94-457 FINANCE AUTHORITY OF MAINE (FAME)

Chapter 803: RULES FOR THE AWARD OF CONTRACTS FOR SERVICES

*(APA Office Note: this chapter has been relocated from the former Maine Educational Loan Authority to the Finance Authority of Maine; see 20-A MRS §11414 et seq. It will be amended, repealed and replaced, or repealed by FAME when appropriate.)*

SUMMARY: This chapter outlines the procedures to be used in the awarding of contracts for necessary clerical and administrative services, loan servicing and other substantial operating contracts pursuant to 20-A M.R.S.A. §§ 11417(4) and 11417(7). In addition, this chapter outlines the policies and procedures to be used in the selection of vendors designed to ensure that the Authority secures the best value in its procurements in compliance with 5 M.R.S.A., chapter 379, subchapter 3, §12022-3.

PROCEDURES PURSUANT TO 20-A M.R.S.A. §§ 11417(4) and 11417(7)

1. DEFINITIONS

A. **REQUEST FOR PROPOSAL**. Means a document listing the scope of work, requirements of the Authority and all evaluation criteria for services needed by the Authority. This document is also known by the initials “RFP.”

B. **CONTRACT REVIEW COMMITTEE**. Means the committee established by the Authority that reviews proposals and actions related to contracts for clerical and administrative services, loan servicing and other substantial operating contracts.

C. **CONTRACT**. Means the agreement between a vendor and the Authority describing the services to be performed, the terms and conditions agreed to by the parties, the cost of the services and how payment will be made.

D. **GRANT**. Means an agreement between a group, organization or other recipient and the Authority that describes terms and conditions and scope of performance or action that is expected of the recipient.

**2. Request for proposal procedure**

A. All contracts issued under the review of the Contract Review Committee that do not qualify as sole source or emergency procurements must be competitively bid using the Request for Proposal. When determining whether or not a contract qualifies as a sole source or emergency procurement, the Authority will use the State of Maine policy and guidelines for sole source justification for guidance.

i. The request for proposal must contain at a minimum a clear definition (scope) of the project, the evaluation criteria and relative scoring weights to be applied, the proposal opening date and time, and agency contact person.

aa. Cost of the contract must be included in the evaluation criteria and must receive a minimum of 25% of the total weight of all criteria.

bb. All proposals shall be opened publicly at the Authority main office or the location specified in the RFP. Proposals received at the Authority main office after the advertised opening time shall be rejected, unless the advertised opening date and time have been extended by the Executive Director of the Authority due to circumstances requiring such an extension of time.

ii. Request for proposals must be submitted to the Contract Review Committee for review prior to release. Review includes, but is not limited to appropriateness of scope and clearly defined evaluation criteria with cost at a minimum of 25%.

iii. Request for proposals must be advertised a minimum of three consecutive days in the *Kennebec Journal* of Augusta, allowing a minimum of fifteen (15) calendar days from the final day of advertising to the proposal opening date. This section does not limit advertising in any other publication, trade publication or other media.

aa. Advertisements must include at a minimum a brief description of the service requirements of the Authority, the name of the contact person and address where copies of the RFP can be obtained, the opening date, the opening time and the opening location.

iv. Pre-Bidders conferences are allowed, but are not required. These conferences are used to be certain that all bidders have an equal understanding of the Authority requirements.

aa. Pre-Bidders conferences must be advertised within the RFP advertisement, including location, day and time. Conferences must be scheduled a minimum of seven (7) calendar days from the final day of advertising and minimum of two weeks prior to proposal opening date. The Executive Director may authorize a pre-bidders conference on shorter notice than previously advertised. The Executive Director shall notify all prospective bidders who requested the RFP of the date and time of the conference under these circumstances.

bb. Conferences must be open to the public, questions raised must be documented in writing and responses must be written and forwarded to each prospective bidder who received an RFP, whether in attendance or not.

cc. No alterations or changes to any requirement or specification within the original RFP can be made without notifying all bidders in writing a minimum of seven (7) calendar days before opening date.

v. Proposals shall be opened publicly at the office of the Authority or a location specified in the RFP. The opening of proposals shall be open to public attendance. The name of the respondent will be read aloud. No other information will be made available prior to evaluation and award notification. All proposals shall be sequestered from this time until notification of award by the contracting agency after which time they become public records.

Proposals received at the office of the Authority later than the date and time specified will not be accepted and will be returned unopened or held to be picked up by the Respondent. Late proposals not picked up within seven (7) calendar days will be destroyed.

vi. A written record of the vendor names, date and time received, and cost/price shall be kept at the office of the Authority after opening.

**3. AWARD**

A. The Contract Review Committee is responsible for reviewing all proposals based on the criteria established within the original Request for Proposal document. The Committee shall document scoring, substantive information that supports the scoring, and make the award decision, which shall be subject to approval by Authority members at a general meeting.

i. **Interviews/Presentations**: Interviews and/or presentations may be considered within the review for information and scoring, if that provision was included within the original RFP documentation.

ii. **Pricing/Negotiations**: Pricing changes, alterations or negotiations are not allowed prior to the award decision and must not be used in scoring. Minor negotiations after notice of award are allowed and if agreement cannot be reached, the proposal may be rejected and the award made to the next highest rated bidder who was in compliance with all terms, conditions and requirements.

iii. **Documentation**: Written records must be kept by each person reviewing or ranking proposals. These records must be made available upon request.

iv. **Award**: Award must be made to the highest rated proposal that conforms to the requirements of the Authority as contained in the RFP.

v. **Proposed Award Decision Notification**: The Authority must notify all bidders responding to an RFP of the award decision in writing, postmarked or delivered a minimum of fourteen (14) calendar days prior to contract effective date. This notice must include a statement that the award is conditional pending approval by the Authority at a general meeting.

B. Upon final approval by the Authority, the Chairman of the Authority shall affix an original signature to the contract, in duplicate, keeping one of the originals and mailing the second to the vendor who has been awarded the contract.

i. Contracts are not considered fully executed and valid before completing final approval by the Authority at a public meeting. No contract will be approved based on an RFP that has an effective date less than fourteen (14) calendar days after award notification to bidders.

ii. Attorney General approval is not required. Nothing within this paragraph prevents request for Attorney General review of any contract.

**4. APPEAL**

A. Any person who has submitted a proposal in response to an RFP and was not awarded the contract has the right to appeal the award. The appeals procedure to be followed is set forth in Chapter 120, Rules for Appeal of Contract and Grant Awards for the Department of Administrative and Financial Services, Bureau of General Services, Division of Purchases.

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**PROCEDURES PURSUANT TO 5 M.R.S.A., chapter 379, subchapter 3, §12022-3**

**1. DEFINITIONS**

1. **COMPETITIVE PROCUREMENT**. Means the transmission of a written request for proposal, written request for qualifications or other invitation to compete on price or qualifications to at least three (3) responsible suppliers that is to be replied to at a stated time.
2. **REQUEST FOR PROPOSAL**. Means a document listing the scope of work, requirements of the Authority and all evaluation criteria for services needed by the Authority. This document may also be referred to as a request for qualifications or other invitation to compete on price or qualifications. The request for proposal document is also known by the initials “RFP.”
3. **REVIEW COMMITTEE**. Means the committee established by the Authority that reviews proposals generated through the competitive procurement process.
4. **CONTRACT**. Means the agreement between the vendor and the Authority describing the services to be performed, the terms and conditions agreed to by the parties, the cost of the services and how payment will be made.

**2. REQUEST FOR COMPETITIVE PROCUREMENT PROCEDURE**

A. All contracts issued by the Authority that are not for necessary clerical and administrative services, loan servicing and other substantial operating contracts must be bid on through a competitive procurement process utilizing the following procedures.

i. The request for proposal must contain at a minimum a clear definition (scope) of the project, the evaluation criteria, relative scoring weights to be applied, the deadline for receipt of proposals and the agency contact person.

aa. Cost of the contract must be included in the evaluation criteria and must receive a minimum of 25% of the total weight of all criteria.

bb. The request for proposal must be sent to at least three (3) responsible suppliers.

cc. No alterations or changes to any requirement or specification within the original RFP can be made without notifying all bidders in writing a minimum of seven (7) calendar days before the deadline for receiving proposals.

dd. All bidders will have the opportunity to make inquiries about the RFP or request additional information about the Authority by an established deadline set forth in the RFP. All questions and the Authority’s response to the questions will be distributed to all bidders by an established deadline set forth in the RFP.

ee. Proposals received after the deadline will be rejected, without exception.

ff. The Review Committee is responsible for reviewing all proposals based on the criteria established within the RFP. The Committee shall document scoring, substantive information that supports the scoring, and make the award decision which shall be subject to approval by Authority members at a general meeting. The award must be made to the highest rated proposal that conforms to the requirements of the Authority contained within the RFP.

gg. Written records must be kept by each person reviewing or evaluating the proposals. These records must be made available upon request.

**3. CONDITIONS UNDER WHICH COMPETITIVE PROCUREMENT MAY BE WAIVED**

A. All contracts issued by the Authority that are not bid on through a competitive procurement process must be justified by one of the following.

i. The services required are unique to a specific vendor. If the vendor has unique expertise, that expertise and the necessity of it must be described.

ii. Time is of the essence and only one known source can meet the Authority’s needs within the required timeframe. The timeframe must be explained in terms of how it was determined, its significance and the impact of the delay.

iii. The total cost of the acquisition is less than $10,000.

B. When a recommendation is made by the Executive Director of the Authority to award a contract without engaging in the competitive procurement process under Sections A.i. and A.ii., the Authority must approve this recommendation at a general meeting.

**4. RECORD KEEPING FOR PROCUREMENTS NOT COMPETITIVELY PROCURED**

A. For procurements not competitively procured exceeding $10,000, written justification prepared by the Executive Director of the Authority and approved by the Authority will be maintained on file for five (5) years. Evidence of approval by the Authority will be the minutes from a general meeting where the approval was voted on.

**5. REPORTING REQUIREMENTS**

The Authority will submit an annual report to the Legislature (Clerk of the House, the Secretary of the Senate, and the Executive Director of the Legislative Council) in a manner determined by the Executive Director of the Legislative Council, with the first report due by February 1, 2014. The annual report will include a list of all procurements exceeding $10,000 in the preceding year for which competitive procurement was waived under the policies adopted pursuant to §12022-3, including procurements exceeding $10,000 that were made under contracts previously entered into for which competitive procurement was not required. The list must include the names of the vendors and cost associated with those procurements.

STATUTORY AUTHORITY: 20-A M.R.S.A. §§ 11417(4), 11417(7) and 5 M.R.S.A. ch. 379 sub‑chapter 3, §§ 12021-6.G., 12022-3

**Under the Maine Educational Loan Authority (MELA)**:

EFFECTIVE DATE:

December 5, 2001

AMENDED:

October 31, 2012 – filing 2012-297

In 2015, MELA was repealed and its responsibilities absorbed by the **Finance Authority of Maine (FAME)** - see 20‑A MRS §11414 *et seq.* This chapter was subsequently renumbered as 94-457 CMR ch. 803.