

Accompanying the fourth recommendation of the Department of the State Auditor (House, No. 3). State Administration.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Four.

AN ACT RELATIVE TO THE PROCUREMENT OF SUPPLIES OR SERVICES BY PROVIDERS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Notwithstanding any general or special law to the contrary, the
2 following provisions shall govern the procurement of supplies or
3 services by any provider, as defined in Section 2 of this act, to
4 provide social service programs funded by the Commonwealth or
5 a subdivision thereof. This act shall include any provider under
6 the jurisdiction of the Division of Purchased Services, pursuant
7 to the authority contained in section 113 of chapter 133 of the
8 acts of 1992, or any successor provision thereto, who meets
9 the restrictions established in Section 1 below.

1 SECTION 1. Providers Subject to Competitive Bidding.
2 Any provider which receives \$100,000 or more in state funding
3 in any given fiscal year shall be subject to the bidding procedures
4 set out herein during that year in the expenditure of these state
5 funds. This requirement shall appear in the contract between the
6 provider and the Commonwealth.

1 SECTION 2. Definitions.
2 As used in this legislation the following words shall, unless the
3 context requires otherwise, have the following meanings: —
4 “Bid”, a written offer to provide a supply or service at a stated
5 price submitted in response to an invitation for bids.
6 “Contract”, all types of agreements for the procurement of
7 supplies or services, regardless of what the parties may call the
8 agreement.

9 “Immediate Family Member”, a relative of a director, partner,
10 administrator, manager, employee or trustee of the provider.

11 “Relative”, shall mean a parent, spouse, child, brother, sister,
12 father-in-law, mother-in-law, brother-in-law, sister-in-law,
13 daughter-in-law, or son-in-law.

14 “Invitation for bids”, the documents utilized for the solicit-
15 ing of bids, including documents attached or incorporated by
16 reference.

17 “Participate”, participate in a particular matter personally and
18 substantially through approval, disapproval, decision, recom-
19 mendation, the rendering of advice, investigation or otherwise.

20 “Person”, any natural person, business, partnership, corpo-
21 ration, union, committee, club, or other organization, entity or
22 group of individuals.

23 “Procurement”, buying, purchasing, renting, leasing, or other-
24 wide acquiring a supply or service, and all functions that pertain
25 to the obtaining of a supply or service, including description of
26 requirements, selection and solicitation of sources, preparation
27 and award of contract, and all phases of contract administration.

28 “Proposal”, a written offer to provide a supply or service at a
29 stated price submitted in response to a request for proposals.

30 “Provider”, an individual, partnership, corporation, trust, or
31 other legal provider which operates a social service program.

32 “Purchase description”, the words used in a solicitation to
33 describe the supplies or services to be purchased, including speci-
34 fications attached to or incorporated by reference into the
35 solicitation.

36 “Related party transactions”, any transactions between related
37 parties, as defined in 108 CMR 1.02, or any successor provision
38 thereto.

39 “Request for proposals”, the documents utilized for soliciting
40 proposals, including documents attached or incorporated by
41 reference.

42 “Responsible bidder or offeror”, a person who has the capa-
43 bility to perform fully the contract requirements, and the integrity
44 and reliability which assures good faith performance.

45 “Responsive bidder or offeror”, a person who has submitted
46 a bid or proposal which conforms in all respects to the invitation
47 for bids or request for proposals.

48 “Services”, the rental or leasing of equipment, vehicles, fur-
49 nishings, or real property or the furnishing of labor, time, or effort
50 by a contractor, including the delivery of social services pursuant
51 to a subcontract. This term shall not include personal services
52 delivered pursuant to employment agreements, collective bar-
53 gaining agreements, or grant agreements.

54 “Social service program”, any social, special educational,
55 mental health, mental retardation, habilitative, rehabilitative,
56 vocational, employment and training, or elder services program,
57 including any program provided pursuant to M.G.L. 71B, but
58 excluding any program or service which is reimbursable under
59 Title XIX of the Social Security Act.

60 “Supplies”, an item of property of a value of less than \$500 and
61 useful life of less than one year, including equipment, materials,
62 printing, and insurance and further including services incidental
63 to the delivery, conveyance and installation of such property, or
64 a group of such items. “Supply” does not include real property.

1 SECTION 3. Submission of Quotations.

2 Except as permitted pursuant to Sections 7 and 8, for the
3 procurement of a supply or service, in the amount of one thousand
4 dollars or greater, but less than ten thousand dollars, the provider
5 shall seek written or oral quotations from no fewer than three
6 persons customarily providing such supply or service. The names
7 and addresses of all persons from whom quotations were sought,
8 the names of the persons submitting quotations, and the date and
9 amount of each quotation shall be recorded by the provider and
10 maintained as part of a contract file. Said file shall contain all
11 documents required in this legislation; the contract file shall be
12 maintained in accordance with the state’s public records main-
13 tenance law.

14 The provider shall award the contract to the responsible person
15 offering the needed quality of supply or service at the lowest
16 quotation.

17 A procurement in the amount of less than one thousand dollars
18 shall be obtained through the exercise of sound business practices.

1 SECTION 4. Except as permitted under Sections 7 and 8, for
2 the procurement of a supply in the amount of ten thousand dollars
3 or more, the provider shall seek written quotations from no fewer

4 than three persons customarily providing such supply. In seeking
5 the written quotation, the provider shall provide the prospective
6 bidder with a written description of the supply being sought. The
7 Division of Purchased Services, pursuant to this legislation, shall
8 promulgate regulations providing providers with the types of
9 information that must be provided in the written description. Said
10 description shall become part of the contract file which shall be
11 maintained in accordance with the requirements of Section 3
12 herein.

13 The provider shall award the contract to the responsible person
14 offering the needed quality of supply at the lowest quotation.

1 SECTION 5. For the procurement of a service in the amount
2 of ten thousand dollars or more, a provider must conform to the
3 bidding procedures set forth in this section. A provider seeking
4 to procure a service of ten thousand dollars or more shall issue
5 an invitation for bids for a procurement contract. The Division
6 of Purchased Services, in consultation with the Office of the State
7 Auditor, shall promulgate regulations governing the information
8 that must be provided in, and sought after by, the invitation for
9 bids; the methods and requirements of public notice which must
10 be utilized by the provider; the methods and requirements
11 regarding submitting and awarding bids, and the terms and
12 conditions which must be contained in the written contract. All
13 documents released or received pursuant to this section shall
14 become part of the contract file and maintained in accordance
15 with the requirements of Section 3 herein.

16 Pursuant to the procedures promulgated in regulation, the
17 provider shall award the contract to the responsible person
18 offering the needed quality of service at the lowest quotation.

1 SECTION 6. In addition to the requirements of Sections 3, 4
2 and 5, the requirements of this section shall apply to all contracts
3 for supplies or services which are one thousand dollars or greater,
4 unless otherwise indicated.

5 A provider official, including a director, partner, administrator,
6 manager, employee or trustee, is hereby prohibited from partici-
7 pating in any procurement matter in which said official or an
8 immediate family member, as defined herein, has a financial

9 interest. Violation of this prohibition shall be punished by a fine
10 of not more than two thousand dollars. The Division of Purchased
11 Services may, upon advance notice by a provider, waive this
12 prohibition for good cause.

13 In addition, in the awarding of a supply or service contract of
14 ten thousand dollars or greater the recipient of which, by
15 definition, is a related party, the Division of Purchased Services
16 and the purchasing agency must be notified by the provider prior
17 to the awarding of the contract. The Division shall review the
18 procurement process to determine its compliance with all appli-
19 cable procurement requirements, including the requirements of
20 and regulations promulgated pursuant to this act. The Division
21 shall have the authority to require the entity to reopen a pro-
22 curement process which it determines to be in violation of
23 procurement requirements, and is further authorized to play
24 such a role as to ensure that the selection process is carried
25 out objectively.

1 SECTION 7. A provider may award a supply or service
2 contract without competition when, after reasonable investiga-
3 tion, the provider determines in writing that only one practicable
4 source for the required supply or service exists. The provider must
5 procure a supply or service by competition if more than one
6 potential bidder exists.

7 The provider shall record in writing its efforts to locate potential
8 bidders for the needed supply or service. In addition, the provider
9 shall record all sole source procurements, specifying each con-
10 tractor's name, the amount and type of each contract, a listing
11 of supplies or services procured under each contract and the basis
12 of the determination that the contractor was the only practicable
13 source for the required supply or service. This information shall
14 be maintained in the contract file pursuant to Section 3 herein.

15 In the event that a sole source identified by the provider is, as
16 defined by 108 CMR 1.02, a related party, the provider shall,
17 before awarding the contract, notify the Division of Purchased
18 Services and any state purchasing agency funding the affected
19 program. The Division shall, after reviewing the provider's efforts
20 to locate potential bidders, either approve the sole source request,
21 or, alternatively, provide the provider with names of potential

22 bidders whom the Division is familiar with and require the
23 provider to invite bids from those contractors.

24 A provider may procure without competition water, gas,
25 electricity, sewer or telephone services from a public utility com-
26 pany as defined in section three of chapter twenty-five if the
27 provider certifies in writing that only one practicable source exists.

1 SECTION 8. Whenever the time required to comply with a
2 requirement of this legislation would endanger the health or safety
3 of a provider's clients or property, the provider may make an
4 emergency procurement without following that requirement. An
5 emergency procurement shall be limited to only supplies or
6 services necessary to meet the emergency and shall conform to
7 the requirements of this chapter to the extent practicable under
8 the circumstances. The provider shall make a record of each
9 emergency as soon after the procurement as practicable, specify-
10 ing each contractor's name, the amount and the type of each
11 contract, and the basis for determining the need for an emergency
12 procurement. This information shall be maintained in the contract
13 file pursuant to Section 3 herein.

1 SECTION 9. No provider shall cause or conspire to cause the
2 splitting or division of any element of a procurement for the
3 purpose of evading the competitive bidding requirements of this
4 legislation. Willful violation of this section and the competitive
5 bidding requirements of this act shall subject the provider and/or
6 the responsible provider officials to fines of not more than two
7 thousand dollars.

1 SECTION 10. A contract for services or supplies in the
2 amount of one thousand dollars or greater, in addition to the
3 requirements of Sections 3-9, shall be in writing, signed by both
4 parties, and maintained as part of the contract file, pursuant to
5 Section 3 herein.

6 In addition, in each written contract, the appropriate executive
7 provider official shall attest, under the pains and penalties of
8 perjury, whether or not the agreement is a related party trans-
9 action as defined in 808 CMR 102, or any successor provision
10 thereto.

11 Furthermore, the contract shall specify all principals or offi-
12 cials, including the Board of Directors, of the provider or con-
13 tractor whose common ownership, control, or financial interest
14 qualify the agreement as a related party transaction; as well as
15 any immediate family members of any director, partner,
16 administrator, manager, employee or trustee of the provider who
17 have a financial interest in the contractor's business or in the
18 immediate contract.

