

**Frequently Asked Questions**

**and other State Agency Questions**

**about the Waiver of Competitive Bidding (Sole Source) Form and Process**

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**Introduction**

On April 27, 2015, the State of Maine’s Division of Purchases, a part of the Department of Administrative and Financial Services’ Bureau of General Services announced to all state agencies that it was revamping the process through which non-competitive (i.e. “sole source”) contracts were processed in state government. The new form and process was introduced via an in-person meeting with attendees from all state agencies, selected by each agency’s commissioner. The changes are primarily focused on the following two goals:

1. To tie the process closer to existing statute on non-competitive procurements.
2. To provide for more transparency of non-competitive procurements, both inside and outside of state government.

We will accomplish these goals by implementing a new form and a seven day online posting period for all non-competitive procurements. The public postings are scheduled to begin on September 1, 2015.

Below is a list of questions coming directly from state agencies on the new Waiver of Competitive Bidding form (BP37WCB) and process, with answers from the Division of Purchases provided. The questions and answers have been organized into the following categories:

* **Basics**
* **Process Clarification**
* **Form Clarification**

**Basics**

1. **Q**: Where can I find a copy of the new BP37WCB (formerly BP37SS)?

**A**: The new BP37WCB form is posted on the Division of Purchases website here:

<http://www.maine.gov/purchases/info/forms/BP37WCB.doc>

1. **Q**: When will the new BP37WCB form be put into use, and who needs to follow the new process?

**A**: Starting on July 15, 2015, any state agency that sends a non-competitive / sole source contracting request to the Division of Purchases must do so on a BP37WCB form.

1. **Q**: I see that the Division of Purchases intends to post these completed BP37WCB forms on its website. Where will they be posted, and when will that practice begin?

**A**: The BP37WCB forms will be posted on the Division of Purchases “Vendors and Bid Opportunities” webpage, found here: <http://www.maine.gov/purchases/venbid/index.shtml>. The public postings will begin on September 1, 2015, allowing state agencies a short period to first become accustomed to the new form before publication. Please note that both the new BP37WCB and previous BP37SS are already available for public inspection pursuant to Maine’s Freedom of Access Act.

1. **Q**: How should I submit my new BP37WCB forms to the Division of Purchases?

**A**: Once completed and signed, it is best to email a scanned PDF copy of the BP37WCB form through [**Purchasing Maine**](https://maine-clg.pegacloud.com/prweb/PRWebLDAP2/N4C72zKj-oEW-eBdnl7GujM6bY2jpi8-%2A/%21STANDARD?pzPostData=1840458927). Refer to [**Purchasing Maine Reference Guides**](http://www.maine.gov/purchases/info/purchasingME.shtml) for instructions on how to enter a BP37WCB document in Purchasing Maine.

**Process Clarification**

1. **Q:** Can you please elaborate on the value of transparency in this new process?

**A:** Transparency is generally valuable in all practices within state government, unless State statute provides for the protection of certain information. In the case of the procurement process, all aspects are open to public consideration, so that interested bidders know that the State of Maine has a fair and open process, and so that Maine taxpayers know that their state government is getting the best value for their tax dollars. In the case of the new Waiver of Competitive Bidding process, this transparency is particularly valuable when considered from the viewpoint of an interested bidder, who wants to know what opportunities were not previously being made available for competitive consideration. If a state agency believes that there is only one vendor who can perform certain work, it would be a “win-win” situation to learn that there are multiple bidders willing to compete for the State’s business.

1. **Q:** There are times when it may not make sense to post a BP37WCB / BP37SS form since the choice of provider is mandated in some way. Examples include:
* The service can be provided by any willing and qualified provider.
* The provider is specified in an approved/awarded Federal grant application.
* The provider is mandated by State or Federal statute.
* In an emergency.

**A:** This is understandable, but the posting is matter of transparency, and it will be beneficial for all parties to understand why the State is moving forward with a non-competitive contract – regardless of the circumstances. Although not specifically stated, the underlying issue in this comment appears to be possible delays caused by the seven day posting period. The Division of Purchases will work with any Department to avoid possible delays, and in the example of emergencies, the posting period will not hold up contract performance. In those cases, performance can begin prior to or simultaneously with posting.

1. **Q:** Will the form be posted to the website prior to execution of the contract? If yes, the concern is that it will jeopardize the timely execution of the contract.

**A:** The form will be posted as soon as possible after it is received. Ideally, a state agency would submit its form well in advance of when the contract’s goods or services are necessary. The only circumstance where contract execution would occur prior to public posting is when an “emergency” has been declared on the cover of the form, and appropriately approved by the requesting state agency’s commissioner.

1. **Q:** Will the new BP37WCB form be required for all non-competitive contracts, even those including DHHS’s MaineCare services?

**A:** This form will be required for all waivers of competitive bidding / sole source requests that are sent to the Division of Purchases.

1. **Q:** If DHHS/SAMHS provides general fund monies to a MaineCare provider to serve non-MaineCare clients, is this form required?

**A:** This form will be required for all waivers of competitive bidding / sole source requests that are sent to the Division of Purchases. If this example is currently sent to the Division of Purchases as a non-competitive contract, then this process would apply.

1. **Q:** Who does it and what is the expected timeline for any investigations of unique, sole source vendors? Example: Our agency buys ORASURE rapid HIV test kits. These test kits are the only oral rapid HIV test kit that processes in 20 minutes and is are perfect for counseling sessions that are roughly 20 minutes. Who would be responsible for that investigation? (Often times the program has the documentation and has established a relationship with the vendor because we keep up on all the available technologies for testing.)

**A:** The "investigations" previously referenced begin at the requesting state agency, where a state agency should explain how a particular vendor is unique (as done in this question's example). The seven calendar day public posting process for the waiver of competitive bidding form will be a mechanism to allow any other possible vendor that meets the state agency’s needs to come forward. The aforementioned seven calendar day period should not be a concern, provided that the request is submitted to the Division of Purchases at least seven days in advance of the need. In this specific example, it would be advisable for the Department to work with the Division of Purchases to issue one competitive bid, covering multiple years, for products that meet the specifications described (i.e. rapid oral test kits). Doing so would be the fastest way to meet the requirements of statute with the minimal amount of processing.

1. **Q:** It appears that a signature of either the commissioner or chief executive is new; requiring the commissioner’s signature for relatively small contracts may not be a good use of valuable time. Could the process be prescribed in such a way as to weed out the invalid requests for sole source without the expense of time and effort by an extended group?

**A:** In accordance with statute, a commissioner's signature will only be required for the "emergency" rationale when requesting a non-competitive contract on page one. Otherwise, the signature on the last page of the form allows for a "designee within the Commissioner's Office". This is being required in an effort to ensure that senior management is aware of a Department's non-competitive contracting requests prior to publication.

1. **Q:** What happens if another vendor notes that they should have been allowed to bid on an opportunity, but the justification was given that, because the contract was under$10K, it wasn’t economical to release a competitive bid? This may be a challenge for the Division of Purchases to navigate and is likely to result in some difficult scenarios. And what is to stop vendors from saying they would have been eligible even if they were not? It could cause programs to undertake an RFP process only to have it be determined that the interested vendor was not eligible. Will there be a way to first determine an interested vendor’s capacity before moving forward with a competitive bid process?

**A:** State statute allows for non-competitive contracts of $10,000 or less when "procurement from a single source is the most economical, effective and appropriate means of fulfilling a demonstrated need." The Division of Purchases is prepared to support such a rationale when it is well justified. It should be noted, however, that it has not been the policy of the Division of Purchases to require RFPs for purchases of $10K or less. Such procurements only require informal competitive bidding through obtaining quotes (not through a formal RFP process). There may be examples where the requesting state agency is asked to seek quotes if other bidders are interested and available. As for the "capacity" question, the Division of Purchases has developed a form where potential bidders would provide relevant, capacity-related information beyond only a desire to do business with the State. The form would be reviewed prior to any decision to issue a competitive bid.

1. **Q:** As I understand it, there is a general principle to primarily competitively bid for services/products, and waiving competitive bidding / sole sourcing is by policy an option which has a pretty stringent process and protocol aligned to it. Therefore, why add the public posting process to the existing process and invite external entities to challenge the State’s sole source decision? This may elongate the process. Isn’t there naturally an expectation where time/energy will be committed for this new process?

**A:** State statute requires competitive bidding, and State rule requires the use of the competitive RFP process for services (over $10K). Waiving that competitive requirement should only happen for very specific reasons that are outlined in statute. If a non-competitive procurement is well justified, then the public posting should not result in any challenge or question. If the justification falls short -- e.g. a state agency asserts that there is only one vendor who can perform a certain service and another vendor comes forward -- then everyone is better served by allowing the competitive process to take place as required by statute. As for the possible elongation of the State's processes, there will be no elongation as long as non-competitive procurements are submitted well in advance of the State's need for the good or service.

1. **Q:** If most sole sourcing is primarily driven by “emergency” or “business urgency/timeframe” and it goes through a strenuous internal vetting/decision process, why risk elongating the time to secure that service? Maybe the new form should be posted only when the driver of the sole source request is that only a single entity can address the need.

**A:** If a waiver of competitive bidding is requested on an "emergency" basis, then the public posting will only be carried out for transparency purposes. That is to say, the emergency contract can move forward immediately, and even if another vendor comes forward, it will not have an opportunity to compete for that specific, emergency business.

1. **Q:** What happens if another provider ‘raises their hand’ to say that they can perform the service?

**A:** If another provider comes forward, the first step will be for the Division of Purchases to ask the provider to complete a short form requesting basic information (such as contact information, a summary of capabilities, and references). The Division of Purchases will then notify the requesting state agency, and all parties will then perform market research to better understand who the provider is, and what they can do. Ultimately, the Division of Purchases and requesting state agency will discuss their findings, and a decision will be made about how to proceed. If the event of a disagreement, the Division of Purchases will make the decision (based upon its authority to approve or deny contracts), but those scenarios are expected to be rare.

1. **Q:** Is there any consideration around global access to this information and the geographic challenges? (i.e., international providers)

**A:** State statute provides no exception or alternative procedures for international businesses bidding on Maine’s contracts. All vendors would be treated equally, subject to any relevant federal restrictions.

1. **Q:** What is the feedback process regarding a BP37WCB/BP37SS being denied or approved?

**A:** Just as is done today, all non-competitive contract requests will be reviewed by the Division of Purchases. Division staff members will notify each requesting state agency when its request has been approved, denied, or if there are any clarifications needed.

1. **Q:** Can you explain more about the seven day posting process?  Is there a process for another provider to contest the sole source decision? It is my understanding that if another provider declare that they could do perform the service or deliver the goods, then the requesting state agency would have to competitively bid the opportunity.  This is fine, but I am concerned about the continuity of services, given the length of time it may take to process a competitive RFP.

**A:** If another provider comes forward, the first step will be for the Division of Purchases to ask the provider to complete a short form requesting basic information (such as contact information, a summary of capabilities, and references). The Division of Purchases will then notify the requesting state agency, and all parties will then perform market research to better understand who the provider is, and what they can do. Ultimately, the Division of Purchases and requesting state agency will discuss their findings, and a decision will be made about how to proceed. If the event of a disagreement, the Division of Purchases will make the decision (based upon its authority to approve or deny contracts), but those scenarios are expected to be rare.

1. **Q:** For contracts involving the maintenance of proprietary systems (such as IT systems), how should those contracts be justified? Should we select the “uniqueness” rationale (option “C” on the first page of the new BP37WCB form), or would we have to do a separate pre-process with Purchases to document that its proprietary system before submitting this form?

**A:** The waiver of competitive bidding process should start with the drafting of the BP37WCB form – no other pre-process is required (but the BP37WCB process should be submitted as early as possible). Although each scenario may be different, using the “uniqueness” (option “C”) rationale sounds reasonable starting point for the example given.

1. **Q:** Can you also please outline the proposed process and time frame from submission by the state agency to approval by the Division of Purchases?

**A:** The process begins when a state agency submits a BP37WCB form to the Division of Purchases. The Division will then seek to review the document as soon as possible, and ask any relevant questions to the requesting state agency to clarify the justification given, if applicable. Once it has been determined that the State has described its need and rationale clearly, the Division will post the completed, signed BP37WCB form on its website for public inspection over a period of seven calendar days. As noted previously, any BP37WCB forms specifying a rationale based on an emergency will not be delayed by the posting process. For non-emergencies, the BP37WCB form will be posted for seven days, during which time other potential bidders may come forward and make their interests known for bidding on the opportunity. The vendor would be asked to complete a basic form on their capabilities, which would be jointly reviewed by the requesting state agency and the Division of Purchases, and a decision would be made about going out to competitive bid. If no vendor comes forward, then the non-competitive contract can move forward after the seven calendar day period has passed.

1. **Q:** Current procedure allows certain programs involved with real estate transactions to submit BP37SS forms to the DAFS/BGS/ Division of Purchases, along with a Project Agreement. Typically the BP37SS would get approved and a payment could then be processed once the contract was approved in Advantage. If the Division of Purchases is going to post the new form on their website for seven days, which means our time frame for ordering and receiving a check for a real estate closing is altered. I need to understand how the proposed changes, and any comments from the public, will alter the current check ordering process and time frame so my staff can plan for that change and still have the check available for the real estate closing date agreed upon by the parties. There are two issues here – one is that the acquisition of land is a much different than the purchasing of goods and services and the other has to do with the specifics of certain Programs. (1) The acquisition of land occurs through a lengthy negotiation process using state standards to ensure it is done in a manner consistent with the state agency’s enabling legislation and the requirements of the funding source they are using (state, federal, other). We use an appraisal to determine value, a survey to determine the boundaries of what we are acquiring, a title policy to insure the value of the property against a future claim, and a purchase and sale agreement to contract with the buyer that covers many more specifics than a BP37 form or BP54 contract template. These documents typically get appended to the BP37SS or BP54 contract. By the time we have entered into a purchase and sale agreement, it’s pretty late in the game to give the public an opportunity to dispute whether they could have provided the same “service” or in this case, land, at a cheaper price. Another complication is that many times the lands are being acquired by a third party who has applied for and received funds through a competitive federal grant process and the state is simply a vehicle for passing these funds through to the third party. 2. The second issue is that my program has a Board, appointed by the Governor, which has vetted the projects through numerous criteria to ensure it meets our statutory requirements and any requirements specified in the bond language. They have the responsibility of developing priorities and the authority to accept and review applications as well as allocate bond funds to projects. The BP37SS has primarily been a tool required by the Division of Purchases to make the money flow once the applicant has met their requirements, the Board has approved the funding, commissioners have signed off on the documents, and a financial order has been completed. All of these things get done BEFORE signing the BP37SS (or Waiver of Competitive Bidding under the new process) and the subsequent check request. The time frame from when an applicant is announced as a finalist to the time we get ready to make funds available can be anywhere from six months to three years. This variability makes the typical state contracting process very challenging to manage and is another reason we have preferred to wait until the very end of the process to get the BP37SS signed at the end of the process, as it allows us to control the timing of the financial order in sync with the expenditure of funds. In the event that the Division of Purchases gets a comment from the public that they can offer the same “service” or land after posting the Waiver of Competitive Bid form, how does that reconcile with the Board’s authority to select finalists for funding, and how might that process impact our ability to provide a check to the contracted seller within the time frame specified in the purchase and sale agreement?

**A:** This question is very specific to the purchase of real estate, and has only a limited application for most state agencies. Nevertheless, the new BP37WCB process should work for real estate purchases provided that three considerations are followed: (1) a BP37WCB process should be submitted as early as possible in the process to begin the seven day posting period; (2) the specific process outlined above is very unique and detailed, and therefore, it is unlikely that any other possible bidder would meet the lengthy and detailed qualifications; and (3) if there is ever a situation where time may require that an agreement be processed immediately, then it would be advisable for the state agency to process the request as an “emergency”, as applicable.

1. **Q:** Is there an appeals process for any entity that did not receive an award?

**A:** Once a BP37WCB form has been publicly posted, any entity could comment on the non-competitive award. This, however, is not a formal appeals process in the same sense as that which can follow a RFP (as described in 5 MRSA §1825-E). Following a review by the Division of Purchases and the requesting state agency, such an objection could result in requiring a competitive process to make the award.

1. **Q:** How will the State manage questions generated by the public or other interested parties when the form is posted? Will contact information be provided?

**A:** All public questions and comments are expected to be received by the Division of Purchases. The Division of Purchases will communicate any relevant questions or comments to the requesting state agency, and coordinate the State’s response (if any). No contact information will be provided, other than the Division of Purchases' generic email address for obtaining public responses to the State’s Notice of Intent (NOI) to Waive Competitive Bidding (NOI-Responses@maine.gov).

1. **Q:** How can the vendor request to have their contact information be confidential or redacted from the website?

**A:** With a few exceptions, a vendor's interactions with a State agency -- whether through emails, contract documents, or other communications -- are a matter of public record in accordance with 1 MRSA, Chapter 13. That said, there is no intention to publicly post any contact details or confidential information through this new process. The only information to be provided will be the vendor's name and city/state location.

**Form Clarification**

1. **Q:** Who is the “Requesting Department’s Contract Administrator” listed on the form? Is this information to be published?

**A:** The "Requesting Department's Contract Administrator" is the person overseeing the contract from the state agency who seeks to put the contract in place. For example, if the Department of Labor (DOL) seeks a non-competitive contract, then DOL would list the person on this form who would be overseeing the contract. It could be a person from within DOL who specializes in the services being provided, or it could be a person who specializes in DOL's procurement portfolio. The person's name should be included for accountability and traceability purposes, and there is no requirement to insert any contact details for that person.

1. **Q:** What is the Notice of Intent to Waive Competitive Bidding Number? Who maintains this list? What is the process?

**A:** The "Notice of Intent to Waive Competitive Bidding Number" is a reference number that will be assigned by the Division of Purchases, and a list of all numbers assigned will be maintained by the Division of Purchases. Upon receipt of a waiver of competitive bidding request, the Division of Purchases will discuss questions (if any) with the requesting state agency, and then assign the request a reference number prior to posting the form on the website. The requesting state agency does not need to take any action relating to this numbering process.

1. **Q:** Will the Consent Decree (or other legal mandate) serve as an appropriate reference for “if a different authorization specifically allows for this non-competitive procurement, please provide that reference here:”

**A:** Not necessarily. If the Consent Decree (or any legal mandate) requires that the State provide a particular service from a specific vendor, then that would be an appropriate reference. If the Consent Decree only requires that a particular service be provided, and no specific vendor is named, then the State must provide that service, but that does not mean that the competitive process must be waived.

1. **Q:** What other examples can you provide of "other authorizations" – i.e.: RFP schedule dates? Established providers? Client choice of provider/Fee for Service services?

**A:** Here are several potential examples of the "other authorizations" selection at the bottom of the first page of the new form:

* Any example in State statute where a specific vendor is named as the State's service provider (and please reference the State statute number);
* Any example in State statute where a specific State employee/position is authorized to select a vendor without using competition (and please reference the State statute number).
* Here is some specific guidance for the examples provided in the question:
* “RFP Schedule Dates” – We interpret this to mean that a non-competitive contract may be requested by a Department in the event that an RFP is scheduled for a future date. In such a situation, this is not – by itself – adequate rationale for granting a non-competitive contract. The Division of Purchases might ask in response: Can the RFP be moved up in the schedule? Can the services be postponed until the RFP is released? If neither are true, the Department may need to seek an “emergency” exception if a situation is being created that would warrant such a decision.
* “Established providers” – If any state agency has a long-standing contractual relationship with a specific provider, that is not – by itself – adequate rationale for granting a non-competitive contract. The requesting state agency should describe why that vendor is so unique that a competitive process should be waived. Ideally, a competitive process would be used in order to prove why that vendor continues to be the right provider, relative to other interested providers.
* “Client choice of provider / Fee For Service services” – If the State is paying for a service where a citizen / client is choosing the provider, then the requesting state agency should be sure describe that situation (without personally identifiable information or detail) as a means to show why that selected provider is unique.
1. **Q:** It would be helpful to have further clarification on this statement: "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;” How is the investigation done?

**A:** This language is taken directly from State statute. The Director of the Bureau of General Services oversees the Division of Purchases. The "investigation" can be interpreted as any means deemed necessary by the Director to determine if only one source is available for a purchase. The public posting of the waiver of competitive bidding form is itself an element of the investigation methods employed by the Director.

1. **Q:** Section 1 of the new BP37WCB form is very specific to the instances when a non-competitive contract would be permitted. This is an improvement over the previous form. However, the only subsection that would pertain to general goods and/or services is subsection 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.” My concern is the low dollar limit of $10,000. Some sole sources are more than this and that may be justified. For example, say that Interpreter Services are required in a part of Maine not covered by the current vendors included in the state’s master agreements. If, in fact, there was a vendor in the geographical area ready and able to serve, we could not avail ourselves of this service without a contract. An RFP in this situation would be impractical. If we engaged one of the existing contracted vendors, the costs would be prohibitive because of travel, overnights, etc. So, the answer would be a sole source agreement. The $10,000 limit of such a contract would be outstripped in a very short time. Does this mean we would have to go through the whole sole source contract process for every $10,000 spent? (We are required to provide interpreter services, free of charge to the client).

**A:** The language found in Section 1 of the new waiver of competitive bidding form is taken directly from current State statute. One of these reasons must apply in order for the non-competitive procurement to move forward. In the example given for interpreter services, it is true that one possible method to obtain the services would be to use a competitive bidding process, in order to determine if, in fact, there really only is one vendor in the geographical region where the services are sought. If there is more than one vendor, then the competitive process would not be seen as impractical to those other, potential bidders. If the requesting state agency is certain that only one possible vendor is available, then the state agency should request a waiver of competitive bidding based on that vendor's uniqueness. Other potential vendors could come forward within the seven calendar day public posting period, but if no other bidders are known to exist in the area, then this should not be a concern.

1. **Q:** Will there be examples provided for us to use as a guide (For consistency and how much information would be expected on the form)?

**A:** Yes. Fictional examples have been posted on the Division of Purchases website here:

* Example BP37WCB based on an emergency (<http://www.maine.gov/purchases/info/forms/BP37WCB_Example_Emergency.pdf>)
* Example BP37WCB based on a vendor’s uniqueness as the only source.

(<http://www.maine.gov/purchases/info/forms/BP37WCB_Example_Uniqueness.pdf>)

1. **Q:** The new BP37WCB form (and State statute) make reference to cooperative agreements / projects. There is another type of Cooperative Agreement which is the one we use for all our large grants. Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302–6305:

(a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal government or pass-through entity’s direct benefit or use;

(b) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(c) The term does not include:

(1) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

(2) An agreement that provides only: (i) Direct United States Government cash assistance to an individual; (ii) A subsidy; (iii) A loan; (iv) A loan guarantee; or (v) Insurance.

With all of this having been said, what would we check on your new form?

**A:** In this example, check the last box on the first page: "If a different authorization specifically allows for this non-competitive procurement, please provide that reference here:" and provide additional information in #6 on page three of the form.

1. **Q:** How would we request a waiver from the competitive bidding process if the vendor is being chosen because they were selected through another agency’s bidding process and they are really the only source to provide what is needed? One example would be that Maine Medical Center has been chosen by the Social Security Administration to deliver benefits counseling to beneficiaries, but the funding is extremely insufficient and we have our own contract with them to increase the availability of the service across the state.

**A:** In a situation like the one described above, where a single vendor is “really the only source to provide what is needed”, the state agency should begin by checking box “C” on the first page of the BP37WCB form, and basing their rationale on the vendor’s uniqueness.

1. **Q:** When I am required to award Federal funds to specific law enforcement agencies because of their crime rates will I be using the “If a different authorization specifically allows for this non-competitive procurement” justification?

**A:** If the Federal government is specifically identifying entities who are to receive funding for specified services, then that would fall under the "If a different authorization specifically allows for this non-competitive procurement" justification.

1. **Q:** Looking at this new form it appears that it will only be usable if the contract is under $10,000?  Am I reading that wrong?   We have grants that are through towns and counties which we have always had to attach a BP37SS with, because they don’t go out to bid since they are actually grants.  Many of these are as much as $25,000 to $50,000 sometimes even more?

**A:** The new BP37WCB form and process will apply to all contracts that were previously submitted to the Division of Purchases on the current BP37SS form – regardless of dollar value (but please note, contracts valued at $5,000 or less have never required a BP37SS form). If a town in Maine receives a $50,000 grant, and such an award was previously submitted on a BP37SS form, then this new process would apply to that scenario.

1. **Q:** There have been circumstances in the past where we have received an award which specifically mentions a partner organization which is to perform a subset of deliverables at our direction.  It is not a direct pass-through. Would it be within the realm of possibility to add a check box for services rendered by a partner organization which are specified in a grant award? We routinely used the BP37SS as part of the process of making bond funds available to grant applicants.

**A:** This situation would likely fall under the justification of "If a different authorization specifically allows for this non-competitive procurement, please provide that reference here:" (i.e. the last box on page 1).

1. **Q:** 1) Should a vendor phone number be provided on the form?

2) The “Form Instructions” says “This form is to precede all contract requests…” Can you further clarify the word “precede.” Does this mean that the form is to be submitted before the contract package is drafted? Can the form be submitted with the routing of the contract package?

3) I think the description of services could be a little more detailed, maybe by adding another question.

4) Should there be some narrative and/or criteria concerning what constitute “emergency” time constraints?

**A:** 1) Vendor information will be limited to the vendor's name, city and state.

2) With regard to the word “precede”, we would ideally like to have the form submitted prior to the contract being drafted and signed, however, we will accept the forms either before or with the submitted contract.

3) A more detailed description of the services should be included in #2 - Description of Specific Need - on page 2 of the document.

4) "Emergencies" can be the result of many factors. It is the responsibility of the requesting state agency’s commissioner (as “the Governor’s designee”) to determine when an emergency exists, and the responsibility of the state agency to describe an "emergency" in #7 - Timeframe - on page 3 of the document.

1. **Q:** If the document being reviewed is a Contract Amendment to an existing Contract that was originally the result of an RFP, would this form still be needed and used for the Amendment or would we use the Contract Amendment form?

**A:** The nature of the amendment dictates which forms will be required. A BP37WCB may be necessary for amendments that appear to expand the scope of the original contract, or increase the contract’s value by more than $10,000 in value.