



# Procure Energy Services with Chapter 25A

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M.G.L. ch. 25A provides several mechanisms to encourage the implementation of energy efficiency and renewable energy projects, including streamlined procurement pathways for energy conservation measures and energy management services. Solicitations issued pursuant to 25A, as well as questions pertaining to these procurement processes, fall under the jurisdiction of the Department of Energy Resources (DOER). Any solicitations, executed agreements, and annual reports based on 25A must be filed with DOER. This strategy describes how to use 25A procurement pathways for energy projects.

## Models

### **Contracting with Investor-Owned Utilities**

Section 14 of ch. 25A provides a limited exemption to public construction bid laws for municipalities contracting with their investor-owned electric or gas utility for energy conservation projects that cost \$100,000 or less. The projects are part of the statewide, mandated energy efficiency program administered by the utilities.

Investor-owned utilities select the vendors through a bidding process. The utilities maintain their own list of prequalified vendors (referred to as “approved vendors,” “preferred vendors,” or “project expeditors”) to complete work on such projects.

### **Energy Management Services**

Communities that solicit energy management services (EMS) providers look for a single qualified vendor to provide the full range of services needed to complete a project, including conceptualization, design, construction, post-construction monitoring and verification, and a performance guarantee.

M.G.L. ch. 25A provides two procurement pathways for EMS: section 11C, which is an advertised request for proposals (RFP) process, and section 11I, which is an advertised request for qualifications (RFQ) process.

- **Choosing an RFP**

The RFP process allows a municipality to evaluate a price proposal as well as qualifications from a responding vendor for a defined scope of work.

- **Advantages** –The RFP process allows municipalities to compare cost and pricing information up front.
- **Disadvantages** – Preparing a full proposal is costly for prospective vendors, and may restrict the response pool.

- **Choosing an RFQ**

The RFQ process allows a community to select a vendor based on qualifications and negotiate a final scope of work based on the recommendations of the qualified vendor.

- **Advantages** – The RFQ process allows more flexibility. For municipalities that want to participate in a group procurement, this flexibility can allow vendors to negotiate agreements with municipalities post-selection that are closely tailored to local needs. By requesting information on “cost-based factors” from respondents (such as soft-cost mark-ups, audit cost per square foot, or assumptions about utility or other incentives) municipalities can still make apples-to-apples comparisons of some cost factors.
- **Disadvantages** – Since the selection of a winning vendor in an RFQ process is based entirely on qualifications, the quality of the RFQ, as well as the thoroughness of the selection committee, is paramount in selecting a long-term EMS provider. It is critical that the provider selected will offer the best value of service and be a reliable business partner for the duration of the EMS agreement, which can extend up to 20 years. As with an RFP process, communities should take great care in ensuring that they are asking for the qualifications that they need to feel confident about awarding an EMS agreement, checking project references in addition to the top references listed, and doing research into a prime respondents’ preferred subcontractors or team partners (if applicable).

## **Allowable Projects**

### **Energy and Water Conservation Measures**

For energy and water conservation measures (ECMs), EMS providers are DCAMM-certified energy services companies (ESCOs). ESCOs will evaluate multiple buildings for potential energy conservation projects and propose a scope of work. Third-party financing is often used to pay for such work, allowing for little or no up-front cost. In this financing scenario, a municipality will sign a performance contract (up to 20 years) with the ESCO and the ESCO will guarantee that the energy savings from the project investments will be equal or greater to the project costs. (For

more information on working with ESCOs, see the [Use a Performance Contract for Municipal Efficiency Projects](#) strategy.)

## Renewables

Sections 11C and 11I also allow for the public procurement of onsite energy generation, such as solar, wind, cogeneration, etc. A municipality contracting for solar EMS can issue an RFP or RFQ under 25A to select a provider that will design, engineer, install, finance, own, and operate a solar photovoltaic system or systems with guaranteed output. In a solar EMS contract, communities agree to lease space for the solar array, as well as purchase the power it generates. (For more information on solar EMS, see the [Contract for Solar Energy Management Services](#) strategy.)

In issuing a solicitation for solar EMS pursuant to 25A, communities should consider the following elements:

- The more information on potential sites and energy consumption history included in the solicitation, the more accurate the proposals will be. Include the addresses of potential sites, approximate roof area, years remaining on roof warranty, and any energy account information (including competitive suppliers).
- Many responses to a solar EMS solicitation will be from a team consisting of a DCAMM-certified solar developer, a backing source of capital, and (sometimes) a preferred engineering firm. Municipalities should consider the qualifications of all parties involved in a teaming arrangement, as individuals and as a team, and make sure it is clear who will be responsible for what components of the scope of work, as well who will be the main point of contact. Ideal teaming arrangements will be complementary, rather than redundant, with a past history of successful projects.
- If participating in a group solar EMS procurement, consider whether the solicitation will be awarded to one developer or two or more developers. An award to a single developer may result in better pricing, but pose capacity/response time issues and eliminate smaller, local companies from consideration.

## Streetlights

Streetlights are increasingly included in EMS projects, whether together with ECMs and onsite energy generation or as standalone projects. One way to implement and finance a standalone streetlight upgrade as a package of services, including the lighting audit and design work necessary to undergo a comprehensive retrofit, is to bid out the project under 25A. These projects can be financed out of energy cost savings or paid for up front, depending on the community's ability to secure capital for the project.

DOER has advised that DCAMM certification in EMS is not required to respond to a 25A streetlight project if a respondent has DCAMM certification in the Electrical category. Teaming

arrangements are permitted for responses to these projects, but the installation work must be completed by a DCAMM-certified entity. (For more information, see the [Buy Back Streetlights from Utility](#) and [Retrofit Streetlights with LEDs](#) strategies.)

## Group EMS Procurements

Teaming up to jointly bid for EMS projects has the advantage of attracting a greater number of proposals (particularly for communities with small projects); reducing administrative costs and overall project costs through economies of scale; and combining institutional knowledge from a inter-municipal team of experts, resulting in a more rigorous evaluation of solicitation documents, responses, interviews and final EMS agreements. The disadvantage of group EMS procurements include increased complexity in reviewing qualifications if the project scopes for each municipality are not aligned and potential slow response time if the selected vendor is not prepared to handle multiple communities at once. Selection committee members should meet in advance of beginning the process to ensure that all parties are on the same page. Regional planning agencies (RPAs) can be a resource for helping to coordinate and administer group EMS procurements.

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## References

- “Energy Management Services (EMS).” Massachusetts Department of Energy Resources. (2013) <http://www.mass.gov/eea/energy-utilities-clean-tech/green-communities/ems.html>
- “Guidance on the Application of Section 44 of the Green Communities Act of 2008.” Massachusetts Department of Energy Resources. (2009) <http://www.mass.gov/eea/docs/doer/green-communities/pubs-reports/contract-guidance.pdf>
- “Community Shared Solar: Implementation Guidelines for Massachusetts Communities.” Massachusetts Department of Energy Resources. (2013) <http://www.mass.gov/eea/docs/doer/renewables/solar/community-shared-solar-implementation-guidelines-with-contracts-032913.pdf>