

Chapter 602 PROCEDURES FOR CONTRACT AWARDS

SUMMARY: This Chapter outlines the procedures that may be used in selecting a contractor to provide deliverables to the Maine State Retirement Public Employees Retirement System (“MSRS MainePERS”). This Chapter also defines the procedures and criteria to be used in the event of an appeal of a contract award decision.

SECTION 1. POLICY

~~It is the policy of the Retirement System to~~ MainePERS will administer the MSRS services its programs and operate the property(ies) where it conducts its operations organization in a cost-effective, consistent, and efficient manner that will serves the best interests of its members, employers, and retirees. When seeking the deliverables (services and/or equipment and/or furnishings and/or supplies) of a contractor for these purposes, the Retirement System services or products MainePERS will make any contract award to the entity determined to best meet the its needs of the Retirement System, taking into account skills, knowledge, integrity and ability to do faithful, conscientious work and promptly fulfill the contract. Any contract award will be the most advantageous to the MSRS MainePERS and provide MainePERS with the best value, after cost and all other factors having been considered, provide the MSRS with the best value.

1. APPLICABILITY.

This Chapter does not apply to:

- A. Contracts with investment fiduciaries or advisors as provided in 5 M.R.S.A §17108;
- B. Contracts with persons or associations for investment counsel or advice and for other professional or other assistance as provided in 5 M.R.S.A §17109;
- C. Contracts for custodial care of securities as provided in 5 M.R.S.A §17110;
- D. Contracts for a total amount reasonably expected not to exceed \$100,000 unless the MSRS MainePERS, in its discretion, chooses to have this Chapter apply to such a contract; and
- E. Contracts awarded through the State of Maine procurement process; and

- F. Contracts to meet bona fide emergencies necessitating expedited action.
2. DELEGATION. Pursuant to statute, for purposes of this Chapter, the Board of Trustees delegates to the ~~Executive Director~~ Chief Executive Officer (“CEO”) its authority to act as the final administrative decisionmaker of the MSRS Board of Trustees and authorizes the ~~Executive Director~~ CEO to further designate ~~another Retirement System~~ MainePERS staff member or members to act in ~~her/his~~ the CEO’s stead.
3. AWARD METHODS. Depending on the nature, context and extent of deliverables sought, the ~~Executive Director~~ CEO may select any one of the following methods for determining to whom a contract award should be made:
- A. Sole Source: A solicitation for deliverables to a single contractor where because of circumstances or characteristics or other reasons, the needed deliverables are best obtained from one particular source. Approval by the Board of Trustees of the use of this method will be obtained when the solicitation is for a contract reasonably expected to be greater than \$100,000_;
- B. Targeted Request for Proposal: An ~~RFP~~ (Request for Proposal) (“RFP”) for deliverables to two or more contractors who, because of characteristics or circumstances or other reasons have been identified by the System as having the particular capability of providing the desired deliverables_; Approval by the Board of Trustees of the use of this method will be obtained when the RFP is for a contract reasonably expected to be greater than \$100,000_;
- C. An RFP for deliverables to which contractors in general are invited to respond.

Any procedures governing contract awards outlined in this Chapter may be modified based upon exigent circumstances to the extent deemed necessary and appropriate by the ~~Executive Director~~ CEO.

SECTION 2. REQUEST FOR PROPOSAL FOR DELIVERABLES

1. 1. — If the ~~Executive Director~~ CEO or a designee determines under Section 1, ~~subsection 3, paragraphs B or C~~ subsection 3, paragraphs B or C to issue an RFP for deliverables ~~under Section 1, subsection 3, paragraphs B or C~~, the RFP shall provide a description of the nature and scope of the deliverables to be provided, the date by which ~~responses~~ proposals must be received, and the evaluation criteria and their relative importance to be used in evaluating the proposals. At its discretion, MainePERS may amend the RFP for any reason at anytime.
2. The relative importance of evaluation criteria will ordinarily be expressed as numerical ratings/weightings but may be expressed in other terms that inform a potential ~~P~~ proposers

(“Proposer”) as to the combination of factors that the System will look for to meet its needs.

- ~~2.3.~~ The importance of cost as an evaluation criterion must be stated in the RFP and will ordinarily be stated as a numerical weighting that is a minimum of 25% of the total weight of all criteria.
- ~~3.4.~~ Previous experience of ~~the MSRS~~ MainePERS, if any, with ~~the~~ Proposer will always be ~~an~~ considered as part of the evaluation ~~criteria~~. The relative importance of this ~~criteria~~ consideration will depend on the relevance and degree of significance of the previous experience in evaluating both the Proposer’s current proposal and its ability to provide satisfactory deliverables.
- ~~4.5.~~ MainePERS may provide an opportunity for substantive questions by Proposers and answers by MainePERS. MainePERS will provide the questions and answers to any potential Proposer who submitted questions or who requests a copy of the questions and answers. MainePERS reserves the right to not answer questions submitted.
- ~~6.~~ Proposals received later than the date and time specified in the RFP or any amendment to the RFP will not be considered.
- ~~7.~~ The MSRS MainePERS, in its discretion, may hold conferences of potential Proposers and/or Proposers, schedule site visits, or use other means to obtain information relevant to its evaluation of proposals.
- ~~5.8.~~ ~~An oral~~ At the discretion of MainePERS, a presentation or demonstration by Proposers may be called for in the RFP before, or after proposals are received, ~~or at the discretion of the MSRS~~, and may include all or only selected Proposers.
- ~~6.9.~~ RFPs under Section 1, subsection 3 must be advertised for a minimum of three consecutive publication days in the Kennebec Journal of Augusta (or its successor newspaper of record), ordinarily allowing a minimum of 10 calendar days from the final day of advertising to the due date for responses, and may be advertised in any other media as ~~the MSRS~~ MainePERS may decide.

SECTION 3. SELECTION PROCEDURE

- ~~The Executive Director will appoint~~ MainePERS will designate a selector or selection committee. The ~~Executive Director~~ CEO may be directly involved in the selection process but will always be informed as to the selector’s or selection committee’s decision before the award decision is conveyed to the successful Proposer.

2. The selector or selection committee will evaluate each proposal based upon the evaluation criteria set out in the RFP and, if called for in the RFP ~~or after proposals are received~~, Proposers' ~~oral~~ presentations or demonstrations.
3. The selector or selection committee may select any number of Proposers for ~~an oral presentation, demonstration,~~ if ~~an oral presentation~~ it has been called for in the RFP or MainePERS determines it is called for after proposals are received. Proposers will be informed, in advance ~~of the oral presentation~~, as to what the presentation is to address.
4. ~~The selector or selection committee~~ MainePERS at its discretion may choose to conduct a reference check of any Proposer and is not required to limit its reference checks to references supplied by the Proposer.
5. ~~The MSRS~~ MainePERS is never bound to accept the lowest cost proposal on the basis of cost alone.
6. After the selector or selection committee has evaluated the proposals, the ~~oral presentation~~ or demonstration, if any, and other information gathered in the evaluation process, the award, if made, shall be made to the highest rated proposal. ~~The MSRS~~ MainePERS will issue a written notification awarding the contract or declining to award any contract to and shall so notify all Proposers.
7. Upon request, a Proposer to whom the contract was not awarded shall be given a written statement of the basis for the award decision.

SECTION 4. APPEALS

1. An unsuccessful Proposer ("Petitioner") may appeal the award decision by filing a written ~~petition objection~~ objecting to the contract award with the ~~Executive Director~~ CEO within five (5) business days of the date of receipt of the award notice and must at the same time send a copy of the written objection to the successful Proposer who shall automatically be a party to the appeal unless the successful Proposer declines participation.
2. The written objection must contain, at a minimum~~;~~:
 - A. A statement of the basis for the objection, including addressing the criteria in subsection 9 below;
 - B. Specification of the relief sought;
 - C. If a stay is requested, including addressing the criteria in subsection 9 below; and
 - D. ~~specification of the basis for the objection(s), specification of the relief sought, and specification of whether or not a stay of the contract award and/or Whether a hearing is requested.~~ a hearing is requested.

~~No request for a stay or hearing may be granted if the Petitioner fails to~~~~Failure to~~ request a stay ~~and/or~~ a hearing at the time the written objection is filed, ~~shall foreclose a later request for stay and/or a hearing.~~

- ~~2.3.~~ The ~~Executive Director~~CEO may ~~her/himself~~ decide the appeal or may appoint ~~an appeal assistant~~designee or ~~an~~ appeal committee to assist in reviewing the appeal and may charge the ~~appeal assistant~~designee or committee to make a recommendation for final decision. If the ~~Executive Director~~CEO has been the selector or part of a selection committee, the ~~Executive Director~~CEO will delegate all of ~~her/his~~their authority and responsibility in the appeal process to a designee.
- ~~3.4.~~ No unsuccessful Proposer may participate in an appeal process unless it files its own timely appeal under this section. In the event that more than one ~~unsuccessful Proposer~~Petitioner files an appeal on a given contract award, the ~~Executive Director~~CEO may combine the appeals proceedings.
- ~~4.5.~~ If a stay of the contract award is requested, the ~~Executive Director~~CEO ~~must~~may grant the stay for a specified period of time or until the appeal has been resolved if, based on the evidence submitted by the ~~unsuccessful Proposer~~Petitioner who has requested the stay, the ~~Executive Director~~CEO finds all of the following:
- A. irreparable injury to the unsuccessful ~~Proposer~~Petitioner if a stay is not granted,
 - B. a reasonable likelihood of success by the ~~unsuccessful Proposer~~Petitioner on the merits of the appeal, and
 - C. no substantial harm to adverse parties, to ~~the MSRS Maine PERS~~ or to ~~the general public~~ist members, employers or retirees by the granting of a stay.

Notwithstanding these findings, the ~~Executive Director~~CEO will not grant a stay if the ~~Executive Director~~CEO determines that proceeding with the contract award and with contract implementation without delay is necessary in order for ~~the MSRS Maine PERS~~ to responsibly conduct its operations and programs.

The ~~Executive Director~~CEO may stay a contract award on their ~~Executive Director's~~ own motion if ~~s/he~~the CEO determines that a stay is in the best interest of ~~the MSRS Maine PERS~~ or its members, employers or retirees.

- ~~5.6.~~ The ~~Executive Director~~CEO shall notify all parties to the appeal in writing of the decision regarding the issuance of a stay within seven (7) calendar days of receipt of the request. Failure of the ~~unsuccessful Proposer~~Petitioner who has requested a stay to obtain a stay does not affect the ~~unsuccessful Proposer's~~ right to a hearing on appeal, if a hearing was requested.

~~6.7.~~ If a hearing is requested, the ~~Executive Director~~CEO shall notify all parties of the date and location of the hearing. Any hearing must be held within ten (10) calendar days of the filing of the written objection to the contract award and shall be recorded ~~by audiotape or other means~~. When an appeal hearing is held, the ~~Executive Director~~CEO shall issue to all parties a final written decision with supporting reason ordinarily within ten (10) calendar days of the hearing and shall notify all parties of the decision.

~~7.8.~~ If no hearing is requested, the ~~Executive Director~~CEO shall issue to all parties a final written decision with supporting reason, ordinarily within ten (10) calendar days of the filing of the appeal and shall notify all parties of the decision.

~~8.9.~~ The burden of proof on all aspects of an appeal lies with the ~~unsuccessful Proposer~~Petitioner.

~~9.10.~~ The evidence that ~~an unsuccessful Proposer~~the Petitioner may present on the merits of the appeal is limited to specifically addressing that there has been one or more of the following:

- A. a violation of law;
- B. irregularity in the selection process creating fundamental unfairness; or
- C. an arbitrary or capricious award.

The ~~unsuccessful Proposer~~Petitioner must establish by clear and convincing evidence one or more of A, B, and/or C in order to prevail in the appeal.

~~10.11.~~ The ~~Executive Director~~CEO shall determine the result of the appeal and issue to all parties a final written decision with supporting reason, ordinarily within ten (10) calendar days of the hearing. The result can be only one or the other of the following:

- A. validation of the contract award under appeal; or
- B. invalidation of the contract award under appeal.

Invalidation of the contract award constitutes a decision not to make any contract award on that RFP. MainePERS in its discretion may reissue the RFP or issue an RFP seeking the same or similar deliverables after a decision not to make a contract award on a RFP.

~~11.12.~~ The ~~Executive Director~~CEO on ~~his/her~~their own motion or at the request of a party, may extend any time ~~frame~~period in this Section if the ~~Executive Director~~CEO determines that to do so will not impair or impede ~~the MSRS~~MainePERS in carrying out its responsibilities.

~~12.13.~~ The determination of the ~~Executive Director~~CEO under paragraph ~~1011~~ constitutes final agency action and, if adverse to ~~the unsuccessful Proposer~~a Petitioner, shall entitle ~~the unsuccessful Proposer~~that Petitioner to judicial review pursuant to 5 M.R.S.A. §11001 *et seq.*

STATUTORY AUTHORITY: 5 MRSA §§ 17103

EFFECTIVE DATE:

February 17, 2002