



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
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SERVING THE PUBLIC AND DELIVERING ESSENTIAL SERVICES TO STATE GOVERNMENT

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June 26, 2024

Senator Craig Hickman
Representative Jessica Fay
Government Oversight Committee
c/o Office of Program Evaluation and Government Accountability
82 State House Station
Augusta, ME 04333-0082

Dear Senator Hickman, Representative Fay, and members of the Government Oversight Committee,

The Department of Administrative and Financial Services is in receipt of Representative Fay's request that the Government Oversight Committee consider an OPEGA evaluation of the State of Maine's procurement process for goods and services.

Procurement's purpose is to provide a competitive, open and transparent process that yields the best value when spending taxpayer dollars. But admittedly, the knowledge about how that objective is accomplished resides with a small, highly specialized group of public servants, and outside of those who regularly engage in the competitive bid process it can look complicated, intimidating, and difficult to break into. Procurement is one of those areas of State government that legislators don't pay a lot of mind to until, either: a business in their district feels aggrieved they didn't win a State contract, or a high-profile appeal gains the news media's attention. Even before the State and Local Government Committee, which is DAFS' committee of jurisdiction for the Bureau of General Services, Office of Procurement Services, the State of Maine's procurement laws, rules and processes are rarely a topic of discussion.

DAFS takes seriously the right of citizens to both understand and engage with their government and would welcome the opportunity to provide the GOC with an overview of the principles that guide State procurement, the processes and standards that the Office of Procurement Services staff are charged with upholding, and improvements the Office is already implementing. DAFS believes that we can satisfactorily answer the questions posed in Representative Fay's letter as well as those that may arise during an open dialogue with the Committee. This could either serve to focus the Committee's direction to staff if you move forward with an OPEGA evaluation, or potentially, allow you to determine that OPEGA's resources are better committed elsewhere.

In providing this initial response, we want to briefly touch on the general causes for concern cited in Representative Fay’s request.

When a business in your district reaches out to you because they feel they should have won an award, DAFS fully recognizes the tension that exists between the best value for the taxpayer’s dollar and the impact on that business and perhaps your district more broadly. Government contracts are big business; they often guarantee a substantial amount of work and can be worth a lot of money. Winning a State contract can present a transformative opportunity for a growing business. For businesses heavily engaged in government contracting, their workforce levels often fluctuate with the volume of work secured. And unfortunately, losing a contract that a business has become accustomed to receiving can be devastating. However, it should also be recognized that Procurement receives an approximate average of six submissions per solicitation, so it is a simple mathematical reality that the competitive bid process yields more disappointed participants than winners.

Award decisions must be justified and are well documented, so if a business in your district isn’t the prevailing bidder, they should be aware that all participating bidders are entitled to receive and review their competitors’ bid submissions and the review panel’s scoring packets. Only about 20% of bidders request these materials, but there is valuable insight to be gleaned from this public information and bidders may learn how to be more successful in future bid submissions from studying them. System upgrades in the process of being implemented will make these documents easily downloadable from the State’s Vendor Self Service Portal, like commodity RFQs and contracts already are. Finally, if an unsuccessful bidder still feels like the award was fundamentally unfair, they can appeal.

There have been a couple of high-profile appeals recently, which may seem concerning, but from DAFS/Procurement’s perspective, appeals are a routine part of an open, fair, and transparent process—in and of itself, an appeal is not indicative of a systemic issue. Procurement’s adherence to process and standards is intended to minimize the number of awards appealed and subsequently the number of awards invalidated. However, Procurement administers more than 200 competitive RFP/A/I processes annually and on average four awards (2%) will be appealed, with more than half of those awards validated upon appeal. It’s also true that the total value appealed tends to account for a disproportionate percentage of the total value of all awards—this is because it’s often worth filing an appeal simply due to the value of the contract at play, either for the unsuccessful bidder’s own benefit or to deny a competitor the benefit. The chart that follows demonstrates that a small number of appeals focus on high stakes awards.

CY	RFP	RFA	RFI	Other	Total	Total Value	Appeals	Appeals Value	Invalidated
2022	160	45	3		208	\$378,233,334	4	\$ 31,775,977	2
2023	198	49	6	1	254	\$265,992,263	4	\$76,050,000	1
2024 (YTD)	80	22	1	1	104	\$88,840,517	3	\$2,445,000	all pending

The appeal process also provides an opportunity for Procurement’s work to be reviewed and the means to acknowledge and correct our mistakes in the small number of cases when an incorrect determination was reached, or the process wasn’t open, fair, and transparent.

Finally, we hope that at a future date the GOC will allow us the opportunity to highlight the initiatives and systems upgrades the Office of Procurement Services has spearheaded upon identifying their own potential for improvement.

- As previously alluded, budget funding has been provided for the implementation of a new vendor portal for RFP/A/I solicitations that will replace the legacy website posting and email response system, facilitate online bid submissions, and make procurement documents easily downloadable consistent with the public's modern information accessibility expectations.
- Procurement is in the content creation phase of a training and certification program for the educational benefit of the State departments and agencies they serve. Both instructor led and asynchronous modules will be deployed through the new statewide Learning Management System (LMS) launching in the next year.
- Procurement has also launched the Maine Accessible Procurement (MAP) initiative. The goal of this initiative is to make the procurement process accessible to a full range of vendors and to pull in new participants. Expanding the pool of businesses and organizations bidding on State contracts increases competition both with regard to quality of services proposed and cost containment. It also spreads the financial benefit of State contracting more broadly throughout all of Maine's communities.

All of this is evidence that the Office of Procurement Services is a reflective and forward-thinking organization that accepts and is responsive to feedback. DAFS/Procurement looks forward to engaging fully with the GOC in a conversation about the State's procurement of goods and services.

Respectfully,



Kirsten LC Figueroa
Commissioner