire that consulting expertise from the outside.

**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 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 above, Berry Dunn McNeil & Parker, LLC has been involved in these proceedings since the beginning (Aug., 2018) and is uniquely situated to continue to provide consultant services to the OPA efficiently and cost-effectively.

**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:**

Barry J. Hobbins, Public Advocate

**Date:**

November 14, 2019