

HOUSE No. 4515

Communication from the Department of Energy Resources of the Executive Office of Energy and Environmental Affairs (under the provisions of section 12 of Chapter 25A of the General Laws) submitting amendments to 225 CMR 19—Energy Management Services (EMS) Contract, Request for Qualifications Process (“EMS Regulations). Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

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In the Year Two Thousand Fourteen
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16 19.01: Application and Authority.

17 (1) Application. 225 CMR 19.00 shall apply to the procurement of Energy Management
18 Services using a Request for Qualifications, which may include On-site Energy Generation by a
19 Local Governmental Body. Any dispute as to inclusion or exclusion within the provisions of 225
20 CMR 19.00 shall be determined by DOER.

21 (2) Authority. 225 CMR 19.00 is promulgated pursuant to M.G.L. c. 25A, §11I.

22 19.02: Definitions.

23 Business Day. A business day shall mean Monday through Friday, exclusive of state and
24 federal legal holidays.

25 Central Register. The publication maintained by the Secretary of the Commonwealth that
26 publishes Notices of RFQs.

27 Certificate of Eligibility. A certificate provided by DCAMM under M.G.L. c. 149 §44D,
28 indicating a Contractor's qualifications to perform the EMS.

29 Commissioner. The Commissioner of DOER established by M.G.L. c. 25A §1.

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31 Contractor. The vendor selected by the Local Governmental Body to perform the EMS
32 solicited pursuant to 225 CMR 19.00.

33 DCAMM. Division of Capital Asset Management & Maintenance, established by M.G.L.
34 c. 7, §4A.

35 DOER. The Department of Energy Resources, established by M.G.L. c. 25A, §1.

36 EMS Annual Report. A report form required by DOER that must be completed by the
37 Local Governmental Body summarizing the energy or water unit and dollar cost savings. The
38 initial report providing estimated savings must be filed along with the EMS contract and
39 thereafter within 90 days after the anniversary of the Guaranteed Energy Performance Period.

40 Energy Audit. A systematic inspection, verification and determination of the energy
41 consumption characteristics of a building or facility which:

42 (1) identifies the type, size and rate of energy consumption of such building or facility
43 and the major energy using systems of such building or facility;

44 (2) determines appropriate Energy Conservation maintenance and operating procedures;
45 and

46 (3) indicates the need, if any, for the acquisition and installation of Energy
47 Conservation Measures or On-site Energy Generation.

48 Energy Conservation. A modification of, or change in, the operation of real or personal
49 property in a manner likely to improve the efficiency of energy use, and shall include Energy
50 Conservation Measures and any Energy Audits to identify and specify energy and cost savings.

51 Energy Conservation Measures. Measures involving modifications of maintenance and
52 operating procedures of a building or facility and installations therein, which are designed to
53 reduce energy and water consumption in such building or facility, or the installation or
54 modification of an installation in a building or facility which is primarily intended to reduce
55 energy and water consumption.

56 Energy Conservation Projects. Projects to promote Energy Conservation, including but
57 not limited to energy conserving modification to windows and doors; caulking and weather
58 stripping; insulation, automatic energy control systems; hot water systems; equipment required to
59 operate variable steam, hydraulic and ventilating systems; plant and distribution system
60 modifications, including replacement of burners, furnaces or boilers; devices for modifying fuel
61 openings; electrical or mechanical furnace ignition systems; utility plant system conversions;
62 installation of water saving devices; replacement or modification of lighting fixtures; energy
63 recovery systems; on-site electrical generation equipment using new Renewable Energy
64 generating sources as defined in M.G.L. c. 25A, § 11F; and cogeneration systems.

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66 Energy Management Services (EMS). A program of services, including Energy Audits,
67 Energy Conservation Measures, Energy Conservation Projects or a combination thereof, and
68 building maintenance and financing services, primarily intended to reduce the cost of energy and
69 water in operating buildings, which may be paid for, in whole or in part, by cost savings
70 attributable to a reduction in energy and water consumption that result from such services. The
71 EMS contract may extend for a term not to exceed 20 years. The allowable length of the
72 contract may also reflect the useful life of the cost savings measures.

73 Energy Savings. A measured reduction in fuel and its costs, energy and its costs, water
74 and its costs, or operating or maintenance costs resulting from the implementation of Energy
75 Conservation Measures or Energy Conservation Projects; provided, however, that any payback
76 analysis to evaluate the Energy Savings of a geothermal energy system to provide heating,
77 cooling or water heating over its expected lifespan shall include gas and electric consumption

78 savings, maintenance savings and shall use an average escalation rate based on the most recent
79 information for gas and electric rates compiled by the Energy Information Administration of the
80 United States Department of Energy.

81 Established Baseline. A written description of previous fuel, energy, and water
82 consumption data and operating and maintenance costs for the past two years, including, but not
83 limited to, future capital replacement expenditures avoided as a result of equipment installed or
84 services performed. The description shall be included in the RFQ.

85 Guarantee of Generation. The written guarantee of a Contractor warranting the particular
86 electrical energy generation derived from an On-site Energy Generation unit. Such written
87 guarantee shall include:

88 (1) a detailed description of the equipment to be installed; and

89 (2) the annual amount of electrical energy to be generated in kilowatt hours per year.

90 Guarantee of Savings. The written guarantee of a Contractor warranting the Energy
91 Savings derived from a particular Energy Conservation Measure, Energy Conservation Project,
92 EMS, or Energy Savings. Such written guarantee shall include a detailed description of the cost
93 of the energy or water conservation or usage measures, all causally connected work, and
94 ancillary improvements provided for in the contract. The guarantee shall state the annual savings
95 expressed in applicable energy units or (if water savings) in gallons per year and be based on
96 dollars saved by reference to established unit rates.

97 Guaranteed Maximum Cost. The fixed maximum cost of the EMS, including:

98 (1) the cost of each Energy Conservation Measure and Energy Conservation Project, after
99 installation, startup, and testing; and

100 (2) the total payments made by a Local Governmental Body to a Contractor, including
101 but not limited to, the total capital investment and the Contractor's costs.

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103 Utility sponsored rebates, tax credits or other incentives, any direct governmental
104 subsidies, interest payments, and energy and water cost savings shall not be deducted from the
105 Guaranteed Maximum Cost.

106 Guidelines. A set of clarifications, interpretations, and procedures, including forms and
107 model documents, developed and issued by DOER to assist it in determining compliance with
108 225 CMR 19.00. Each Guideline shall be effective on its date of issuance or on such date as is
109 specified therein, except as otherwise provided in 225 CMR 19.00.

110 Investment Grade Audit (IGA). An Energy Audit that includes a detailed evaluation of
111 the Energy Conservation Project cost, including but not limited to the investment opportunities
112 for Energy Conservation Measures, operations and maintenance. The IGA shall provide a return
113 on investment that represents an optimized bundle of short-term payback Energy Conservation
114 Measures combined with long-term payback Energy Conservation Measures to meet Local
115 Governmental Body Energy Savings and financial goals.

116 Local Governmental Body. A city, town, district, regional school district or county, or an
117 agency or authority thereof, including a housing authority, board, commission, department or
118 instrumentality of a city, town district, regional school district or county, and any other agency
119 that is not a state agency or building authority; or a combination of two or more such cities,
120 towns, districts, regional school districts or counties, or agencies or authorities thereof.

121 On-site Energy Generation. The generation of Renewable Energy or the cogeneration of
122 electricity and heating or cooling of a generation unit located on or adjacent to a building or
123 structure owned by a Local Governmental Body that utilizes some or all of the energy so
124 generated either directly or indirectly through net metering, as defined in M.G.L. c 164,

125 §138.

126 Renewable Energy. The electrical energy output of an RPS Class I Renewable
127 Generation Unit, Solar Carve-Out Renewable Generation Unit, or Solar Carve-Out II Renewable
128 Generation Unit as defined under 225 CMR 14.00: Renewable Energy Portfolio Standards –
129 Class I.

130 Request for Qualifications (RFQ). A written document issued by a Local Governmental
131 Body that invites qualified providers to submit responses outlining their qualifications, the
132 capacity to perform the EMS for the Local Governmental Body, and other information required
133 by 225 CMR 19.00 and the Local Governmental Body.

134 Responsive Offeror. A person who has submitted a statement of qualifications, which
135 conforms in all respects to the RFQ and who possesses the skill, ability, and integrity necessary
136 to faithfully perform the work, based upon a determination of competent workmanship and
137 financial soundness in accordance with M.G. L. c. 149, §44D.

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139 RFQ Compliance Certification. A form prepared by DOER from time to time that is
140 completed and signed by a duly authorized officer of the Local Governmental Body, certifying
141 that the Local Governmental Body's RFQ for EMS is in full compliance with

142 225 CMR 19.00 and M.G.L. c. 25A, § 11I.

143 Update Statement. A form developed by DCAMM, as defined in 810 CMR 4.01:
144 Definitions, to be completed by a general contractor and submitted with the statement of
145 qualifications.

146 19.03: Request For Qualifications.

147 (1) RFQ Terms. A Local Governmental Body shall solicit competitive sealed statements
148 of qualifications through an RFQ. Except for those soliciting only On-site Energy Generation,
149 requirements set forth in 225 CMR 19.03(2), every RFQ shall, at a minimum, include the
150 following:

151 (a) A general description of those buildings to be addressed by the RFQ, including where
152 applicable:

153 1. the general purpose for which the building is used, the physical location, and
154 approximate hours of daily occupancy;

155 2. the approximate size, age, and condition of the building envelope;

156 3. a general description of the heating and cooling systems including the approximate
157 age, condition, and fuel type(s);

158 4. a general description of the heating and cooling distribution and control systems;

159 5. a general description of the lighting and lighting control systems; and

160 6. fuel, electricity, and water consumption data for the past two years; (b) A general
161 statement of the minimum scope of building improvements proposed by the Local Governmental
162 Body;

163 (c) A request that the Responsive Offeror provide recommendations to address building
164 improvements referenced in 225 CMR 19.03(1)(b), and where applicable, additional
165 improvements for:

166 1. the building envelope;

167 2. the heating and cooling systems;

168 3. the lighting and control systems; and

169 4. any other recommendations for Energy Savings sought by the Local

170 Governmental Body;

171 (d) A statement of objectives, identifying the Local Governmental Body’s priorities, on
172 which the statement of qualifications will be evaluated. The statement of objectives may include
173 Energy Savings, reducing energy and/or water consumption, funding major capital
174 improvements, and improving building operating conditions;

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176 (e) A requirement to submit a Certificate of Eligibility and the most current
177 Update Statement; and

178 (f) A requirement to submit the cost of an IGA.

179 (2) RFQ Terms For On-site Energy Generation. A Local Governmental Body that is
180 soliciting statement of qualifications for solely the construction of On-site Energy Generation
181 shall be required to solicit competitive sealed statement of qualifications through an RFQ
182 process. An RFQ shall at a minimum include the information listed below:

183 (a) A general description of those buildings or facilities to be addressed by the
184 RFQ, including:

185 1. the general purpose for which the building or facility is used, and approximate hours
186 of daily occupancy;

187 2. any permitting requirements;

188 3. the conditions (surface, subsurface, and underground facilities) at the site; and

189 4. For rooftop installations, the approximate size, age and condition of the building,
190 including the roof where the system will be mounted;

191 (b) A statement of objectives, identifying the Local Governmental Body’s priorities on
192 which statements of qualifications will be evaluated; and

193 (c) A requirement to submit a Certificate of Eligibility and the most current
194 Update Statement.

195 (3) Notice of EMS Procurement. All Local Governmental Bodies shall file a notice of
196 EMS procurement with DOER at least 15 Business Days prior to filing the RFQ with the
197 Secretary of the Commonwealth for publication in the Central Register. The notice of EMS
198 procurement shall include a copy of the RFQ, RFQ Compliance Certification, the contact
199 information, the name of the Local Governmental Body, the physical address, the name and
200 contact information for the Chief Procurement Officer, if applicable, or an alternative local

201 governmental official with equivalent responsibilities, and the current phone number and email
202 address for the person responsible for the RFQ. The Local Governmental Body shall use the
203 most current RFQ Compliance Certification and associated instructions, including all required
204 information, documentation, and

205 assurances provided by DOER.

206 (4) Acknowledgment of Receipt. Upon receipt of a notice of EMS procurement, EMS
207 contract, or EMS contract amendment from a Local Governmental Body, DOER shall determine
208 whether it is complete and satisfies all requirements.

209 (a) If such notice is deemed incomplete, DOER shall identify all information necessary to
210 complete the filing and notify the Local Governmental Body in writing within ten Business Days
211 of receipt.

212 (b) Once DOER has deemed that the notice of EMS procurement, EMS contract, or EMS
213 contract amendment is complete, DOER shall, within ten Business Days of receipt, email an
214 acknowledgement of receipt to the contact person

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216 named in the Notice and the Chief Procurement Officer which does not constitute a
217 review or approval of the RFQ, EMS contract, or EMS contract amendment by DOER.

218 (c) A Local Governmental Body shall not issue and publish an RFQ, or execute an EMS
219 contract or contract amendment until the Local Governmental Body receives an acknowledgment
220 of receipt from DOER.

221 (d) Publication by the Local Governmental Body of an RFQ or execution of an EMS
222 contract or contract amendment prior to receipt of an acknowledgment of receipt shall be deemed
223 to be a violation of the procurement process under

224 225 CMR 19.00, unless the Local Governmental Body has not received a response from
225 DOER within ten Business Days of receipt.

226 (5) Publication of RFQ. A Local Governmental Body may only publish an RFQ for EMS
227 if the RFQ process is in compliance with 225 CMR 19.00. Such publication of an RFQ shall also
228 comply with the requirements of M.G.L. c. 149, § 44J(1). Local Governmental Bodies are
229 encouraged to provide longer than required posting and publication periods, when appropriate, to
230 increase fair competition among Responsive Offerors.

231 (6) Response Opening and Evaluation.

232 (a) Response Opening. A Local Governmental Body shall open statements of
233 qualifications publicly, in the presence of two or more witnesses, at the time specified in the
234 RFQ, and shall be available for public inspection.

235 (b) Response Evaluation. A Local Governmental Body shall evaluate each statement of
236 qualifications and award each contract based solely on the criteria set forth in the RFQ. Unless
237 no other manner of description suffices, and the Local Governmental Body so determines in
238 writing, the requirements for a basis of determination may not result in exclusively requiring a
239 proprietary supply or service, or procurement from a sole source. Response evaluation criteria
240 shall include, but not be limited to, the following:

- 241 1. references of other Energy Savings contracts performed;
- 242 2. the Certificate of Eligibility and Update Statement;
- 243 3. quality of the products proposed;
- 244 4. methodology of determining Energy Savings;
- 245 5. general reputation and performance capabilities including responsiveness and
246 responsibility;
- 247 6. substantial conformity with the specifications and other conditions set forth in the
248 RFQ;
- 249 7. time specified in the RFQ for the performance of the contract; and
- 250 8. any other factors the Local Governmental Body considers reasonable and appropriate,
251 which factors shall be made a matter of record.

252 The Local Governmental Body shall conduct discussions with, and may require public
253 presentations by, each person who submitted qualifications in response to the RFQ regarding his
254 qualifications, approach to the project and

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256 ability to furnish the required services. The Local Governmental Body shall select in
257 order of preference three such persons, unless fewer persons respond, it considers to be the most
258 highly qualified to perform the required services. The Local Governmental Body may request,
259 accept and consider statement of qualifications for the compensation to be paid under the
260 contract only during competitive negotiations conducted under 225 CMR 19.05(1).

261 19.04: Investment Grade Audit Agreement.

262 Prior to negotiating a contract for EMS with the most qualified person under 225 CMR

263 19.05(1), the Local Governmental Body shall enter into an Investment Grade Audit
264 contract for design and engineering services with said qualified person. A Local Governmental
265 Body shall only negotiate a contract for EMS after completing an IGA. The IGA agreement shall
266 include the following requirements:

267 (a) Price data on each proposed Energy Conservation Measure and Energy Conservation
268 Project that includes a breakdown of each Energy Conservation Measure and Energy
269 Conservation Project cost structure, mark-ups, overhead, and profit;

270 (b) Estimated Guarantee of Savings or Energy Savings based on the specified savings
271 calculation methodology prescribed by the most recent standards established by the Federal
272 Energy Management Program (FEMP) Guide for Measurement and Verification; and

273 (c) The minimum payment terms including, but not limited to, all payments to the
274 Contractor; any related Energy Savings; revenues such as utility sponsored rebates; tax
275 incentives or other incentives; and payments to the Local Governmental Body.

276 19.05: Contract Negotiation and Award.

277 (1) Contract Negotiation. The Local Governmental Body shall negotiate a contract with
278 the most qualified person at compensation which it determines is fair, competitive, and
279 reasonable. If the Local Governmental Body is unable to negotiate a satisfactory contract with
280 the person considered to be the most qualified at a price the Local Governmental Body
281 determines to be fair, competitive and reasonable, negotiations with that person shall be formally
282 terminated. The Local Governmental Body shall then undertake negotiations with the second
283 most qualified person. Failing accord with the second most qualified person, the Local
284 Governmental Body shall terminate those negotiations and then undertake negotiations with the
285 third most qualified person. Should the Local Governmental Body be unable to negotiate a
286 satisfactory contract with any of the selected persons, it may select additional qualified providers
287 who responded to the RFQ, in the order of their competence and qualification, and

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289 continue negotiations in accordance with this subsection until either an agreement is
290 reached or the Local Governmental Body cancels the RFQ.

291 (2) Contract Award.

292 (a) A Local Governmental Body shall only award a contract for EMS if all the
293 requirements of 225 CMR 19.00 have been met. At least 15 Business Days prior to execution of
294 an EMS contract, the Local Governmental Body shall file with DOER a final copy of the

295 contract along with DOER's EMS Annual Report with projected energy and water cost savings
296 estimates. Within 15

297 Business Days after the contract is executed, the Local Governmental Body shall file an
298 electronic copy of the executed contract with the Commissioner of DOER under the terms of the
299 DOER EMS Contract Submission Guideline, available on the DOER website.

300 (b) The Local Governmental Body shall provide public notice of the meeting at which it
301 proposes to award the EMS contract, of the name of the parties to the proposed contract and of
302 the purpose of the contract. The public notice shall be made at least ten days before the meeting.
303 The Local Governmental Body shall promptly publish in the Central Register notice of the award
304 and shall provide the Commissioner with notice of the award and a copy of the EMS contract.

305 (c) Before entering into a contract for EMS, the Local Governmental Body shall require
306 the Responsive Offeror to file with the Local Governmental Body payment and performance
307 bonds for construction and installation of Energy Conservation Measures and Energy
308 Conservation Projects in an amount equal to 100% of the estimated contract value from a surety
309 company licensed to do business in the commonwealth and whose name appears on United
310 States Treasury Department Circular 570.

311 19.06: Contract Terms.

312 The EMS contract shall conform to the terms included in the RFQ, utilize the terms and
313 conditions set forth in Guidelines established by DOER, and conform to other terms required by
314 law and by the Local Governmental Body. The Contract shall include, but not be limited to, the
315 following provisions:

316 (1) A description of:

317 (a) each required Energy Conservation Measure; (b) each water conservation measure;
318 and

319 (c) each unit producing On-site Energy Generation, to be installed by the Contractor.
320 Such description shall include the cost of each measure or unit, the Energy Savings, or in the
321 case of On-site Energy Generation, the energy to be generated, and the method to be used to
322 measure and verify said Energy Savings or energy generated that conform to the most recent
323 standards established by the FEMP of the United

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325 States Department of Energy;

326 (2) All services and to be provided by the Contractor and the associated costs, including
327 but not limited to, operation and maintenance services, measurement and verification services,
328 and costs thereof, if applicable;

329 (3) The payment terms;

330 (4) The fixed Guaranteed Maximum Cost;

331 (5) The fixed minimum Guarantee of Savings or in the case of On-site Energy Generation
332 the Guarantee of Generation, measured in the appropriate unit of energy when compared with an
333 Established Baseline of previous fuel, energy, water and operating or maintenance costs,
334 including, but not limited to, future capital replacement expenditures avoided as a result of
335 equipment installed or services performed;

336 (6) The method to make the Local Governmental Body whole in the case of Guaranteed
337 Savings or Generation shortfall, to be determined annually; and

338 (7) A written guarantee of the Contractor that either the amount of Energy Savings
339 guaranteed shall be achieved or the Contractor shall reimburse the Local Governmental Body for
340 the shortfall amount. Methods for measurement and verification of Energy Savings shall
341 conform to the most recent standards established by the FEMP of the United States Department
342 of Energy.

343 Payments under a contract for EMS may be based in whole or in part on any cost savings
344 attributable to a reduction in energy and water consumption due to the Contractor's performance
345 or revenues gained due to the Contractor's services which are aimed at energy and water cost
346 savings.

347 19.07: Contract Amendments.

348 An EMS contract may be amended if it does not exceed the scope of the RFQ, and does
349 not violate the requirements established in M.G.L. c. 25A, §11I, 225 CMR 19.00, and all other
350 applicable laws of the Commonwealth. The Local Governmental Body shall file a copy of a
351 contract amendment with DOER on or before ten Business Days before the effective date of the
352 applicable contract amendment.

353 19.08: Monitoring and Reporting Requirements.

354 For the duration of the EMS contract term, the Local Governmental Body shall annually
355 file the EMS Annual Report with DOER utilizing the established Guidelines and ending with a
356 final report no later than 90 days after the contract termination date.

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358 19.09: Enforcement; Complaint Processing Procedures; and Disputes.

359 (1) Document Inspection: DOER may audit the accuracy of all information submitted
360 under

361 225 CMR 19.00. The Department may request and obtain from any Local Governmental
362 Body or Contractor information that the Department determines necessary to monitor
363 compliance with and enforcement of 225 CMR 19.00.

364 (2) Audit and Site Inspection: Upon reasonable notice to a Local Governmental Body or
365 Contractor, DOER may conduct audits, which may include inspection and copying of records
366 and/or site visits, including but not limited to, all files and documents that DOER determines are
367 related to compliance with 225 CMR 19.00.

368 (3) DOER shall investigate any complaints of non-compliance with M.G.L. c. 25A, §11I
369 and

370 225 CMR 19.00 subject to the following procedures and requirements:

371 (a) Any person may file with DOER a complaint of non-compliance with the
372 requirements of M.G.L. c. 25A, §11I and 225 CMR 19.00.

373 (b) The complaint shall be in writing, mailed to the Commissioner and the relevant Local
374 Governmental Body, certified mail return receipt requested, and shall include the following
375 information:

376 1. the name, address, email address, and phone number of the person filing the
377 complaint;

378 2. the name of the entity about whom the complaint is filed;

379 3. a detailed description of the nature of the alleged non-compliance, including but not
380 limited to, all applicable dates, the applicable statutory and regulatory requirement(s) allegedly
381 violated, and names of any other persons involved in and aggrieved by the non-compliance;

382 4. a statement demonstrating that the complaint has been brought to the attention of the
383 Local Governmental Body and describing all previous efforts to resolve or correct the non-
384 compliance with the Local Governmental Body; and

385 5. any supporting documentation.

386 (4) Upon receiving a written complaint which complies with the requirements established
387 in

388 225 CMR 19.09(3) or upon its own initiative, DOER shall conduct an investigation if it
389 has reasonable cause to believe a violation has occurred.

390 (5) DOER shall notify the Local Governmental Body or individual that is the subject of
391 the complaint of the alleged violation and the existence of the investigation within a reasonable
392 period of time.

393 (6) After giving such notice, DOER may:

394 (a) Contact the person filing the complaint to request additional information;

395 (b) Request information, including existing documentation and verbal or written
396 explanations, from the Local Governmental Body regarding the complaint; and

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398 (c) Contact other persons, including Responsive Offerors and the selected Contractor, to
399 seek additional information regarding the complaint. All persons including but not limited to
400 Responsive Offerors, Local Governmental Bodies, and Contractors, involved in the RFQ
401 procurement which is the subject of the complaint, shall comply fully with any such
402 investigation and provide such information as DOER may require.

403 (7) If DOER determines after its initial investigation that there has been no violation of
404 M.G.L. c. 25A §11I or 225 CMR 19.00, then DOER shall terminate the investigation and notify
405 the subject of the complaint of its finding, in writing.

406 (8) If DOER determines after its initial investigation concludes that there is evidence to
407 support its investigative conclusion that a violation occurred, DOER shall conduct a hearing
408 under 801 CMR 1.00 et seq. The hearing shall determine whether there was a violation of
409 M.G.L. c. 25A §11I or 225 CMR 19.00.

410 (9) If, after a hearing, there is a finding that a violation did occur, the Commissioner may
411 order:

412 (a) Immediate and future compliance with M.G.L. c. 25A, §11I or 225 CMR

413 19.00;

414 (b) Any specific action to correct the violation;

415 (c) Nullification of any actions taken, including issued RFQs, or executed contracts; or

416 (d) Other appropriate action.

417 (10) DOER may forward its findings and any order to the Attorney General or Inspector

418 General for further investigation.

419 (11) The Commissioner may seek enforcement of any Order issued under 225 CMR
420 19.00 in the Superior Court of Suffolk County.

421 (12) The decision of the Local Government Body regarding the selection of a Contractor
422 shall be final and not subject to appeal except on the grounds of fraud or collusion.

423 19.10: Waivers.

424 (1) The Commissioner of DOER may grant a waiver from one or more provisions or
425 requirements of 225 CMR 19.00 upon written request of a Local Governmental Body and a
426 showing of special or exceptional circumstances or need, provided that such written request shall
427 at a minimum meet the following conditions:

428 (a) The waiver request must be in writing, signed by the Chief Executive Officer, or a
429 designee, of the Local Governmental Body, specifying the provisions of 225

430 CMR 19.00 to be waived;

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432 (b) The written waiver request must be mailed to the Commissioner by certified mail,
433 return receipt requested;

434 (c) The waiver request must provide a detailed explanation of why the waiver should be
435 granted, including all documentation supporting the special circumstances or need for such
436 waiver including all information and documentation required by DOER; and

437 (d) The waiver request must include a statement that the Local Governmental
438 Body has made a good faith effort to comply with the applicable requirements of
439 225 CMR 19.00.

440 (2) Any waiver granted by the Commissioner of DOER shall not relieve the Local
441 Governmental Body from any responsibility or obligation to comply with the other provisions of
442 225 CMR 19.00 or any other requirement of law.

443 19.11: Severability.

444 If any provision of 225 CMR 19.00 is declared or found to be illegal, unenforceable or
445 void, Local Governmental Bodies shall be relieved of all obligations under that provision only,
446 and all other provisions shall remain in full force and effect.

447 REGULATORY AUTHORITY
448 225 CMR 19.00: M.G.L. c. 25A, §11I.
449