



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF
ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENERGY RESOURCES

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September 3, 2013

VIA HAND DELIVERY

Steven T. James
Clerk of the House of Representatives
24 Beacon Street, Room 145
State House
Boston, MA 02133

RE: Proposed Amendments to 225 CMR 10; submission to General Court.

Dear Clerk James:

On behalf of the Massachusetts Department of Energy Resources, and in accordance with Section 12 of Chapter 25A of the Massachusetts General Laws ("Statute"), enclosed for filing please find proposed amendments to 225 CMR 10—Energy Management Services (EMS) Contract ("EMS Regulations"). The EMS Regulations provide the process for local governmental bodies to procure energy efficiency improvements for buildings and facilities, thereby saving them time and money in the procurement process and money in energy and water savings, once energy and water efficiency improvements are installed. The proposed amendments address the following: improve clarity, explicitly allow for the installation of "on-site electrical generation equipment," and incorporate best industry practices.

These proposed revisions to the EMS Regulations are being submitted to your office for further action, after complying with all applicable provisions of Chapter 30A of the Massachusetts General Laws, except Section five. Also enclosed herewith is a document summarizing the proposed changes to the EMS Regulations, in layman's terms, as required by the Statute.

Thank you for your attention to this matter.

Very truly yours,

Mark Sylvia
Commissioner

Enclosures

Summary of Proposed 225 CMR 10.00 Revisions

10.02: Definitions

The current regulation contains an outdated agency name and is missing updated definitions from the Green Communities Act (GCA). This section was updated or changed to coincide with agency name changes and definitions in the GCA. The revisions also include new definitions for “Guarantee of Savings,” “Guarantee of Generation,” and “Guidelines,” which are important to ensure adherence to requirements set forth in M.G.L. c. 25A, §11C.

Additional Changes Made In Response to Public Comments

Following comments received during the public comment period, DOER changed the reporting requirement period under the definition for “EMS Annual Report” from “60 days...” to “90 days after the anniversary of the of the Guaranteed Energy Performance Period.” Additionally, the definition of “Guaranteed Energy Savings” was changed to include the project as a whole. Moreover, since energy saving performance is measured from an established baseline, a definition was added for “Established Baseline.” Finally, DOER added maximum term language to the definition of “Energy Management Services,” so that the contract duration may not exceed 20 years and reflect the useful life of the cost savings measures.

10.03: Request for Proposal (RFP)

The regulation does not currently distinguish energy efficiency, conservation, and energy generation. This can cause confusion when referring to “energy savings” and the methods for calculating those savings as relates to the guarantee provided by the contracted. Therefore, the following changes have been included: under subsection (1) DOER separated energy efficiency and conservation from energy generation, as well as to better recognize that the saving and generating use distinct methods for calculating benefits. In addition, language was added in order to require more transparency in demonstrating the method by which savings are calculated and the elements that go into the calculation. In subsection (2), DOER included RFP Terms for On-site Generation, which mirror subsection section (1). In subsections (3) through (5) DOER extended time required for filing RFP with DOER from seven to 15 days to allow enough time for the agency to review and respond to the solicitation. DOER also expanded this section to clarify the steps for filing an RFP.

Additional Changes Made In Response to Public Comments

Following comments received during the public comment period, DOER revised subsection 10.03 (1)(e) to include not only Energy Conservation Measures but also Energy Conservation Projects. In addition, the regulation did not provide a specific period in which DOER would provide a response stating the status of filing. Therefore, this section was further revised to provide for a 10-day timeline for acknowledgment of whether the RFP is complete or incomplete.

10.05 Contract Terms

This section was expanded to include a standard detailed description of the energy conservation measures, methods of measuring energy savings against an established baseline, and means by which the contract will provide payment in the case of a savings shortfall.

10.06 Contract Amendments

The current regulation did not refer to filing requirement for amendments. This section is reworded to address the possibility of contract amendments not complying with the regulations and requires that filing amendments mirror the requirements for contracts.

10.07 Monitoring; Reporting Requirements

In this section, DOER Deleted the list of information required for annual energy savings reporting in the current regulation and instead simplified this section to provide for an online, downloadable form for the energy savings.

10.08 Enforcement, Complaint Processing Procedures; Disputes

The current regulation does not clearly address the methods for filing a complaint, what information should be submitted to effectively process a complaint, or define the steps for solution. Therefore, DOER added subsections (1) Document inspection and (2) Audit and site inspections, in order to better clarify DOER's authority to investigate complaints and the procedures by which a violation is processed.

HOUSE No. 3644

Communication from the Division 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 10, Energy Management Services (EMS) Contract ("EMS Regulations"). Telecommunications, Utilities and Energy

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

225 CMR 10.00

**225 CMR 10.00: ENERGY MANAGEMENT SERVICES (EMS) CONTRACTS
RFP PROCESS**

Section

10.01: Application; Purpose; Authority

10.02: Definitions

10.03: Request for Proposals

10.04: Contract Award

10.05: Contract Terms

10.06: Contract Amendments

10.07: Monitoring; Reporting Requirements

10.08: Complaint Process Procedures; Disputes

10.09: Waivers

10.10: Severability

10.01: Application and Purpose; Authority.

(1) Application and Purpose. 225 CMR 10.00 shall apply to the procurement of Energy Management Services, which may include On-site Generation, by a Local Governmental Body. Any dispute as to inclusion or exclusion within the provisions of 225 CMR 10.00 shall be determined by the Department of Energy Resources.

(2) Authority. 225 CMR 10.00 is promulgated under M.G.L. c. 25A, §11C.

10.02: Definitions.

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

Central Register. The publication maintained by the Secretary of the Commonwealth that publishes Notices of RFPs.

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35 Certificate of Eligibility. A certificate provided by DCAM under M.G.L. c. 149, § 44D,
36 indicating a contractor's qualifications to perform Energy Management Services

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38 Commissioner. The Commissioner of the Department of Energy Resources established
39 by M.G.L. c. 25A §1.

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41 Contractor. The vendor selected by the Local Governmental Body to perform the energy
42 management services solicited through an RFP under this regulation.

43
44 DOER. The Department of Energy Resources, established by M.G.L. c. 25A, §1.

45
46 DCAM. The Division of Capital Asset Management and Maintenance, established by
47 M.G.L. c. 7, § 4A.

48 Energy Audit. A systematic inspection, verification and determination of the energy
49 consumption characteristics of a building or facility which: (1) identifies the type, size
50 and rate of energy consumption of such building or facility and the major energy using
51 systems of such building or facility; (2) determines appropriate energy conservation
52 maintenance and operating procedures; and (3) indicates the need, if any, for the
53 acquisition and installation of Energy Conservation Measures or On-site Energy
54 Generation.

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

59 Energy Conservation Measures. Measures involving modifications of maintenance and
60 operating procedures of a building or facility and installations therein, which are designed
61 to reduce energy consumption in such building or facility, or the installation or
62 modification of an installation in a building or facility which is primarily intended to
63 reduce energy consumption.

64 Energy Conservation Projects. Projects to promote Energy Conservation, including but
65 not limited to energy conserving modification to windows and doors; caulking and
66 weather stripping; insulation, automatic energy control systems; hot water systems;
67 equipment required to operate variable steam, hydraulic and ventilating systems; plant
68 and distribution system modifications, including replacement of burners, furnaces or
69 boilers; devices for modifying fuel openings; electrical or mechanical furnace ignition
70 systems; utility plant system conversions; replacement or modification of lighting
71 fixtures; energy recovery systems; on-site electrical generation equipment using new
72 renewable generating sources as defined in section 11F; and cogeneration systems.

73 Energy Management Services (EMS). A program of services, including Energy Audits,
74 Energy Conservation Measures, Energy Conservation Projects or a combination thereof,
75 and building maintenance and financing services, primarily intended to reduce the cost of
76 energy and water in operating buildings, which may be paid for, in whole or in part, by
77 cost savings attributable to a reduction in energy and water consumption that result from
78 such services. The EMS contract may extend for a term not to exceed twenty years. The

79 allowable length of the contract may also reflect the useful life of the cost savings
80 measures.

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

86

87 Energy Savings. A measured reduction in fuel and its costs, energy and its costs, water
88 and its costs, or operating or maintenance costs resulting from the implementation of
89 Energy Conservation Measures or Projects; provided, however, that any payback analysis
90 to evaluate the energy savings of a geothermal energy system to provide heating, cooling
91 or water heating over its expected lifespan shall include gas and electric consumption
92 savings, maintenance savings and shall use an average escalation rate based on the most
93 recent information for gas and electric rates compiled by the Energy Information
94 Administration of the United States Department of Energy.

95 Established Baseline. A written description of previous fuel, energy, and water
96 consumption data and operating and maintenance costs for the past three years, including,
97 but not limited to, future capital replacement expenditures avoided as a result of
98 equipment installed or services performed. The description shall be included in the
99 Request for Proposals.

100 Guarantee of Savings. The written guarantee of a Contractor, warranting the energy
101 savings to be derived from a particular Energy Conservation Measure, Energy
102 Conservation Project, Energy Management Services, or Energy Savings. Such written
103 guarantee shall include a detailed description of the cost of the energy or water
104 conservation or usage measures, all causally connected work, and ancillary improvements
105 provided for in the contract. The guarantee shall state the annual savings expressed in
106 applicable energy units or (if water savings) in gallons per year and be based on dollars
107 saved by reference to established unit rates.

108

109 Guarantee of Generation. The written guarantee of a Contractor warranting the particular
110 electrical energy generation to be derived from the On-site Electrical Generation unit.
111 Such written guarantee shall: (1) include a detailed description of the equipment to be
112 installed; and (2) state the annual amount of electrical energy to be generated in kilowatt
113 hours per year.

114

115 Guaranteed Maximum Cost. The fixed maximum cost of the Energy Management
116 Services, including: (1) the cost of each energy conservation measure, after installation,
117 startup, and testing; and (2) the total payments made by a Local Governmental Body to a
118 contractor, including but not limited to, the total capital investment and the contractor's
119 costs. Utility sponsored rebates, tax credits or other incentives, any direct governmental
120 subsidies, interest payments, and energy and water cost savings shall not be deducted
121 from the Guaranteed Maximum Cost.

122

123 Guidelines. A set of clarifications, interpretations, and procedures, including forms and
124 model documents, developed and issued by DOER to assist it in determining compliance
125 with 225 CMR 10.00. Each Guideline shall be effective on its date of issuance or on
126 such date as is specified therein, except as otherwise provided in 225 CMR 10.00.

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128 Local Governmental Body. A city, town, district, regional school district or county, or an
129 agency or authority thereof, including a housing authority, board, commission,
130 department or instrumentality of a city, town district, regional school district or county,
131 and any other agency that is not a state agency or building authority; or a combination of
132 2 or more such cities, towns, districts, regional school districts or counties, or agencies or
133 authorities thereof.

134 On-site Energy Generation. The generation of renewable energy or the cogeneration of
135 electricity and heating or cooling of a generation unit located on or adjacent to a building
136 or structure owned by a Local Governmental Body who utilizes some or all of the energy
137 so generated either directly or indirectly through net metering, as defined in M.G.L. c 164
138 §138.

139
140 Renewable Generation. The electrical energy output of an RPS Class I Renewable
141 Generation Unit or Solar Carve-Out Renewable Generation Unit as defined under 225
142 CMR 14.00.

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144 Request for Proposals (RFP). A written document issued by a Local Governmental
145 Body that invites potential Responsive Offerors to submit proposals outlining their
146 qualifications to perform the Energy Management Services for the Local Governmental
147 Body, a cost proposal, and other information required by 225 CMR 10.03(1) and (2) and
148 the Local Governmental Body.

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150 RFP Compliance Certification. A form prepared by DOER from time to time that is
151 completed and signed by a duly authorized officer of the Local Governmental Body,
152 certifying that the Local Governmental Body's RFP for EMS is in full compliance with
153 225 CMR 10.00 and M.G.L. c.25A, §11C.

154 Responsive Offeror. A person who has submitted a proposal, which conforms in all
155 respects to the Requests for Proposals and who possesses the skill, ability, and integrity
156 necessary to faithfully perform the work, based upon a determination of competent
157 workmanship and financial soundness in accordance with M.G. L. c. 149, §44D.

158 Update Statement. A form developed by DCAM, as defined in 810 CMR 4.01, to be
159 completed by a General Contractor and submitted with all proposals.

160 10.03: Request for Proposals.

161
162 (1) RFP Terms. A Local Governmental Body shall solicit competitive sealed proposals
163 through an RFP process. Except for those soliciting only On-Site Energy Generation,
164 requirements set forth in Section 10.03(2) below, every RFP shall, at a minimum, include
165 the information listed below:

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167 (a) A general description of those buildings to be addressed by the RFP, including
168 where applicable:

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1. the general purpose for which the building is used, the physical location, and approximate hours of daily occupancy;
2. the approximate size, age and condition of the building envelope;
3. a general description of the heating and cooling systems including the approximate age, condition, and fuel type(s);
4. a general description of the heating and cooling distribution systems and control systems;
5. a general description of the lighting and lighting control systems; and
6. fuel, electricity, and water consumption data for the past three years.

(b) A general statement of the minimum scope of building improvements proposed by the Local Governmental Body;

(c) A request that the Responsive Offeror provide recommendations to address building improvements referenced in 225 CMR 10.03(1)(b), and where applicable, additional improvements for:

1. the building envelope;
2. the heating and cooling systems;
3. the lighting and control systems; and
4. any other recommendations for Energy Savings sought by the Local Governmental Body.

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

(e) A request for price data on each proposed Energy and, if applicable, water Conservation Measure and Project that includes a breakdown of each Energy Conservation Measure and Project cost structure, mark-ups, overhead, and profit;

(f) A request for estimated Guarantee of Savings or Energy Savings based on the specified savings calculation methodology identified in the most recent version of the Federal Energy Management Program (FEMP) Guide for Measurement and Verification;

(g) A Certificate of Eligibility and the most current Update Statement;

217 (h) Minimum payment terms including, but not limited to, all payments to the
218 Contractor; any related Energy Savings; revenues such as utility sponsored
219 rebates; tax incentives or other incentives; and payments to the Local
220 Governmental Body; and

221
222 (i) Minimum terms and conditions of the contract.
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224 (2) RFP Terms For On-Site Energy Generation. A Local Governmental Body that is
225 soliciting proposals for solely the construction of On-site Energy Generation shall be
226 required to solicit competitive sealed proposals through an RFP Process. Every RFP
227 shall at a minimum include the information listed below:
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229 (a) A general description of those buildings or facilities to be addressed by the
230 RFP, including:
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- 232 1. the general purpose for which the building or facility is used, and
233 approximate hours of daily occupancy;
- 234 2. any permitting requirements;
- 235 3. the conditions (surface, subsurface, and underground facilities) at the
236 site; and
- 237 4. For rooftop installations, the approximate size, age and condition of
238 the building, including the roof where the system will be mounted;
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243 (b) A statement of objectives, identifying the Local Governmental Body's
244 priorities on which proposals will be evaluated;
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246 (c) A request for price data on each proposed Renewable Energy system that
247 includes a breakdown of cost structure;
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249 (d) A request for estimated actual and Guarantee of Generation based on the
250 specified savings calculation methodology in the most recent version of the
251 Federal Energy Management Program (FEMP) Guide for Measurement and
252 Verification,
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254 (e) A Certificate of Eligibility and the most current Update Statement; and
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256 (f) Minimum payment terms including, but not limited to, all payments to the
257 Contractor; revenues such as utility sponsored rebates; tax incentives or other
258 revenues which are factored in said payments; and payments to the Local
259 Governmental Body.
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261 (3) Notice of EMS Procurement. All Local Governmental Bodies shall file a Notice of
262 EMS Procurement with DOER at least 15 Business Days prior to filing the RFP with the
263 Secretary of the Commonwealth for publication in the Central Register. The Notice of
264 EMS Procurement shall include a copy of the RFP, the contact information, the name of

265 the Local Governmental Body, the physical address, the name and contact information
266 for the Chief Procurement Officer, if applicable, or an alternative local governmental
267 official with equivalent responsibilities, and the current phone number and email address
268 for the person responsible for the RFP. The Local Governmental Body shall use the most
269 current forms and associated instructions, including all required information,
270 documentation, and assurances provided by DOER.

271
272 (4) Acknowledgment of Receipt. Upon receipt of a Notice of EMS Procurement, EMS
273 Contract, or EMS Contract Amendment from a Local Governmental Body, DOER shall
274 determine whether it is complete and satisfies all requirements.

275
276 (a) If such Notice is deemed incomplete, DOER shall identify all information
277 necessary to complete the filing and notify the Local Governmental Body in
278 writing within 10 Business Days of receipt.

279 (b)
280 Once DOER has deemed that the Notice of EMS Procurement, EMS Contract, or EMS
281 Contract Amendment is complete, DOER shall, within 10 Business Days of receipt,
282 email an Acknowledgement of Receipt to the contact person named in the Notice
283 and the Chief Procurement Officer which does not constitute a review or
284 approval of the RFP, EMS Contract, or EMS Contract Amendment by DOER.
285

286 (c) A Local Governmental Body shall not issue and publish an RFP, or execute
287 an EMS Contract or Contract Amendment until the Local Governmental Body
288 receives an Acknowledgment of Receipt from DOER.
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290 (d) Publication by the Local Governmental Body of an RFP or execution of an
291 EMS Contract or Contract Amendment prior to receipt of an
292 Acknowledgment of Receipt shall be deemed to be a violation of the
293 procurement process under 225 CMR 10.00, unless the Local Governmental
294 Body has not received a response from DOER within 10 Business Days of
295 receipt.
296

297 (5) Publication of RFP. A Local Governmental Body may only publish an RFP for EMS
298 if the RFP process is in compliance with 225 CMR 10.00. Such publication of an RFP
299 shall also comply with the requirements of M.G.L. c. 149, § 44J(1). Local Governmental
300 Bodies are encouraged to provide longer than required posting and publication periods,
301 when appropriate, to increase fair competition among Responsive Offerors.

302 (6) Response Opening and Evaluation.

303 (a) Response Opening: A Local Governmental Body shall open proposals
304 publicly, in the presence of 2 or more witnesses, at the time specified in the
305 request for proposals, and shall be available for public inspection.
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307 (b) Response Evaluation: A Local Governmental Body shall evaluate each
308 proposal and award each contract based solely on the criteria set forth in the
309 request for proposals. Such criteria shall include, but not be limited to, all
310 standards by which the local governmental body shall evaluate

311 responsiveness, responsibility, qualifications of the offeror, technical merit
312 and cost to the local governmental body.
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314 10.04: Contract Award. A Local Governmental Body shall only award a contract for EMS if all
315 the requirements of 225 CMR 10.00 have been met. At least 15 Business Days prior to execution
316 of an EMS contract, the Local Governmental Body shall file with DOER a final copy of the
317 contract along with DOER’s EMS Annual Report with projected energy and water cost savings
318 estimates. Within 15 Business days after the contract is executed, the Local Governmental Body
319 shall file an electronic copy of the executed contract with the Commissioner of DOER under the
320 terms of EMS Contract Submission Guideline.
321

322 10.05: Contract Terms. The EMS contract shall conform to the terms included in the RFP,
323 utilize the terms and conditions set forth in Guidelines established by DOER, and confirm to
324 other terms required by law and by the Local Governmental Body. The Contract shall include,
325 but not be limited to, the following provisions:
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- 327 (1) A description of (a) each required Energy Conservation Measure, (b) each water
328 conservation measure, and (c) each unit producing On-site Energy Generation, to be
329 installed by the Contractor. Such description shall include the cost of each measure
330 or unit, the Energy Savings, or in the case of On-site Energy Generation, the energy
331 to be generated, and the method to be used to measure and verify said Energy Savings
332 or energy generated that conform to the most recent standards established by the
333 FEMP of the United States Department of Energy;
334
- 335 (2) Provisions that require all services and costs to be provided by the Contractor,
336 including but not limited to, operation and maintenance services, measurement and
337 verification services, and costs thereof, if applicable;
338
- 339 (3) The fixed Guaranteed Maximum Price;
340
- 341 (4) The fixed minimum Guarantee of Savings or in the case of On-Site Energy
342 Generation, Guarantee of Generation, measured in the appropriate unit of energy when
343 compared with an established baseline of previous fuel, energy, water and operating or
344 maintenance costs, including, but not limited to, future capital replacement expenditures
345 avoided as a result of equipment installed or services performed;
346
- 347 (4) The method to make the Local Governmental Body whole in the case of Guaranteed
348 Savings or Generation shortfall, to be determined annually;
349
- 350 (5) The payment terms.
351

352 10.06: Contract Amendments. A contract may be amended, so long as the contract as amended
353 does not exceed the scope of the RFP, and does not violate the requirements established in
354 M.G.L. c.25A, §11C this regulation, and all other applicable laws of the Commonwealth,
355 including Executive Orders and relevant guidance. The Local Governmental Body shall file a
356 copy of a contract amendment with DOER on or before 10 Business Days before the effective
357 date of the applicable contract amendment.
358

359 10.07: Monitoring; Reporting Requirements. For the duration of the contract term, the Local
360 Governmental Body shall annually file with DOER an Annual Report utilizing the Guidelines
361 established by DOER. Said Annual Report shall be filed not later than 90 days from the first
362 anniversary of the effective date of the contract, and every year thereafter on the same date,
363 ending with a final report on the contract termination date, or anytime before six months after the
364 contract termination date.

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366 10.08: Enforcement, Complaint Processing Procedures; Disputes.

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368 (1) Document Inspection: DOER may audit the accuracy of all information submitted under
369 225 CMR 10.00. The Department may request and obtain from any Local Governmental
370 Body or Contractor information that the Department determines necessary to monitor
371 compliance with and enforcement of 225 CMR 10.00.

372
373 (2) Audit and Site Inspection: Upon reasonable notice to a Local Governmental Body or
374 Contractor, DOER may conduct audits, which may include inspection and copying of
375 records and/or site visits, including but not limited to, all files and documents that DOER
376 determines are related to compliance with 225 CMR 10.00.

377
378 (3) DOER shall investigate any complaints of non-compliance with M.G.L. c. 25A, §11C
379 and 225 CMR 10.00 subject to the following procedures and requirements:

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381 (a) Any person may file with DOER a complaint of non-compliance with the
382 requirements of M.G.L. c. 25A, §11C and 225 CMR 10.00.

383
384 (b) The complaint shall be in writing, mailed to the Commissioner and the relevant Local
385 Governmental Body, certified mail return receipt requested, and shall include the
386 following information:

- 387
- 388 1. the name, address, email address, and phone number of the person filing the
389 complaint;
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 - 391 2. the name of the entity about whom the complaint is filed;
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 - 393 3. a detailed description of the nature of the alleged non-compliance, including
394 but not limited to, all applicable dates, the applicable statutory and regulatory
395 requirement(s) allegedly violated, and names of any other persons involved in
396 and aggrieved by the non-compliance;
 - 397
 - 398 4. a statement demonstrating that the complaint has been brought to the attention
399 of the Local Governmental Body and describing all previous efforts to resolve
400 or correct the non-compliance with the Local Governmental Body; and,
401
 - 402 5. any supporting documentation.

403
404 (4) Upon receiving a written complaint which complies with the requirements established in
405 225 CMR 10.08(3) or upon its own initiative, DOER shall conduct an investigation if it
406 has reasonable cause to believe a violation has occurred.

- 407
408 (5) DOER shall notify the Local Governmental Body or individual that is the subject of the
409 complaint of the alleged violation and the existence of the investigation within a
410 reasonable period of time.
411
- 412 (6) After giving such notice, DOER may:
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- 414 (a) Contact the person filing the complaint to request additional information;
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 - 416 (b) Request information, including existing documentation and verbal or written
417 explanations, from the Local Governmental Body regarding the complaint; and
418
 - 419 (c) Contact other persons, including Responsive Offerors and the selected Contractor, to
420 seek additional information regarding the complaint. All persons including but not
421 limited to Responsive Offerors, Local Governmental Bodies, and Contractors,
422 involved in the RFP procurement which is the subject of the complaint, shall
423 comply fully with any such investigation and provide such information as DOER
424 may require.
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- 426 (7) If DOER determines after its initial investigation that there has been no violation of
427 M.G.L. c. 25A §11C or 225 CMR 10.00, then DOER shall terminate the investigation
428 and notify the subject of the complaint of its finding, in writing.
429
- 430 (8) If DOER determines after its initial investigation concludes that there is evidence to
431 support its investigative conclusion that a violation occurred, DOER shall conduct a
432 hearing under 801 CMR 1.00 et seq. The hearing shall determine whether there was a
433 violation of G.L. c. 25A §11C or 225 CMR 10.00.
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- 435 (9) If, after a hearing, there is a finding that a violation did occur, the Commissioner may
436 order:
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- 438 (a) Immediate and future compliance with G.L. c. 25A, §11C or 225 CMR 10.00;
 - 439
 - 440 (b) Any specific action to correct the violation;
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 - 442 (c) Nullification of any actions taken, including issued RFPs, or executed
443 contracts; or,
444
 - 445 (d) Other appropriate action.
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- 447 (10) DOER may forward its findings and any order to the Attorney General or Inspector
448 General for further investigation.
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- 450 (11) The Commissioner may seek enforcement of any Order issued under 225 CMR 10.00 in the
451 Superior Court of Suffolk County.
452

453 10.09: Waivers.
454

455 (1) The Commissioner of DOER may grant a waiver from one or more provisions or
456 requirements of 225 CMR 10.00 upon written request of a Local Governmental Body and
457 a showing of special or exceptional circumstances or need, provided that such written
458 request shall at a minimum meet the following conditions:

459 (a) The waiver request must be in writing, signed by the Chief Executive Officer,
460 or a designee, of the Local Governmental Body, specifying the provisions of 225
461 CMR 10.00 to be waived;

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

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

468 (d) The waiver request must include a statement that the Local Governmental
469 Body has made a good faith effort to comply with the applicable requirements of
470 225 CMR 10.00.

471 (2) Any waiver granted by the Commissioner of DOER shall not relieve the Local
472 Governmental Body from any responsibility or obligation to comply with the other
473 provisions of 225 CMR 10.00 or any other requirement of law.

474 10.10: Severability. If any provision of 225 CMR 10.00 is declared or found to be illegal,
475 unenforceable or void, Local Governmental Bodies shall be relieved of all obligations under that
476 provision only, and all other provisions shall remain in full force and effect.

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485 REGULATORY AUTHORITY

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487 225 CMR 10.00: M.G.L. c.25A, §11C.