



SMART GROWTH AND REGIONAL COLLABORATION

Comments on Proposed New Regulations
225 CMR 19.00—Energy Management Services (EMS) Contracts
Submitted by: Metropolitan Area Planning Council (MAPC)
September 25, 2014

The Metropolitan Area Planning Council (MAPC) would like to submit the following comments regarding the Department of Energy Resources (DOER)'s proposed new regulations, 225 CMR 19—Energy Management Services (EMS) Contracts, for the RFQ process.

Background

DOER is seeking public comment on proposed new regulations, 225 CMR 19—Energy Management Services (EMS) Contracts, governing implementation of the RFQ process under MGL c. 25A, §11i. As a regional planning agency, MAPC has been working very successfully with cities and towns, both individually and collectively, for years to help them to procure EMS services and move forward with EMS contracts under Chapter 25A §11i. We have facilitated competitive joint procurements on behalf of municipalities for a variety of EMS projects, including ESCOs, municipal solar, and LED streetlight retrofits.

MAPC's region – the 101 cities and towns of Metro Boston – accounts for nearly half of the Commonwealth's energy consumption and GHG emissions. Through our Clean Energy Initiative, MAPC has designed, implemented, and evaluated a wide range of energy projects and programs. The success of our work has led to greater demand to replicate projects in an ever-increasing number of municipalities. Combined, our LED and ESCO projects are anticipated to save an estimated 11.9 MWh annually and reduce GHG emissions by 12 million pounds annually, and our solar project has the potential to result in over 15 MW of energy generation and GHG reductions of over 16,000 tonnes annually.

Comments

- 1. Definition of Local Governmental Body.** The current definition requires additional specificity. While MAPC, as a regional planning agency (RPA), is “an agency or authority” created under Massachusetts General Law that serves cities and towns in Massachusetts, the inclusion of RPAs in the definition of “Local Governmental Body” should be explicit, just as the reference to housing authorities and regional school districts are.

- 2. Applicability of Energy Generation Provisions to Non-Building Sites or Structures.**
 - The “On-site Energy Generation” definition of a “unit located on or adjacent to a building or structure owned by a Local Governmental Body” should be expanded to include generation on sites within a Local Government Body's jurisdiction where no buildings are located, including but not limited to undeveloped property, brownfields, landfills, and parking lots. Alternatively, an additional definition could be developed for these non-building sites within the jurisdiction for which a net-metering credit purchase is proposed.
 - Other references to “energy generation” should also be expanded to explicitly encompass non-building sites, including the definition of Energy Conservation Projects and Energy Management Services (EMS) and the RFQ Terms For On-site Energy Generation.
 - The treatment of other energy management services, such as LED streetlight retrofits, should be made explicit within the regulations and provided with RFQ terms that reasonably pertain to them.

- Section 19.04, concerning Investment Grade Audits, should be revised so as not to be mandatory for energy generation projects before proceeding to an EMS (or PPA or NMCPA), as many generation projects neither need nor utilize IGAs.
- 3. DCAMM Certification Requirements.** To ensure an effective and clear process:
- Greater clarity concerning whether the contractor or subcontractor must be DCAMM certified is required.
 - i. If the subcontractor’s certification is deemed compliant, a determination must be made explicitly as to whether that subcontractor must be a signatory to the EMS contract.
 - Greater specificity regarding which DCAMM certification categories are considered compliant for the various types of EMS (sub)contractors is necessary.
 - The procedure concerning the public opening of responses is at conflict with the fact that, according to Chapter 149, DCAMM Update Statements are not public record. This conflict should be addressed.
- 4. Regulations to Collective Procurements.** The regulations should explicitly pertain to collective as well as individual procurements. Moreover, when referring to negotiations and effective dates of EMS contracts, it should be clear that an individual community or entity is party to the EMS (or PPA or NMCPA) contract and therefore that the effective date refers to this contract between the individual community or entity and the respondent, and is separate from the other communities or entities involved in the joint procurement and their respective effective dates.
- 5. Response Evaluation.** The term “may” should replace “shall” in 19.03 (6) so as not to imply that the Local Governmental Body must interview, or “conduct discussions,” with each and every qualified respondent before selecting the top three. Evaluation of the qualified respondents should determine the small pool with whom discussions are then conducted.
- 6. Review of the information that can be treated as business sensitive and confidential.** The draft currently requires that the entire response to the RFQ be “available for public inspection.”
- According to Chapter 149, DCAMM Update Statements are not public record.
 - Some respondents to MAPC’s solicitations under Chapter 25A have expressed concern regarding the public disclosure of their business-sensitive or confidential financial information. This challenge has cost both MAPC and our communities considerable time and effort to overcome.
- 7. Clarification of Contract Amendments to the RFQ Scope.** Greater clarity should accompany the limits of the scope referenced in 19.07. For instance, if during the course of an audit or analysis, a vendor determines that a site, measure, or configuration is infeasible, a clear path should exist for the vendor to present an alternative without exceeding the scope of the RFQ.

Please contact Cammy Peterson, Manager of Clean Energy, MAPC, at cpeterson@mapc.org or 617-933-0791 with any questions on these comments.