

## 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>	Dawn Hallowell	<b>Office/Division/Program of Contract Administrator:</b>	DEP, Bureau of Land Resources
<b>Est. Contract Amount:</b>	+\$4,500,000	<b>Contract or RQS Number:</b>	06A 20180413*3128
<b>Proposed Start Date:</b>	October 21, 2019	<b>Proposed End Date:</b>	June 30, 2020
<b>Vendor/Provider Name, City, State:</b>	The Nature Conservancy, 14 Maine St., Suite 401, Brunswick ME 04011		
<b>Short Description of Good or Service:</b>	<p>TNC manages the Natural Resources Mitigation Fund for the Department. Funds are granted for natural resource mitigation/compensation through a competitive bid process with both State and Federal Agencies participating. The economy is strong and development is occurring in the State, which impacts protected natural resources. Developers are paying In Lieu Fees for resource impacts. That money comes to the Department, which then transfers it to TNC to hold in specific regional accounts until it can be distributed through grants. Grants are awarded by a committee that includes, among others, multiple commissioners of State natural resource agencies; TNC does not have a representative on the committee. The current contract allows the Department to transfer a total of \$4.5M during the term of the contract. We are currently nearing that limit and anticipate the receipt of an additional \$4.5M before June 30, 2020. Included in this amount are payments associated with several large development projects such as the Maine Turnpike widening and exit work and Portsmouth Naval Shipyard expansion.</p>		
<p><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>		<p><b>To be completed by the Division of Procurement Services</b>  Posting dates on Division of <i>Procurement Services</i> website:  From: <u>12/2/2019</u> To: <u>12/8/2019</u></p>	
<b>Notice of Intent to Waive Competitive Bidding Number:</b>	NOI# 1220191949		
<p><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.</p>			

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	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;	
	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>	<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>  <b>Date:</b>
<b>X</b>	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: <ol 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> </ol>	
	<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>		

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**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 stated above, there was a competitive bid process for this contract (RFP #201706122). The Department, in agreement with TNC, now seeking to Amend this contract in response to the active development market in the State.**

**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.

This is a request to Amend an existing competitively bid contract with the selected vendor.

**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**.

There is no additional cost to the State. This is an unusual contract. The amount of the contract is not the total amount to be paid to the vendor. The amount reflected on the contract is money that is deposited into regional accounts held for DEP by TNC. The money is awarded through grants annually (through a competitive process) to projects around the state for the purposes of restoring & enhancing wetland (and other aquatic) resources. Compensation is required by statute for certain impacts, an option the developer has to meet that compensation requirement is to pay into the In Lieu Fee program (this program).

The Vendor (The Nature Conservancy) is paid 7.95% of monies transferred from DEP to TNC for the work they do holding the money, managing data (all impacts are tracked in detail), facilitating and

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managing the granting process, review of proposals, review of legal documents and real estate transactions and project compliance (among other things). TNC does not have a seat on the committee that awards the grants.

This program is done in cooperation of the US Army Corps of Engineers (USACOE). USACOE is also a partner with other New England states In Lieu Fee programs which pay similar amounts to their Providers for the implementation of programs.

**5. Future Competition**

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

The development of an active conservation community within the State will help foster competition for this type of land/water/natural resource conservation work.

**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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This Vendor has unique abilities to promote and foster the In Lieu Fee program, not only did they win the contract through a competitive bid process, but they also have extensive contacts through out the State with a varied audience (municipal, tribes, conservation groups, land trusts) which adds value to the work they do with the program. They have the capabilities to input and manage the data, the real estate expertise to manage land transactions, and the technical expertise to work with project sponsors. They contribute additional data that assists with the review of potential projects such as anticipated sea level rise and salt marsh migration, impediments to fish passage in river/stream systems and the on the ground knowledge of what it takes to successfully complete restoration projects. Maine's In Lieu Fee program is seen as one of the most established and experienced In Lieu Fee programs in the country, thanks to the work that TNC does on the behalf of the State of Maine.

**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:**

**Date:**

*11/8/19*