

OPEGA  
REPORT



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# Office of Cannabis Policy: Identification and Management of Conflicts of Interest in Procurement

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September  
2025

a report to the  
Government Oversight Committee and the Legislature  
from the  
Office of Program Evaluation & Government Accountability  
of the Maine State Legislature

## **Government Oversight Committee of the 132<sup>nd</sup> Legislature**

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PETER SCHLECK  
DIRECTOR



MAINE STATE LEGISLATURE  
OFFICE OF PROGRAM EVALUATION AND  
GOVERNMENT ACCOUNTABILITY

September 17, 2025

The Honorable Craig V. Hickman, Senate Chair  
The Honorable Anne-Marie Mastraccio, House Chair  
Members of the Government Oversight Committee

Dear Government Oversight Committee Members:

As directed by the 132<sup>nd</sup> Legislature's Government Oversight Committee, and in accordance with the scope approved by the Committee, I respectfully submit the Office of Program Evaluation and Government Accountability (OPEGA) Report on Office of Cannabis Policy: Identification and Management of Conflicts of Interest in Procurement.

OPEGA's service to the Legislature as an independent, non-partisan resource is meant to support the important role of legislative oversight and to help improve the performance of State government. We remain committed to serving Maine's legislators and citizens as a trusted source of objective, credible information.

Sincerely,

A handwritten signature in black ink, reading "Peter Schleck".

Peter Schleck  
Director

cc: Darek M. Grant, Secretary of the Senate  
Robert B. Hunt, Clerk of the House

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# Acronyms Used in this Report

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AHP	Advocates for Human Potential
CPPC	Cannabis Public Policy Consulting
DAFS	Department of Administrative and Financial Services
GOC	Government Oversight Committee
NASPO	National Association of State Procurement Officials
OCP	Office of Cannabis Policy
OPEGA	Office of Program Evaluation and Government Accountability
OSPS	Office of State Procurement Services
PJF	Procurement Justification Form
RFP	Request for Proposal

# Introduction

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## Background and Scope

On February 14, 2025, Representative David Boyer appeared before the Government Oversight Committee (GOC) and raised three “areas of concern”<sup>1</sup> relating to the operations of the Office of Cannabis Policy (OCP) within the Department of Administrative and Financial Services (DAFS). The GOC subsequently voted to direct the Office of Program Evaluation and Government Accountability (OPEGA) to review one of these concerns, which Representative Boyer asserted was “. . . [t]he appearance of a conflict of interest between OCP Director John Hudak<sup>2</sup> and the State-mandated software company METRC.”

The GOC specified the following scope of work for OPEGA’s review:

“Since its inception, how have standards and requirements been applied in the Office of Cannabis Policy to identify, disclose, manage, or mitigate potential or actual conflicts<sup>3</sup> of interest in contracting activity?”

Consequently, this report presents OPEGA’s results in two parts:

- I. The concern regarding whether there was an appearance of a conflict of interest between the OCP Director and the State-contracted software company METRC; and
- II. Overall conclusions, issues, and recommendations for improvement, based on OPEGA’s:
  - Consideration and analysis of relevant policies, processes, and practices; and
  - Review of five OCP procurements that occurred since the inception of the office in 2019.

Under Maine’s hybrid procurement structure, the Office of State Procurement Services (OSPS) within DAFS standardizes policies and procedures to ensure consistent decision-making and efficient collaboration between OSPS and agency staff, while operational aspects of procurement are the responsibility of individual agencies (see Appendix D). As a result, this review focuses on OCP, as well as DAFS/OSPS.

## Results in Brief

### The concern raised by Representative Boyer

The contract (and more specifically, a subsequent amendment’s negotiations and execution) at issue here was between OCP and METRC, the State’s software vendor for adult-use cannabis and cannabis product inventory tracking. The original METRC contract pre-dated the OCP Director’s

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<sup>1</sup> Representative Boyer read from his letter to the GOC of that same date, which may be found at the following link: <https://legislature.maine.gov/doc/11564>

<sup>2</sup> At times we use “Director Hudak” or “the OCP Director” to refer to the current incumbent of that office. A prior director is mentioned by name later in this report.

<sup>3</sup> For the purposes of this report, we refer to a “potential” conflict of interest as any circumstance an employee may raise or have concerns about being a conflict of interest or an appearance of one. An “actual” conflict of interest is a financial interest within the meaning of the relevant statutory provisions requiring disqualification of the employee from the proceeding, as described later in this report.

tenure in his position with the State of Maine, while the subsequent amendment process occurred in part both before and then during the OCP Director's tenure.

At the heart of the stated concern was that the OCP Director, prior to his tenure with the State, had a relationship at a company, *other than* METRC, with an individual who later worked at METRC at the time of the METRC contract amendment process with OCP. The other company was FREEDMAN & KOSKI, and the other individual was Lewis Koski. The OCP Director has described himself both as a friend of Lewis Koski, and as a co-founder of FREEDMAN & KOSKI. FREEDMAN & KOSKI also contracted earlier with the State concerning cannabis regulation.

To assist the reader in understanding relevant events, their timing, and potential relevance to whether they gave rise to the appearance of a conflict of interest as asserted, OPEGA has documented a Timeline of Facts and Events, which begins on page 7.

**In brief, and with respect to the specific concern raised by Representative Boyer, OPEGA's review disclosed:**

- The OCP Director, in his own words, had “never worked for, taken money from, or had a financial stake in METRC.”
- Although Lewis Koski worked at METRC:
  - Lewis Koski was not involved in the METRC contract amendment process; and
  - The OCP Director's professional relationship with Lewis Koski ended over three years prior to commencement of the Director's involvement in the METRC contract amendment process.
- While the OCP Director described himself to OPEGA as a co-founder of FREEDMAN & KOSKI, he did not ever have any ownership or equity in FREEDMAN & KOSKI. His role was limited to performing periodic consulting services for FREEDMAN & KOSKI for which he was compensated on a contract basis.

The relevant conflict of interest statute covers a prior business relationship by an executive employee *as a partner or fellow shareholder* of a professional services corporation *within one year prior* to the official participation in a proceeding. As applied to these facts, the OCP Director was neither a partner of Lewis Koski nor a shareholder in METRC or FREEDMAN & KOSKI.

DAFS advised OPEGA that it has interpreted the “appearance” provision of relevant conflict of interest statute<sup>4</sup> to only cover enumerated relationships when there is a particular financial interest, not a personal friendship. Yet at the same time, internal DAFS/OSPS training materials, in the judgment of OPEGA, appear somewhat inconsistent with this interpretation, and warrant further review. The internal training materials OPEGA reviewed suggested that “... any relationship that could be construed by the public as personal” was within the realm of potential conflict of interest concern. DAFS advised OPEGA that the broader description of potential conflicts of interest in training materials is to encourage open discussions that raise potential scenarios that can then be

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<sup>4</sup> See 5 M.R.S. § 18(7), found at the following link: <https://legislature.maine.gov/statutes/5/title5sec18.html>, and the more detailed discussion beginning on page 9.



evaluated for identification or dismissal of an appearance, potential, or actual conflict of interest. The OCP Director has described Lewis Koski as a friend, in addition to having had a contractual business relationship. OPEGA observed a lack of clarity regarding whether any non-financial connection that might raise questions about an executive official's impartiality could be considered a conflict of interest.

Prior relevant proposed legislation on “appearance” concerns was seemingly more prescriptive, but never enacted, raising the possibility that the Legislature may or may not wish to revisit this area of statute. See Appendix F for a summary of that legislative history.

Late in our field work, DAFS produced an email, which was sent by the OCP Director, prior to his tenure with the state of Maine, to the official who would become his immediate supervisor, DAFS Deputy Commissioner Anya Trundy. In the email, the OCP Director wrote, in part: “while I have worked with someone<sup>5</sup> who is now an employee [at METRC], I severed a working relationship with him prior to his taking that post.”

**OPEGA is not in a position to render an authoritative legal opinion, but generally acknowledges that:**

The facts do not support a conclusion that disclosure (by the OCP Director of the prior relationship with Lewis Koski, or “abstention”—not participating at all—) was required by statute in relation to the METRC contract amendment.

See page 7 for more on this matter.

For a variety of reasons we set forth in Part II of this report, OPEGA concluded that DAFS should seek to enhance its policies to provide better guidance for these matters. Greater clarity and rigor in DAFS/OSPS procedure—particularly as to the importance of OSPS and agency roles and responsibilities in documenting conflict of interest disclosures and abstentions—should be pursued, and OPEGA acknowledges DAFS is in the process of doing just that by creating a formal written policy, which was provided to OPEGA in draft toward the end of our work.

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<sup>5</sup> While OPEGA's understanding that this “someone” was referring to Lewis Koski, Lewis Koski is not explicitly referenced by name in the email.

### **Overall Conclusions, Issues, and Recommendations Based on our Review of Five OCP Procurements, and Consideration of Current Statute and DAFS Policies and Procedures**

We considered current statute, and DAFS policies, practices, and procedures, in reviewing five OCP procurements (including the METRC contract and related amendment).

#### **As a result, OPEGA concludes the following:**

- There was no clear, formal written policy within DAFS outlining how a potential conflict of interest should be disclosed or managed in relation to OCP contracting activity;
- There was a lack of adequate documentation of potential or actual conflicts of interest in instances in which such matters were identified and disclosed. The absence of an adequate written record can inhibit later review and assurance that such matters were handled appropriately; and
- OPEGA found that OCP considered conflicts of interest at several points in the procurement processes that we reviewed and OCP complied generally with current applicable requirements.

#### **OPEGA recommends that DAFS:**

- Provide clear, thorough, formal guidance to agencies, including OCP, on how to identify, disclose, manage, or mitigate potential and actual conflicts of interest throughout contracting activities; and
- Such policy should include both OSPA and agency roles and responsibilities regarding requirements for documentation and records retention of disclosures of conflicts of interest and abstentions from contracting activities based on actual or appearance of conflict of interest.

#### **In response to OPEGA's review, DAFS:**

- Shared with OPEGA draft documents seeking to “formalize [the] previously unwritten approach to handling Conflict of Interest (COI) inquiries and some enhancements suggested by the Office of the State Controller and our Assistant Attorney General;”
- “Recogniz[ed] the need for a more structured and transparent process;” and
- Indicated that components of the draft policy will include:
  - A formal written policy outlining the conflict of interest inquiry process;
  - Clearly established agency and staff responsibilities;
  - An internal conflict of interest reporting form;
  - Integrated SharePoint functionality to support tracking, shared documentation, and visibility; and
  - Additional updates and clarifications based on review recommendations from the State Controller and the assigned Assistant Attorney General.

Detailed discussion of our Conclusions begins on page 14 of this report, with our Recommendations further explained beginning on page 21.

# Part I. Concern Raised Regarding Appearance of Conflict of Interest

*[Whether there was] . . . “[t]he appearance of a conflict of interest between OCP Director John Hudak and the State-mandated software company METRC.”*

## Timeline of Facts and Events

OPEGA’s review disclosed the following relevant facts and events through our interviews and record reviews. As detailed below, it is necessary to understand how certain individuals and entities intersected with each other initially, and then later, in the context of Maine’s then-emerging regulatory environment for cannabis. At the heart of the stated concern was that the OCP Director, prior to his tenure with the State of Maine, had a business relationship at a company, *other than* METRC, with an individual who later worked at METRC during the pendency of certain METRC contract amendment negotiations with OCP. The other company was FREEDMAN & KOSKI, and the other individual was Lewis Koski.

### History of the Relationship Between OCP Director Hudak and Lewis Koski

- Prior to his appointment as the Director of OCP, Hudak was employed at the Brookings Institution (“Brookings”) for about 10 ½ years (from 2013–2022). While at Brookings, Hudak also worked as a consultant. According to Director Hudak, in 2017, Hudak “co-founded” FREEDMAN & KOSKI,<sup>6</sup> a cannabis consulting firm, with Andrew Freedman and Lewis Koski.
- Director Hudak advised OPEGA that he did not, however, have any ownership or equity stake in the FREEDMAN & KOSKI firm (Andrew Freedman and Lewis Koski each retained 50% ownership), nor was he a salaried employee.<sup>7</sup> Rather, Hudak worked on a contract-basis for specific projects. Hudak remained on a contract-basis until 2022, although by that time, as described below, Lewis Koski had left the FREEDMAN & KOSKI firm. Director Hudak told OPEGA he has also maintained a friendly relationship with Lewis Koski over time.

### FREEDMAN & KOSKI’s Contract with the State of Maine

- FREEDMAN & KOSKI’s first contract with Maine was in the fall of 2018—prior to the inception of OCP—when DAFS awarded FREEDMAN & KOSKI an emergency sole-source<sup>8</sup> contract for emergency rulemaking to implement P.L. 2017, ch. 447 (LD 238), *An*

<sup>6</sup> FREEDMAN & KOSKI was primarily a government services firm focused on developing and implementing cannabis legalization policy for the medical and adult-use components of the cannabis industry.

<sup>7</sup> Andrew Freedman and Lewis Koski both agreed to be interviewed by OPEGA and confirmed this account.

<sup>8</sup> The justification for the sole-source contract documented in the waiver of competitive bidding request form stated that LD 238 allowed for medical use cannabis processing and manufacturing, including processing through the use of inherently hazardous substances and that without the rules to govern these potentially dangerous activities, the health of Maine citizens, their property and the safety of their communities would be put at risk. The justification included that there was no available expertise in the state that could provide the necessary expertise in an emergency fashion meeting the state’s need for timely implementation.

*Act to Amend the Maine Medical Use of Marijuana Act*,<sup>9</sup> which required DAFS to adopt rules governing cannabis manufacturing facilities. Subsequently, DAFS posted a Request for Proposals (RFP) for rulemaking pursuant to LD 1719, *An Act to Implement a Regulatory Structure for Adult Use Marijuana*<sup>10</sup> and LD 1539, *An Act to Amend Maine's Medical Marijuana Law*,<sup>11</sup> which was also ultimately awarded to FREEDMAN & KOSKI in February 2019,<sup>12</sup> the same month that OCP was officially established within DAFS.

- The contract with FREEDMAN & KOSKI ultimately ran from March 2019 through March 2022. At the beginning of the contract, in March 2019, Lewis Koski joined METRC as Chief Operating Officer. This was during an approximately 3-month transition period in which Lewis Koski was winding down his work with FREEDMAN & KOSKI while working at METRC, and by late summer 2019, Lewis Koski had fully divested from FREEDMAN & KOSKI.
- Although Andrew Freedman never officially changed the name of FREEDMAN & KOSKI<sup>13</sup> following Lewis Koski's exit, OPEGA was told that Andrew Freedman did refer to the firm as Andrew Freedman Consulting. Eventually Andrew Freedman began a separate new venture, Cannabis Public Policy Consulting (CPPC), as discussed on page 12.

#### **METRC and the State of Maine**

- In February 2019, the newly established OCP also announced an award with METRC for a cannabis seed-to-sale tracking system,<sup>14</sup> piggy-backing off of a competitive bidding process in Alaska.<sup>15</sup> However, this contract was not ultimately executed and DAFS/OCP instead conducted a competitive bidding process, launching a new Request for Proposal (RFP) in March 2019.
- In March 2019, Lewis Koski joined METRC as Chief Operating Officer.<sup>16</sup>

<sup>9</sup> [https://legislature.maine.gov/legis/bills/bills\\_128th/chapters/PUBLIC447.asp](https://legislature.maine.gov/legis/bills/bills_128th/chapters/PUBLIC447.asp)

<sup>10</sup> [https://legislature.maine.gov/legis/bills/bills\\_128th/chapters/PUBLIC409.asp](https://legislature.maine.gov/legis/bills/bills_128th/chapters/PUBLIC409.asp)

<sup>11</sup> [https://legislature.maine.gov/legis/bills/bills\\_128th/chapters/PUBLIC452.asp](https://legislature.maine.gov/legis/bills/bills_128th/chapters/PUBLIC452.asp)

<sup>12</sup> This contract had originally been awarded to BOTECH, but FREEDMAN & KOSKI appealed that award based on a part of the RFP scoring having to do with a Maine Business and Economic Impact Consideration. DAFS canceled the award, and re-posted the RFP, but with some changes and without that provision. The new RFP was awarded to FREEDMAN & KOSKI. Although BOTECH appealed alleging a variety of concerns— one of which included an allegation of a potential conflict of interest due to Lewis Koski's dual role with both FREEDMAN & KOSKI and METRC, BOTECH ultimately withdrew that appeal.

<sup>13</sup> Today FREEDMAN & KOSKI as an entity is wholly owned by Andrew Freedman and technically still exists on paper but is no longer in business.

<sup>14</sup> OCP is required to implement and administer a tracking system for the purpose of tracking cannabis from immature plant to the point of retail sale, return, disposal or destruction. 28-B MRSA §105. This is commonly referred to as a cannabis "seed-to-sale" tracking system, and the process of users of the system software continually updating their inventory in the software is known as "track-and-trace."

<sup>15</sup> The state may choose to participate in the procurement process with other states regionally or nationally for the purpose of cooperative purchasing with other states who have similar procurement processes. More information on this process may be found here:

<https://www.maine.gov/dafs/bbm/procurementservices/reports/multi-state-cooperative-purchasing>

<sup>16</sup> When METRC submitted a bid for the seed-to-sale contract, METRC included in the conflict of interest section that Lewis Koski had joined METRC and that METRC did not believe that Koski's role as rule advisor for FREEDMAN & KOSKI and his position of COO of METRC created any conflict legally or ethically. By the time

- During Spring 2019, the Seed-to-Sale contract was awarded to a company called BIOTRACK.<sup>17</sup> OCP and BIOTRACK began rolling out the new system.
- However, by December 2019 OCP announced that the contract with BIOTRACK had been mutually terminated. Rather than further delay the rollout of the adult-use cannabis market by restarting the RFP process, OCP announced that they intended to go with second place bidder, METRC.
- OCP and METRC agreed to contract terms in February 2020. The contract was for \$540,000 running from 2/5/2020 through 2/4/2026 for a commercial-off-the-shelf tracking system.
- Adult-use cannabis sales were launched in Maine in October 2020.

#### **Batch Tracking Legislation and Early Contract Amendment Negotiations**

- During the 130<sup>th</sup> Legislature, the Joint Standing Committee on Veterans and Legal Affairs considered legislation that proposed to implement batch tracking.<sup>18</sup> This legislation was enacted and became effective in August 2022.
- Earlier in May 2022, Lewis Koski, who had been Chief Operating Officer at METRC, moved into a new role as METRC's Chief Strategy Officer. In this new role, Lewis Koski was focused solely on international opportunities.
- In the summer of 2022, then-OCP Director Erik Gunderson began contract amendment negotiations with METRC to implement the new batch-tracking requirement. Director Gunderson and METRC provisionally agreed to terms of the contract amendment, and Director Gunderson delivered the proposal to DAFS leadership in October 2022, as he was exiting OCP. DAFS leadership, however, determined that the terms were not favorable to the State and did not move forward with the proposed contract amendment. Instead, DAFS reached out to a former employee, Dick Thompson, who was previously the State's Procurement Officer and State Chief Information Officer, and had recently retired from the DAFS Deputy Commissioner role. Thompson was brought back in to help with the contract amendment, restarting conversations with METRC.

#### **Director Hudak's Role and METRC Contract Amendment**

- During Director Hudak's hiring process in early December 2022, Hudak informed Deputy Commissioner Anya Trundy—who would become his direct supervisor—via an email<sup>19</sup> that he had never worked for, taken money from, or had a financial stake in METRC and that,

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METRC was awarded the contract following the mutual termination with BIOTRACK, Lewis Koski had fully separated and divested from FREEDMAN & KOSKI.

<sup>17</sup> Although similar in name, BIOTRACK is not the same as, nor affiliated with, the previously-mentioned BOTE.

<sup>18</sup> Batch tracking refers to the requirement that cannabis plants at the same stage of growth that are the same varietal or cultivar of the plant genus Cannabis may be tracked by group if they meet certain criteria. 28-B MRSA § 105(1-A).

<sup>19</sup> This email documentation was not readily available with contract documentation initially provided by DAFS, but was provided to OPEGA during the course of our review.

while he worked with someone who was now an employee at METRC, he had severed his working relationship with that person prior to that person taking the METRC position. Although not specifically named in the email, this person is, presumably, Lewis Koski.

- Director Hudak was appointed as OCP Director effective December 30, 2022, and was informed that negotiation of the METRC contract amendment would be a top and immediate priority.
- Between January and March 2023, OCP and METRC negotiated the contract amendment. Director Hudak relied on the knowledge and experience of Dick Thompson. OCP Deputy Directors Vern Malloch and Lisa Roberts were also involved in the negotiations. METRC employees involved in the contract negotiations included METRC's Chief Financial Officer, Chief Technology Officer, Chief Legal Officer, Senior Vice President of Growth, Customer Service Management Leader, and Vice President of External Affairs & Business Development. OPEGA did not observe any evidence that Lewis Koski was involved in the contract amendment negotiations, nor any evidence to indicate that Director Hudak's relationship with Lewis Koski influenced the contract amendment negotiations.
- The contract amendment was signed by Director Hudak on 3/31/2023, reviewed and approved by the Director of IT Procurement on 4/3/2023, and reviewed and finalized by OSPS on 4/13/2023. The amendment adjusted the contract amount by \$350,000 (for a total of \$890,000) but kept the expiration of the contract of 2/4/2026.

## Conflict of Interest Statute

5 M.R.S. § 18(2)<sup>20</sup> prohibits executive employees<sup>21</sup> from participating in certain proceedings—including contracting—in which they have a direct and substantial financial interest, and subsection (7) of that statute requires executive employees to endeavor to avoid the appearance of a conflict of interest by disclosure or abstention. At the same time, the statute does not define what constitutes an appearance nor does it include a definition of the term “conflict of interest.”<sup>22</sup>

The full text of 5 M.R.S. § 18(2) reads as follows:

**2. Executive employee.** An executive employee commits a civil violation if the executive employee personally and substantially participates in an official capacity in any proceeding in which, to the executive employee's knowledge, any of the following have a direct and substantial financial interest:

- A. The executive employee or the executive employee's spouse or dependent children;
- B. The executive employee's partners;
- C. A person or organization with whom the executive employee is negotiating or has agreed to an arrangement concerning prospective employment;
- D. An organization in which the executive employee has a direct and substantial financial interest; or
- E. A person with whom the executive employee has been associated as a partner or a fellow shareholder in a professional service corporation pursuant to Title 13, chapter 22-A during the preceding year.

<sup>20</sup> See Appendix E for a range of related provisions.

<sup>21</sup> See Appendix E for the definition of “executive employee.”

<sup>22</sup> 5 MRSA § 18(7) does provide that “conflict of interest” includes receiving remuneration, other than reimbursement for reasonable travel expenses, for performing functions that a reasonable person would expect to perform as part of that person's official responsibility as an executive employee.

DAFS has asserted to OPEGA that the test of a conflict of interest is financial benefit to the employee and others listed in 5 M.R.S. § 18(2),<sup>23</sup> and therefore an appearance of a conflict of interest requires the appearance of a financial benefit. From this perspective, DAFS asserted that Director Hudak did not have an appearance of a conflict of interest.<sup>24</sup>

As noted in the Maine Commission on Governmental Ethics and Election Practices Report on Ethics Laws for Executive Branch Employees (2009), presumably the activities forbidden in 5 M.R.S. § 18(2) (as well as those in subsections 2-A and 3 relating to participation in the legislative process and former executive employees, respectively) are intended to constitute a conflict of interest, but they are not referred to as such.<sup>25</sup> By this interpretation, one could conclude that an appearance of a conflict of interest constitutes only an appearance that the executive employee has a direct and substantial *financial* interest in the proceeding as prohibited in subsection 2.

OPEGA is not in a position to render an authoritative legal opinion. OPEGA is aware of an Attorney General Opinion applying 5 M.R.S. § 18(7)'s appearance provision, which asserts that its underlying purpose is to preserve and protect the public's confidence in the integrity of public servants and the processes in which they participate and through the lens of transparency and government accountability. As stated in this Opinion, "[p]reserving the public's confidence in public agencies and institutions lies at the very heart of the requirement that executive employees endeavor to avoid the appearance of a conflict of interest, even where no actual violation of law may have occurred." This provision is intended to send a "clear message to executive employees that they should be alert to the need to evaluate their actions and interests so as to eliminate even the appearance of impropriety."<sup>26</sup>

### **DAFS Training on Appearance of Conflict of Interest**

OPEGA reviewed the training on ethics in procurement processes conducted by DAFS/OSPS and available on DAFS intranet. The training, like best practices literature OPEGA reviewed from the National Association of State Procurement Officials (NASPO), covers not only those situations in which there may be an appearance of a financial interest, but also those situations in which there may be an appearance of other types of potential for conflict. In this regard, the training covers situations beyond those in statute.

In contrast to 5 M.R.S. § 18(2), DAFS/OSPS ethics training defines a "conflict of interest," as when "a public official has a private or other interest that influences or appears to influence the impartial and objective performance of his or her duties." Examples include a close relationship with a bidding company, economic interest in a bidding company, and prospects of future employment

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<sup>23</sup> See also 5 M.R.S. § 18-A(2) and 17 M.R.S. § 3104, discussed in Appendix E.

<sup>24</sup> 5 M.R.S. § 18(6) also provides that if other statutory conflict of interest provisions pertaining to any state agency are more stringent than those provided in Title 5, the more stringent provisions apply. OPEGA is not aware of such other *statutory* provisions applicable to OCP.

<sup>25</sup> The full text of this report may be found here:

[https://www.maine.gov/ethics/sites/maine.gov.ethics/files/inline-files/executive\\_ethics.pdf](https://www.maine.gov/ethics/sites/maine.gov.ethics/files/inline-files/executive_ethics.pdf)

<sup>26</sup> Me. Op. Atty. Gen. No. 00-02 (Me.A.G.), 2000 WL 33408763, ¶18-19. To be clear, however, the subject matter of this Opinion involved an appearance concern associated with a particular *financial interest* of a public official—personally-owned land near a proposed turnpike interchange, so the Opinion is factually distinct from the present circumstances.



with a bidding vendor. This guidance appears to be much broader in scope than the statutory limitations already discussed.

Best practice may be to identify anything that could potentially be perceived by others as a conflict of interest or even the appearance of a conflict of interest, for consideration and resolution by others in the chain of command. The State must balance ensuring that the State is getting the best services for the best value, while also ensuring public trust in the process and the outcome.

The relevant “appearance” statute, and its legislative history,<sup>27</sup> appear to recognize the need for this balance by explicitly disqualifying executive employees from certain proceedings in which they have a direct and substantial *financial* interest and—in the specific case of contracting activity—a direct or indirect pecuniary interest,<sup>28</sup> but at the same time requiring that executive employees endeavor to avoid the appearance of a conflict of interest by disclosure or abstention. Accordingly, the Ethics Commission’s Report on Ethics Laws for Executive Branch Employees also provides that if a situation presents an appearance of a conflict of interest but does not require disqualification, the appearance issue may be resolved through disclosure of the issue to the employee’s direct supervisor.<sup>29</sup>

### **OPEGA Conclusion on OCP Director’s Involvement in METRC Contract Amendment**

In OPEGA’s view, relevant statute does not appear to require a disclosure (or a corresponding abstention) regarding a potential appearance of a conflict of interest between Director Hudak and METRC. OPEGA based this conclusion on the following key facts gathered over the course of our review:

- By his own account, Director Hudak did not—at any time—work for, take money from, or have a financial stake in METRC;
- Although Lewis Koski worked at METRC:
  - Lewis Koski was not involved in the contract negotiation in question; and
  - Director Hudak and Lewis Koski’s financial relationship ended over 3 years prior to the start of the METRC contract amendment negotiations; and
- While Director Hudak stated he was a co-founder of FREEDMAN & KOSKI, Director Hudak did not have ownership or equity in FREEDMAN & KOSKI.

At the same time, in accordance with our recommendations, beginning on page 21, OPEGA suggests that DAFS provide more formal guidance to agencies on conflicts of interest and improve associated documentation.

### **OCP Director’s Recusal from Market, Economical and Statistical Analysis Contracting Process**

In contrast with the circumstances surrounding the OCP Director and METRC, the following is a demonstration of how an appearance of conflict of interest was handled when the OCP Director had a prior *financial* relationship with another vendor, Cannabis Public Policy Consulting (CPPC).

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<sup>27</sup> See Appendix F setting forth how earlier proposed language, never enacted, was more prescriptive. This may or may not be an area the Legislature wishes to revisit.

<sup>28</sup> OPEGA’s understanding is that “pecuniary” interest and “financial interest” are used interchangeably.

<sup>29</sup> See footnote 25 for link to full report.



OPEGA sought information on the nature of the relationship between Director Hudak and CPPC to understand how and why the potential conflict of interest was identified and disclosed, and how it was ultimately managed or mitigated within OCP. Through interviews, review of the relevant contracts, and Director Hudak's annual financial disclosures,<sup>30</sup> OPEGA was able to identify the following facts:

- OCP began contracting directly with an entity, Advocates for Human Potential (AHP), in the Spring of 2020 for data collection and analysis on the effects of the use of cannabis in Maine. AHP had previously worked as a subcontractor under OCP's contract with FREEDMAN & KOSKI. After Lewis Koski left FREEDMAN & KOSKI, Andrew Freedman began a joint venture with the owner of AHP, launching Cannabis Public Policy Consulting (CPPC). CPPC used AHP for back-office support and bookkeeping, and some personnel who contracted with FREEDMAN & KOSKI and/or AHP also contracted with—or ultimately received payment from—this new entity.<sup>31</sup> This includes OCP Director Hudak (prior to his appointment as OCP Director).<sup>32</sup>
- Director Hudak's last contract work for CPPC occurred in 2021, for which he was paid in 2022, and for travel reimbursement for a one-day conference in early December 2022. Director Hudak started with OCP on December 30, 2022. Accordingly, Director Hudak's financial disclosure for 2022 identifies CPPC as income from self-employment.
- In December 2023, Director Hudak learned from his staff that OCP's contract with AHP/CPPC was set to expire in April 2024 (four months away). OCP anticipated posting a new RFP for market analysis, for which CPPC was a likely bidder. Accordingly, the same day that Director Hudak was notified, he emailed his direct supervisor—Deputy Commissioner Anya Trundy—that, given his previous work for AHP/CPPC prior to his start at OCP, he was fully recusing himself from that contracting activity and directed that all conversations or actions related to that contract should run through his Deputy Directors.
- Although Director Hudak was not required to disqualify himself pursuant to the criteria listed in 5 MRSA § 18(2) or 5 MRSA § 18-A, Director Hudak believed that his prior financial relationship with CPPC could create the appearance of a conflict of interest. Consistent with the requirements of 5 MRSA § 18(7) and (8), Director Hudak immediately notified his direct supervisor and abstained from these proceedings.

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<sup>30</sup> As required by 5 MRSA § 19, which is excerpted in Appendix E.

<sup>31</sup> Eventually, Andrew Freedman also stepped back from CPPC. He is no longer involved in the cannabis industry in Maine.

<sup>32</sup> In December 2021, Hudak participated in a site visit by FREEDMAN & KOSKI in Maine to discuss a federal policy update and discuss in-state stakeholder outreach strategy. Hudak did not conduct business with FREEDMAN & KOSKI with the state of Maine after the work related to the December 2021 visit.

## Part II. Review of Five OCP Procurements and Corresponding Conclusions; Two Overall Issues and Recommendations

### Analysis of DAFS and OCP Expectations for Considering Conflicts of Interest

In order to also assess how statutes, policies, and practices have been applied systemically at OCP to potential or actual conflicts of interest considerations in the procurement process over time, OPEGA conducted a detailed review of five procurements that occurred since the inception of the office in 2019.

Table 1: Selected OCP procurements for review by OPEGA

RFP#	RFP Title	Vendor Awarded Contract	Amount	Term
201901014	Consulting Services for Rulemaking Pursuant to LD 1719 and LD 1539	FREEDMAN & KOSKI	\$189,335	2019 - 2020
			\$189,335 (renewal)	2020 - 2021
			\$189,335 (renewal)	2021 - 2022
			\$540,000	2020 - 2026
201903049	Marijuana Seed to Sale Tracking System	METRC	\$350,000 (amendment)	Effective 3/31/23
			\$1,000,000	2021 - 2023
202012179	Marijuana Public Health Safety & Awareness Education Campaign	RESCUE AGENCY	\$500,000	2023 - 2024
			\$925,250	2024 - 2026
202402046	Maine Adult Use Cannabis and Medical Use of Cannabis Compliance	DIRIGO SAFETY	\$262,000	2024 - 2026
202409165	Market, Economical and Statistical Analysis	CANNABIS PUBLIC POLICY CONSULTING	\$158,260	2025 - 2027

Source: Compiled by data provided to OPEGA by OSPS

There are key parts of the RFP evaluation phase of contracting<sup>33</sup> on which agency staff is trained and prompted to consider potential and actual conflicts of interest with any bidders and/or their subcontractors. Agency staff, however, are also expected to identify potential and actual conflicts of interest of which they become aware during all phases of contracting activity. This expectation is not formalized in a written policy (see Issue 1, page 21).

OPEGA reviewed existing policy, along with interviews with OSPS and OCP management, to understand additional expectations that have not been formalized. We reviewed the procurement

<sup>33</sup> See Appendix D for a description of procurement processes, including the RFP evaluation phase.

materials related to five contracts, to determine whether policy and expectations were met, related to conflict of interest. Additionally, we looked for any other evidence that conflicts of interest were considered during the procurement process. We note that DAFS/OSPS requirements related to conflicts of interest have changed over time, and we took those changes into account as we assessed the materials for the selected contracts from 2019 through 2025 (see Appendix B for methodology).

Overall, OPEGA found that OCP considered conflicts of interest at several points in the procurement processes that we reviewed and complied generally with current applicable requirements. The following paragraphs summarize the specific areas OPEGA examined, and our results.

### Training on Conflicts of Interest

Prior to evaluating bidder proposals, the staff involved in RFP evaluations<sup>34</sup> are required to watch training videos prepared by OSPS. One of these required videos includes guidance on identifying potential conflicts of interest with bidders. The video instructs evaluation team members of certain circumstances that may create potential conflicts of interest and provides examples including:

- Having current or former ownership in a bidder's company or a role as a board member of said company;
- That the individual or a family member are current or former employees of the bidder; or
- That there is a personal contractual relationship with a bidder *or any relationship that could be construed by the public as personal*.

If anyone on the RFP evaluation team is concerned about a potential or actual conflict of interest or are unsure, they are directed to contact the RFP coordinator immediately to discuss those concerns.<sup>35</sup> OPEGA notes that 5 MRSA § 18(8) requires executive employees to disclose immediately to their direct supervisor any conflicts of interest, while the OSPS training directs employees to contact the RFP coordinator—who may not be that employee's supervisor. Should a conflict of interest be identified that requires disclosure under 5 MRSA § 18(8), it is important that agency staff are instructed to make the disclosure to their direct supervisor in addition to the RFP coordinator.

While there is no mandatory ethics training for agency staff who are not part of the RFP team, there is an ethics training video that is available on the OSPS intranet site that includes a robust discussion on conflicts of interest. OSPS informed OPEGA that agencies can request ethics training from OSPS, but that such requests are uncommon, especially now that the video is available on the intranet.<sup>36</sup>

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<sup>34</sup> See Appendix D for more information on RFP evaluation process.

<sup>35</sup> As explained by DAFS, an evaluation team member may not necessarily work for the agency issuing the RFP; an agency might, for example, use a financial expert from OSC or a Service Center. However, because the potential conflict of interest relates to the agency's RFP, the risk must be reported to the RFP coordinator.

<sup>36</sup> According to OSPS, an updated ethics training module is currently in development and will be released in the third quarter of FY26 in conjunction with OSPS' annual conference.

### OPEGA's Analysis

We saw evidence that members of the RFP evaluation teams certified they had participated in training, which includes conflict of interest training. OPEGA noted that in one RFP evaluation, the OSPS employee responsible for reviewing the RFP materials did not verify that one of the evaluators had completed the required training acknowledgement form.

Overall, we found that the training required for RFP evaluators considered conflicts of interest and appeared to be comprehensive, useful information.<sup>37</sup> Additionally, the requirement to certify having received training is a good practice to help assure employees are receiving the necessary education to avoid conflicts of interest.

### Agreement and Disclosure Statements

At the close of the proposal submission period, but before the RFP evaluators are allowed to review the proposals, each evaluator is sent a proposal cover sheet for each qualified proposal, along with an Agreement and Disclosure Statement form to sign. A copy of this form is included in Appendix G.

The Agreement and Disclosure Statement requires the evaluator to:

- Disclose any affiliation or relationship that they have in connection with a bidder;
- Certify that neither they nor any member of their immediate family members have a personal or financial interest, direct or indirect, in the bidders' proposals;
- Certify that they have not advised, consulted with, or assisted any bidder in preparation for the proposal;
- Certify they understand that the evaluation process must be conducted in an impartial manner; and
- Agree to hold confidential all information related to the contents of the RFPs until such time as it is formally released publicly.

### OPEGA's Analysis

In all RFP evaluations that we reviewed, there was evidence that all members of the agency RFP evaluation teams signed an agreement certifying that they do not have any conflicts of interest.

We found one example where the former OCP Director disclosed a former professional relationship with a bidder on the Agreement and Disclosure Statement.<sup>38</sup>

Overall, OPEGA found that the Agreement and Disclosure Statements cover a variety of circumstances that could create a conflict of interest or the appearance of one. The combination of the training required of RFP evaluators and the Agreement and Disclosure Statements provide robust evidence of consideration of potential and actual conflicts of interest in the early stages of contracting activity. Although, as noted below, OPEGA recommends additional documentation when an RFP evaluator is *unable* to sign the Agreement and Disclosure Statement due to a conflict, these forms are a good example of sound ethical practices.

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<sup>37</sup> While OPEGA did not conduct a formal evaluation of the training materials, we viewed all training materials and assessed the content to be satisfactory.

<sup>38</sup> The former OCP Director noted that a bidder had been his employee at a different organization for a 9-month period, approximately five years prior to the RFP evaluation.

## Procurement Justification Form

Once the agency and successful bidder have negotiated and executed the contract, the agency submits the contract to OSPS for final approval along with the Procurement Justification Form (PJF). The agency must also submit a PJF to OSPS when the agency is requesting a contract amendment that includes changes in the contract's scope of work or dollar amount (if \$10,000 or more). In July 2024, OSPS added a new section to this form, requiring the signatory to certify that they understand and acknowledge Maine's Conflict of Interest statutes: 5 MRSA § 18, 5 MRSA § 18-A, and 17 MRSA § 3104, as seen in the following selection from the PJF:

PART V: CONFLICTS OF INTEREST (COI); CONTRACT WITH THE STATE
<i>Maine law contains Conflict of Interest statutes directed to State Departments, State Officers, and Employees Generally under MRS <a href="#">Title 5, §18</a> and <a href="#">§18-A</a>, in harmony with MRS <a href="#">Title 17, §3104</a>.</i>
<input type="checkbox"/> The requesting department signatory understands and acknowledges Maine's Conflict of Interest statutes.

Source: Selected text from Procurement Justification Form REV 8.12.24, accessed from DAFS OSPS Intranet by OPEGA in May 2025.

## OPEGA's Analysis

When required, we saw evidence of the acknowledgement of Maine's Conflict of Interest statutes by the contract amendment signatories. OPEGA notes that the addition of this checkbox acts as an additional prompt for executive employees to consider potential conflicts of interest and considers it an improvement to the form. However, it may not cover all executive employees who are involved in the contract activity. For example, employees who are on a contract amendment negotiation team but who are not signatories to the contract or the PJF are not required to complete this certification. Additionally, the form is generally not signed until negotiations on the contract terms have already been completed.

OSPS's draft Conflict of Interest policy appears to address these concerns, prompting the authorized signatory to affirm no actual conflicts exist at the time of submission of an initial contract, renewal, or amendment. This policy, however, was not in place during the time period we reviewed. Additionally, in August 2025, OSPS revised the conflict of interest section in the PJF to include the language, "[t]he requesting department's signatory affirms, understands, and acknowledges Maine's Conflict of Interest statutes and, in accordance with those statutes and to the best of their knowledge, has determined that no conflict of interest exists at the time of this contract, renewal, or amendment."

## Documentation of Conflict of Interest

Other than the Agreement and Disclosure Statement and the PJF—in which agency staff certifies that they do not have conflicts of interest—OSPS does not require written documentation of potential or actual conflicts of interest which have been identified and disclosed. For example, if

agency staff were to raise a potential conflict of interest that was determined not to be disqualifying, that identification and disclosure may not be documented.

#### **OPEGA's Analysis**

Promptly and properly documenting conflict of interest concerns in the procurement process can influence public perception of the relevant circumstances. OPEGA identified the lack of written documentation as an issue (see Issue 2, page 22).

OPEGA reviewed the contracting materials to determine if any disclosures of conflict of interest were made. We note that there is no OSPS requirement for disclosures of potential or actual conflict of interest to be documented, though it is OCP's expectation that a recusal is made in writing to one's supervisor.

- As described on page 16, we found one example where an RFP evaluator disclosed a former professional relationship with a bidder. This disclosure was documented on the Agreement and Disclosure Statement. OPEGA notes this form does not have a designated space for a recusal, but it appeared to be an appropriate way to document the relationship, and an appropriate reason for disclosure.
- We found one example, as described on page 12, where the current OCP Director recused himself from an RFP evaluation process due to a former business relationship with prior awardee, who was a potential bidder for the new RFP. The recusal was documented as an email from the OCP Director to their supervisor. On the OCP Director's annual financial disclosure, he disclosed income received in the prior year from the potential bidder. OPEGA verified that the OCP Director recused themselves from this contracting process.
- We saw evidence that current and former OCP Directors filed annual financial disclosures, as required by 5 MRSA § 19, which demonstrate sources of income for executive employees and immediate family members in the prior year.
- We saw evidence of the current OCP Director disclosing a prior working relationship with an employee at METRC (Lewis Koski), as described on page 9. We do note, however, that this email was sent by the OCP Director prior to his State of Maine tenure and the email itself was not directly related to the METRC contract amendment. Again, as noted above, there is no requirement for disclosures of potential conflicts of interest to be documented.

#### **Bidder Disclosures of Conflict of Interest**

In addition to the ways in which OCP considered conflicts of interest in the contract activities that we reviewed, we also noted that bidders were prompted to consider potential conflicts of interest in the following ways:

- We observed three OCP solicitations in 2019 and 2020 where bidders were required to disclose conflicts of interest in their RFP submission. We were told that OCP added this language at their discretion, but that it does not reflect standard OSPS template language. The RFP language that we observed appears to serve as a notice that potential conflicts and their nature must be identified if awarded the contract. OSPS management explained that any potential or perceived conflicts should be disclosed by the bidder and addressed during contract negotiations prior to

signing contracts, and that if an agency is unable to adequately mitigate a disclosed or discovered conflict, the agency may then move into negotiations with the next highest-scoring bidder.

- In all RFP submissions reviewed, we saw evidence of bidders certifying a Debarment, Performance and Non-collusion certification that they had “not entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same...services...and this proposal is in all respects fair and without collusion or fraud.”

After a bidder has been conditionally awarded a contract, the bidder and the State must negotiate the contract terms. The current standard contract terms include that:

- The Provider warrants that no State employee has or will receive any direct or indirect pecuniary interest in or receive or be eligible to receive, directly or indirectly, any benefit that may arise from this contract, for any employee who participated in any way in the solicitation, award, or administration of the contract;
- The Provider may not engage, during the period of the contract, any executive employee who participated in any way in the solicitation, award, or administration of the contract; and
- There has not been any collusion in the preparation of the proposal or to solicit or secure the contract.

### **OPEGA's Analysis**

As explained to OPEGA by OSPS, bidder conflict of interest discussions typically occur during contract negotiations when key details—related to scope, deliverables, terms and conditions, collaborative vendor relationships, and project personnel—are identified and clarified. Requiring bidder conflict of interest disclosures at the RFP submission stage can introduce significant challenges in evaluating and scoring bids, in particular because an accurate evaluation of the conflict of interest concern would likely require follow-up discussion with the bidder, which is not permissible during the evaluation and award process. This is aligned with NASPO's best practices, which recommend investigating any potential conflicts of interest and allowing bidders to explain. This dialogue can only occur at the contract negotiation stage.

OSPS has worked to strengthen and clarify the conflict of interest contract terms and conditions language over the past two years. By entering into the contract, OSPS works to ensure that all agencies and vendors are aware that any violation of these provisions may result in contract termination. Additionally, as part of this review DAFS also advised OPEGA that an additional clause has been added to the RFP template's general provisions to put vendors on notice that, should the RFP result in a contract award, the vendor will be required to disclose, in writing and in accordance with Maine conflict of interest laws, any actual or potential conflicts of interest.

### **Resources Available to Agency Staff on Questions of Conflict of Interest**

If OCP staff have questions or concerns about potential or actual conflicts of interest in contracting activity, they are encouraged to reach out for guidance. Questions can be elevated, as needed, to the



RFP coordinator, OSPS staff, Office of State Controller (Internal Audit) and/or the Attorney General's Office. OSPS indicated that they typically receive between three and six inquiries a year—statewide—regarding potential conflicts of interest. However, because of the hybrid nature of procurement, there may be questions and concerns about conflicts of interest in contracting that are being managed at the agency-level and not brought to OSPS' attention, especially if these questions arise outside of the initial RFP evaluation and contract award.

#### **OPEGA's Analysis**

Ultimately, the process for managing and/or mitigating potential or actual conflicts of interest depends on where in the contracting activity the agency is when the conflict is identified, as well as the nature of the potential or actual conflict itself. For example, if an RFP evaluator identifies a potential or actual conflict of interest at the beginning of the process and cannot sign the Agreement and Disclosure Statement, the evaluator may simply be removed from the RFP evaluation team and the RFP process may continue. On the other hand, conflicts of interest identified and disclosed during or after the RFP evaluations have begun may require OSPS to assess potential risk to the integrity of the process, discuss with the issuing agency, and advise the agency whether to continue the RFP or to start the process over. If an actual conflict of interest is identified after a contract has been implemented, the agency and/or OSPS would likely work with the State Controller and potentially the Attorney General's Office, as such a disclosure could impact the validity of the contract. It is important for agency staff to understand what resources are available throughout all procurement-related activities.



# Issues and Recommendations

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For this review, OPEGA sought to understand the general procurement process and the roles and responsibilities of OSPS and OCP when there is a potential or actual conflict of interest in contracting activities. As noted previously, OSPS standardizes policies and procedures to ensure consistent decision-making and efficient collaboration between OSPS and agency staff. Although OPEGA did not review procurements outside of OCP, it is our understanding that OCP follows the same guidance from OSPS as other state agencies. As a result of this structure, and as both OSPS and OCP are housed within DAFS, OPEGA identified two issues and makes corresponding recommendations.

Recommendations for DAFS/OSPS	
1	DAFS/OSPS should provide clear, thorough, formal guidance to agencies on identifying and disclosing potential and actual conflicts of interest throughout contracting activities.
2	Disclosures and abstentions from contracting activities due to conflict of interest should be documented.

## **1 Issue: Lack of clear, formal written policy in OSPS and OCP outlining how a potential conflict of interest should be disclosed or managed throughout contracting activities.**

At the time of our review, neither DAFS, OSPS, nor OCP had a formal policy outlining procedures for disclosing conflicts of interest throughout the procurement process. Interviews with agency staff also identified a lack of clarity on roles and responsibilities in determining abstentions/recusals from procurement processes due to conflict of interest.

There are key parts of the RFP evaluation phase of contracting in which agency staff are trained on, and prompted to consider, potential and actual conflicts of interest with any bidders or subcontractors. Agency staff, however, are also expected to identify potential and actual conflicts of interest of which they become aware during all phases of contracting activity. This expectation is not formalized in a written policy. This creates a risk that agency staff engaged in contracting activities outside of the RFP evaluation—such as contract administration, negotiations, and amendments—could have potential or actual conflicts of interest that they are not prompted to identify.

Because agency staff are expected to self-identify conflicts of interest, having established processes such as these help agency staff identify and disclose potential and actual conflicts of interest so that they may be appropriately managed, mitigated, and/or avoided altogether. This is especially important due to the hybrid structure of Maine's procurement system, where individual agencies are responsible for a large part of contracting activities, rather than having close monitoring by DAFS/OSPS.

Additionally, OPEGA consistently heard that cannabis regulation is a small, emerging industry, in which there is a limited field of experts. Our interviews with OCP demonstrated an awareness of the risk this creates for potential and actual conflicts of interest. A clear policy on how the agency is to address conflicts of interest would help to mitigate these risks.

**Recommendation: DAFS/OSPS should provide clear, thorough, formal guidance to agencies on identifying and disclosing potential and actual conflicts of interest throughout contracting activities.**

With regard to identifying and disclosing potential and actual conflicts of interest, OPEGA observed a lack of clear, formal guidance for agency staff. Clear, established policy is a key method in ensuring agency staff understand expectations and the importance of impartiality in procurement processes.

**Recommended Management Action**

In accordance with OSPS' role in standardizing policies and procedures to ensure consistent decision-making and efficient collaboration between OSPS and agency staff, OSPS should establish a formal policy on conflicts of interest in contracting activities. This policy should outline agency responsibilities in managing conflict of interests in contract activities and ensure agency staff understand:

- how and when to identify actual or potential conflicts of interest;
- how to disclose such matters and to whom;
- how to escalate questions regarding potential conflicts of interest, and with whom; and
- decision-making roles and responsibilities on conflicts of interest.

Training on this policy, as needed, should be developed and offered regularly.

Although there was no current written policy or procedure at that time of this review, DAFS/OSPS explained to OPEGA the expectations of agency staff in identifying conflicts of interest during contracting activity. It is anticipated that much of the procedures outlined will be included in a written policy that OPEGA understands is forthcoming.<sup>39</sup>

## **2 Issue: Lack of documentation of potential or actual conflicts of interest which have been identified and disclosed.**

While it is not a formal policy, OCP management told us that if there is a conflict of interest that requires abstention from contracting activity, the expectation is that it be done in writing, usually by email to the individual's direct supervisor and copying the Commissioner's office. As noted previously, the expectation that recusals be in writing is not an OSPS requirement. Interviews with OSPS staff suggest that how a recusal is implemented is up to the agency and may not be formally documented. In OCP, once recused, the expectation is that boundaries of the recusal

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<sup>39</sup> OPEGA received a draft version of this policy, and understands it is to include: a formal written policy outlining the COI inquiry process; clearly established agency and staff responsibilities; an internal COI reporting form; integrated SharePoint functionality to support tracking, documentation, and visibility; and additional updates and clarifications based on review recommendations from the State Controller and the assigned AAG.

should be set, communicated to relevant stakeholders, and that the individual should be fenced off from all relevant contracting activity.

5 MRSA § 18(8) requires executive employees to disclose immediately the conflict of interest or the appearance of a conflict of interest to that employee's direct supervisor. This disclosure, however, is not required to be documented in any form. A disclosure of an appearance of conflict of interest that does not lead to the need to abstain from the contracting activity is especially important to document, as there may be questions regarding the employee's continued participation and/or relationship with a vendor. The absence of documentation creates a risk of a lack of transparency and accountability. Additionally, lack of documentation creates a potential risk of information regarding disclosures being lost when staff leave employment at agencies.

**Recommendation: Disclosures and abstentions from contracting activities due to conflict of interest should be documented.**

From our review of policies and procedures, training resources, and interviews, we understand that there is no requirement for OSPS or OCP to document recusals from an RFP evaluation team or any other contracting activities (though we understand it is the current OCP Director's expectation, it is not a formalized process). Documentation of disclosure and abstention from contracting activities demonstrates a willingness to be transparent and accountable to regarding the procurement process.

There is also no requirement for OSPS or OCP to document disclosures of conflicts that could be considered an appearance of conflict of interest for the RFP evaluation team or any other contracting activities. While it is not a statutory requirement to maintain this documentation, the lack of such records can impair transparency and accountability.

**Recommended Management Action**

OSPS' conflict of interest policy should include both OSPS and agency roles and responsibilities regarding requirements for documentation and records retention of disclosures of conflicts of interest and abstentions from contracting activities based on actual or appearance of conflict of interest.

OPEGA recognizes that some disclosures and recusals may involve sensitive personnel matters and that some potential conflicts of interest—upon further consideration—may not require disclosure or abstention. Consistent with Maine's hybrid procurement system, it may be appropriate for documentation to be held at either the agency level or OSPS, depending on the circumstances.<sup>40</sup> OPEGA recommends the policy clearly outline the circumstances that require documentation and the manner in which to document and retain these records.

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<sup>40</sup> According to OSPS, most recusal documentation is best retained at the agency level, but in situations in which an agency or OSPS has evaluated for a potential conflict of interest and determined none exists, OSPS notes that central documentation would be valuable to record the analysis to respond to and protect the employee from accusations of conflict of interest.

## Conclusion

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The lack of clear, detailed, formal guidance on identifying and disclosing potential and actual conflicts of interest throughout contracting activities and the lack of adequate documentation of disclosures and abstentions can impede transparency in the procurement process. This is especially important in circumstances where it is the appearance of a conflict of interest that is at issue, since the underlying purpose of the appearance statute is to preserve and protect the public's confidence in the integrity of public servants and the processes in which they participate. Thus, while OPEGA observed that OCP has endeavored to avoid the appearance of a conflict of interest by disclosure or abstention, the process for doing so should be improved to enhance accountability and transparency.

# Appendices

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## *Appendix A. Agency Response Letter*

See next page for agency response letter in full.



STATE OF MAINE  
DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES  
BURTON M. CROSS BUILDING, 3<sup>RD</sup> FLOOR  
78 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0078  
(207) 624-7800  
[WWW.MAINE.GOV/DAFS](http://WWW.MAINE.GOV/DAFS)

SERVING THE PUBLIC AND DELIVERING ESSENTIAL SERVICES TO STATE GOVERNMENT

JANET T. MILLS  
GOVERNOR

KIRSTEN LC FIGUEROA  
COMMISSIONER

September 11, 2025

Director Peter Schleck  
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Maine State Legislature  
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[Peter.Schleck@legislature.maine.gov](mailto:Peter.Schleck@legislature.maine.gov)

RE: Response of Department of Administrative and Financial Services to OPEGA's Report,  
Office of Cannabis Policy: Identification and Management of Conflicts of Interest in  
Procurement

Director Schleck,

### **Executive Summary**

Office of Program Evaluation and Government Accountability (OPEGA) findings, through an evaluation of statute and policy, confirm what the Department of Administrative and Financial Services (DAFS) had previously determined and has always known to be true: Director Hudak did not have a real or apparent conflict of interest in his work renegotiating the contract for the State's cannabis inventory tracking system.

DAFS, including the Office of State Procurement Services (OSPS) and the Office of Cannabis Policy (OCP) appreciates OPEGA for its professionalism and thoroughness throughout this review directed by the Government Oversight Committee.

This review focused on how the standards and requirements around potential or actual conflicts of interest are handled in OCP's contracting activity broadly and was prompted specifically by, "... [t]he appearance of a conflict of interest between OCP Director John Hudak and the State-mandated software company METRC."

OPEGA concluded that OCP considered conflicts of interest at several points in its procurement processes and complied with current applicable requirements. OPEGA further concluded that relevant statute was followed. OPEGA's review identified that Director Hudak was never a shareholder in METRC, nor in the firm Freedman & Koski.

These findings reaffirm DAFS's repeated statements that there was not, and is not, a potential or actual conflict of interest between Director Hudak and METRC.

Maine state government takes seriously its responsibility and commitment to ensuring the public's trust in our government, beginning with hiring individuals with the skills, experience, and judgment necessary to perform the duties associated with their position. The collective commitment by all public servants to act appropriately and ethically ensures the highest quality of performance and inspires public confidence in our stewardship of the resources and decision making entrusted to us. Any allegation of a breach in that trust is taken seriously, and any violation would be addressed appropriately.

It should also be noted that unfounded criticisms of State employees have a real and negative impact on the morale of our workforce, making it much more difficult to recruit and retain supremely qualified individuals who have the subject matter expertise and practical skills, experience, and judgment necessary to perform their jobs with the high level of competence the public deserves. Unfounded criticisms also erode the public's trust without cause.

The remainder of this response expands upon: (1) the initial request for investigation into OCP, (2) appropriate application of existing statutory standards, (3) good governance, and (4) OPEGA's recommendations.

DAFS is grateful that OPEGA's independent findings will bring this matter to a close and allow our ethical, skilled, and remarkably competent individuals we employ to continue their work.

### **(1) The initial request for investigation into OCP**

In February 2024, Representative Boyer, claimed that he was causing some "good trouble" and began circulating a petition to fire Director Hudak, who had only been in his position at OCP for a little over a year. The petition declared that "several instances have raised questions about the director and the department's actions" including "Hudak's ties to Freedman & Koski / METRC are of grave concern."

Despite DAFS saying publicly and often since the very beginning of Director Hudak's tenure that there was not and is not a potential or actual conflict of interest, these allegations were repeated and circulated on online platforms, among the cannabis community, and among other legislators.

A year later, on February 14, 2025, Representative Boyer appeared before the Government Oversight Committee (GOC) requesting further investigation into the conduct of OCP. The GOC subsequently directed OPEGA to review Representative Boyer's assertion of "The appearance of a conflict of interest between Director and the state-mandated software company METRC."

In this mid-September 2025 report, OPEGA confirms that Director Hudak was neither a partner of Lewis Koski nor a shareholder in Freedman & Koski or METRC and that the "facts do not support a conclusion that disclosure (by the OCP Director of the prior relationship with Lewis Koski), or abstention – not participating at all – was required by statute in relation to the METRC contract amendment". Therefore, he did not have a real or apparent conflict of interest in his work renegotiating the State's contract with METRC.

## **(2) Appropriate application of existing statutory standards**

Conflict of interest considerations related to Director Hudak were evaluated by DAFS and it was determined that there was not and is not a real or apparent conflict of interest in his work renegotiating the State's contract with METRC. This determination was shared with OPEGA.

- Director Hudak previously served as a consultant on an “as needed” basis to Freedman & Koski and never had a financial interest in the firm.
- When Mr. Koski left the firm in March 2019 for METRC, Director Hudak severed his working relationship with Mr. Koski.
- Director Hudak was never a partner or shareholder of METRC and does not hold a financial interest in METRC.
- Director Hudak disclosed his past relationship with Freedman & Koski to his DAFS supervisors in his application materials and was transparent about it throughout the hiring process, in compliance with 5 MRS §18(8). Under guidance issued by the Maine Commission on Governmental Ethics for the precise statutes under consideration, these disclosures resolved the “appearance of conflict” issue. The same supervisors were aware of the disclosure during contract amendment negotiations with METRC.
- At the time the amendment was negotiated with METRC, four years had elapsed since Director Hudak last worked with Mr. Koski.
- Mr. Koski did not participate in METRC amendment negotiations.
- Looking at the statutory scheme as a whole, in accordance with rules of statutory construction, an “appearance” of conflict of interest must derive from a pecuniary or financial benefit. LD 2419, from which current 5 MRS §18 derives, was enacted without its original language treating “personal friendships” as the potential source of an “appearance” of conflict. Rather, the source is solely financial. Director Hudak did not receive financial benefits from the contract Amendment. None of the other named categories of people and entities that are prohibited from receiving a “direct and substantial financial interest” are applicable. 5 MRS §18(2)(A – E).
- Consistent with judicial decisions requiring statutes to be interpreted as a whole, the Maine Commission on Governmental Ethics reads 5 MRS §18(7) and (8) together, finding that an “appearance” of conflict that does not rise to the level of a disqualification is eliminated by disclosure to an employee's supervisor.
- Neither Maine law nor Ethics Commission guidance contemplates the existence of an actual, apparent or potential conflict of interest arising from the fact that a party to a public contract employs an individual who formerly worked with the public employee. That is because the simple fact that two individuals worked for the same former employer at the same time does not create, or otherwise implicate, any personal interest that would conflict with the public interest.

OPEGA confirms that Director Hudak was neither a partner of Lewis Koski nor a shareholder in Freedman & Koski or METRC and that the “facts do not support a conclusion that disclosure (by the OCP Director of the prior relationship with Lewis Koski), or abstention – not participating at all – was required by statute in relation to the METRC contract amendment”.



Therefore, he did not have a real or apparent conflict of interest in his work renegotiating the State's contract with METRC.

As part of its scope, OPEGA also reviewed the procurement activities related to five procurements that occurred in OCP since its inception in 2019, and included in their report a good, real-world example of the interplay of state laws and policies governing the procurement process. OPEGA's review makes clear that the OCP employees involved in those contracts "...considered conflicts of interests at several points in the procurement processes..." and were in compliance with existing requirements applicable to the identification and consideration of conflicts of interest.

In addition to the conflict of interest statutes found in 5 MRS §18 and 5 MRS §18-A, and 17 MRS §3104, the *State Administrative and Accounting Manual (SAAM)*, which includes a *Code of Ethics for Government Financial Stewards*, applies to the financial and administrative affairs of all agencies of Maine State Government. The policies and procedures set forth in this manual are the minimum requirements that State agencies must meet. The need to ensure that institutional ethical codes are in place across the breadth of State government is the basis of the *Code*, and the *Code* is intended for agencies to make available to all employees with financial responsibilities and to be incorporated into Departments' Internal Control Plans. Within the *Code*, "Government Financial Management Activities" is defined as "activities associated with the operation and control of the fiscal and administrative matter of government(s) including but not limited to accounting, auditing, budgeting, financial reporting, grants management, procurement and systems as well as associated activities such as human resource administration, training and education."

DAFS works diligently to consider potential and actual conflicts of interest throughout the State of Maine procurement process. Prior to evaluating proposals, RFP evaluators are required to watch training videos prepared by the Office of State Procurement Services (OSPS) that cover identifying potential conflicts of interest with bidders. RFP evaluators must also sign an Agreement and Disclosure Statement for each qualified proposal where they must disclose any affiliation or relationship in connection with a bidder before evaluation begins. Then once a contract is negotiated and executed, it gets submitted to OSPS for final approval along with a Procurement Justification Form (PJF) in which agency staff must certify that they do not have a conflict of interest.

Once a contract leaves OSPS' process, the executing agency becomes legally accountable for those contracting activities, including the documentation, monitoring, and resolution of ethical concerns. This is because it is not desirable to consolidate responsibility for identifying and averting potential or actual conflicts of interest or knowledge about professional ethics within OSPS. Ethics is a matter of personal and professional responsibility. Each State department, agency, and employee needs to share that responsibility and regularly exercise their judgement in order to foster an overall culture of ethics, free of conflict of interest across all of State government.

### **(3) Good governance**

As DAFS shared with OPEGA, when a procurement process is initiated at the request of an agency, the agency has four major touchpoints with OSPS for conflict-of-interest checks: 1) solicitation/selection, 2) initial contract negotiation, 3) exercise of contract renewals, and 4) as applicable, negotiation of contract amendments. When a contract leaves OSPS' process it enters

a new phase which is management at the agency level. It is not OSPS' statutory role or responsibility to monitor contracting agencies' ongoing compliance with State laws throughout the duration of their contracts; agencies have that responsibility independently, as the statutes clearly state. In the event of a contract extension or amendment, OSPS is re-engaged.

While OSPS is not the sole enforcement mechanism for conflict of interest laws, the Office does educate agencies through ongoing programs and online trainings about conflicts of interest and ethical conduct in addition to contracting processes. In 2024, OSPS reorganized its positions to add and to fund a position devoted to development of educational content—that is how serious OSPS is about educating agencies in all aspects of procurement, including conflict of interest matters. Those trainings are designed not only to provide public employees with a recitation of what the law is, but to also encourage discussion and thoughtful reflection among those staff entrusted to make decisions about state procurement activities. OSPS training materials are designed to encourage open discussions that raise potential scenarios that can then be evaluated for identification or dismissal of an appearance, potential, or actual conflicts of interest. The broader conversations lead to a more comprehensive evaluation, and in most cases the scenarios will be eliminated as appearance and potential are not violations of statute. The scenarios and conversations are as different as each procurement.

Given OSPS's limited role in day-to-day contract management, it is incumbent upon each department and agency to enforce Maine's conflict of interest and ethics standards. Departments hire their own contract managers, know their work histories and prior affiliations, monitor their performance, and replace them when staff turns over—just as vendors commonly assign new account representatives over the life of a contract. This proximity means that agencies, not OSPS, are best positioned to detect, prevent, and respond to the everyday realities that raise ethical questions: gifts and meals offered by vendors, invitations to social events, or any other financial or pecuniary interactions that could create an actual or appearance of a conflict of interest.

Good government functions because of the skills, knowledge and judgment of the individual employees who make up our public workforce. When state government employees are hired, they are provided myriad one-time and ongoing training and guidance by the Bureau of Human Resources, the Office of the State Controller, the Office of the Attorney General, the Secretary of State, and others about various legal and ethical responsibilities, including conflict of interest, of all state employees. Many state employees also receive job-specific legal and ethical training, and many credentials held by state employees like nurses, auditors, or attorneys require additional credential-specific continuing education and ethical training. Specifically, the State of Maine requires all new managers, across all departments and agencies, to complete the three-day Managing in State Government program. Day 1, session 1 of Managing in State Government is devoted to the Maine State Code of Ethics, including avoiding any interest or activity which is in conflict with the conduct of official duties, and how to actively apply the Code of Ethics within their teams. The Maine State Code of Ethics is also posted on the Bureau of Human Resources website.

OCP procurement activities reviewed by OPEGA demonstrate not only that OSPS policies and procedures are working to identify circumstances where recusal is necessary, but also that ethical considerations begin well before an employee is tasked with engaging in procurement activities, showing that state employees and the agencies and departments where they work continue to be deeply committed to the efficient and responsible use of state resources for the people of Maine.

#### **(4) OPEGA's recommendations**

The reality is that there are very few instances where an employee or agency will determine that a conflict of interest exists for an individual whose job responsibilities include procurement activities.

Having said that, for those few instances, DAFS recognizes the need for a more structured and transparent process for handling agencies' conflict of interest inquiries and thanks OPEGA for highlighting ways in which these efforts can be enhanced. DAFS has already shared with OPEGA a draft written policy that outlines and formalizes the process for handling such inquiries. The policy clearly establishes agency and staff responsibilities; establishes an internal conflict of interest reporting form; integrates SharePoint functionality to support tracking, shared documentation, and visibility; and makes additional updates and clarifications based on recommendations from the State Controller and the assigned Assistant Attorney General.

While OPEGA indicates that "best practice may be to identify anything that could potentially be perceived by others as a conflict of interest or even the appearance of a conflict of interest...", this is practically and operationally extremely difficult to implement. For example, it is simply not possible, or advisable, to create a checklist, SOP, or flowchart for every circumstance encountered by public employees during the discussion, decisions, and course of their work, especially through the lens of the perceptions of others, either in that moment or days, months or even years later. The State, like any employer, must give its staff the tools and training necessary for success, but must not lose sight of the reality of the framework in which the day-to-day work is done.

OPEGA further suggests that recusal documentation should be standardized through a single, formal, recusal form. This is neither possible nor desirable to implement as documentation of a recusal can take many forms, for example an email to a supervisor, a verbal disclosure, or direction from management to reassign an evaluator. The relevant statute (5 MRSA § 18 (8)) does not require that disclosures be documented in a specific form or retained in a central repository. In part, that is in acknowledgment that disclosures and recusals often involve sensitive personnel matters (health, relationships, or other confidential information) and as such must be handled with care. Additionally, many disclosures can be effectively handled verbally and do not require further recordkeeping, especially when no actual conflict exists. For example, if an employee approaches their supervisor, proactively identifies that they have a potential conflict of interest with an anticipated bidder on an upcoming RFP, and removes themselves from the forthcoming proceeding completely, no formal written documentation is necessary because the employee's lack of participation completely avoided all real and perceived conflict of interest.

The key requirement is that the *agency* manages the conflict appropriately consistent with its internal policies and statutory obligations under 5 MRSA § 18 and § 18-A. Each department, not OSPA, may be called upon to defend its actions in court, respond to audits, or address appeals, presenting a given matter fully, in context, along with supporting records.

That being noted, alternatively, there may be circumstances in which employees desire to formally document their recusal as a means of protecting their professional reputation and proactively dispelling any accusation of a real or perceived conflict of interest. As in the OCP case, the central recording of Director Hudak's disclosure of his distant, non-pecuniary,

non-conflict of interest relationship with an employee of a vendor would have documented DAFS' knowledge, evaluation, and dismissal of conflict of interest, real or perceived.

The reality is that there are very few instances where an employee or agency will determine that a conflict of interest exists for an individual whose job responsibilities include procurement activities. Although DAFS has created a form for capturing these rare determinations, it is unlikely that form will be used more than once or twice a year. Of course, if consulted, OSPS will offer general guidance.

In conclusion, OPEGA's report confirms and details the many ways in which Maine's thousands of State employees work to ethically and thoughtfully execute the laws of Maine. DAFS continues to celebrate their dedication, integrity, judgment, and diligence.

Respectfully submitted,

A handwritten signature in blue ink that reads "Kirsten LC Figueroa". The signature is written in a cursive, flowing style.

Kirsten LC Figueroa, Commissioner  
Department of Administrative and Financial Services

## ***Appendix B. Methodology***

To answer the scope question, OPEGA first sought to understand the general procurement process by interviewing staff and reviewing materials from the Office of State Procurement Services (OSPS) within the Department of Administrative and Financial Services (DAFS). Additional interviews of both OSPS and OCP staff were used to understand roles and responsibilities in contracting, with a specific focus on conflicts of interest.

Due to the specific concerns related to the OCP Director's role in the 2023 contract amendment with METRC for the Seed to Sale tracking system, OPEGA conducted a focused assessment to determine the facts associated with this circumstance. We interviewed key players in the contract negotiations, reviewed email correspondence and other materials, and created a timeline of key events to assess the extent to which OCP and any other responsible parties met statutory and agency policy expectations with regards to appearance of conflict of interest.

OPEGA researched relevant statute, OSPS policy, guidance, and expectations, as well as national best practices—such as those from the National Association of State Procurement Officials (NASPO) and the U.S. Office of Government Ethics—in addressing conflicts of interest in procurement. This established a framework for our review and accompanying recommendations, in which transparency and accountability throughout contracting activities are vital to ensuring integrity and trust in public procurement.

Next, we reviewed, at a high-level, all of OCP's contracts, beginning with its inception in 2019. OPEGA selected five specific contracts to review in detail, based on the concerns of conflict of interest and other potential risks. We assessed what occurred in these contracting activities in relation to what the expectations were from DAFS and OCP at the time. This report details how OCP has identified, disclosed, managed, and mitigated potential and actual conflicts of interest from 2019-2025, and the oversight that DAFS/OSPS provides in these processes.

### ***Appendix C. Agency Overview***

The Office of Cannabis Policy (OCP)<sup>41</sup> was formed within the Department of Administrative and Financial Affairs (DAFS) on February 4, 2019 to oversee all aspects of legalized cannabis, including Maine’s Medical Use of Cannabis Program and Adult Use Cannabis Program. Since its inception, OCP has been the sole agency responsible for the registration, licensure, compliance, and general oversight of Maine’s Medical and Adult Use Cannabis programs. As of 2025, OCP has 49 staff members across five divisions: Licensing; Compliance; Media and Stakeholder Relations; Policy; and Data Analytics. OCP is overseen by Director Hudak, who directly oversees an executive assistant, a Deputy Director of Operations, and a Deputy Director of Strategic Initiatives. Each deputy director supervises one or more of the five divisions listed above.

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<sup>41</sup> OCP was originally called the Office of Marijuana Policy (OMP). Public Law 2021, chapter 669 amended the Maine Revised Statutes to replace the term “marijuana” with “cannabis” in Titles 22 and 28-B.

## ***Appendix D. Overview of Procurement for Services over \$25,000***

Procurement services are overseen by the Department of Administrative and Financial Services (DAFS), in the Office of State Procurement Services (OSPS). Maine has a hybrid procurement structure, where certain responsibilities are centralized within OSPS and other duties are delegated to the individual State agencies. OSPS is responsible for centralized oversight and strategic direction. Policies, regulations, and training are standardized within OSPS. Individual agencies, such as OCP, are responsible for operational aspects, including issuing solicitations, managing contracts, and handling routine procurements.

There is a series of steps agencies are directed to take to procure goods or services, depending on the dollar amount. Services are the furnishing of labor, time, and effort by a contractor or vendor. For the purposes of examining OCP's procurements specific to the scope of this review, the following description of the procurement process only relates to procurement of services over \$25,000. While this OPEGA review focuses on OCP, the procurement process is the same for many State agencies, with several exceptions<sup>42</sup>.

The first step in the procurement process is searching for an existing Master Agreement. A Master Agreement is a contract for the procurement of goods or services at agreed-upon terms and prices between the State of Maine and the supplier, which satisfies all competitive bid requirements and MUST be used if available.

If a Master Agreement does not exist, the agency begins a formal procurement. Procurement of services over \$25,000 requires competition to allow for:

- a fair and open process that allows vendors equal opportunity;
- State agency access to a wide variety of vendors; and
- best value offers from vendors.

A competitive solicitation is initiated by the agency in the form of a Request for Proposal (RFP). A non-competitive solicitation—also called sole source procurement—may occur when a vendor is selected without a competitive process. The agency must justify sole source using a Procurement Justification Form (PJF). Justification is based on:

- emergency;
- uniqueness of vendor based on proprietary designation or other mitigating conditions; or
- product or services that support existing equipment.

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<sup>42</sup> Examples of exceptions include Department of Transportation, Bureau of General Services, Department of Defense, Veterans, and Emergency Management, and various agencies with independent grant-making authority.

The outcome of this procurement, whether through competitive or non-competitive solicitation, is one of a number of contract types: service contract, buyers purchase order, delivery order, or master agreement.

### **Agency roles and responsibilities**

The agency is responsible for drafting the RFP, evaluating submissions, and awarding the contract to the selected vendor with OSPA templates and guidance documents. Once the RFP is drafted by the agency, it is submitted to OSPA for approval. There may be several levels of OSPA approval if the RFP has an IT component, data concern, or is over \$1 million in value. Along with this submission is an RFP evaluation and planning form (called GOVRFP), where the agency lists, among other pertinent planning information related to the RFP, who is anticipated to be on the RFP evaluation team. OSPA reviews to ensure the RFP evaluation team includes the required staff.

The RFP evaluation team is led by an RFP coordinator who is responsible for:

- liaising with OSPA;
- organizing subject matter experts;
- being the single point of contact for bidders, evaluation team, other interest parties;
- ensuring confidentiality;
- collecting signed agreement and disclosure forms;
- coordinating drafting of RFP;
- compiling evaluation notes and documents; and
- submitting documents to OSPA.

The RFP evaluation team is generally selected by the agency and includes a minimum of three people: a finance expert, a business expert, and a subject matter expert. Often, the RFP coordinator fills one of these roles or participates in addition to these three individuals. Larger, more complex RFPs have more evaluation staff. OSPA has recently required RFPs with an IT component to have a Maine OIT staff on the evaluation team to liaise with a separate technology team that conducts a targeted technical assessment of each proposal.

The RFP evaluation team evaluates the bidders' proposals to determine which vendor will be awarded the contract. There are two main phases to the proposal evaluation. First, each evaluator completes an individual review of each proposal to consider how well the proposal meets the RFP requirements. The second phase is when evaluators meet as a group to complete team evaluations and determine a consensus score for each proposal, following a structured scoring criteria that is described in the RFP. Once the evaluation is complete, a selection package containing all required documents, forms, and notes is compiled and submitted to OSPA for review, comment, and approval.



Once the successful bidder receives the conditional award, and if there is no appeal and/or stay request<sup>43</sup> issued by a competitor, the agency is responsible for:

- drafting the service contract;
- negotiating with the vendor on description and timing of deliverables, terms and conditions, and payment terms; and
- obtaining signatures of agency-authorized representative and vendor.

If the service contract reaches \$1M, it is reviewed—prior to signatures—by the State Procurement Review Committee<sup>44</sup> which sets standards to approve all State agency RFPs, contracts, contract renewals, and amendments. This committee is made up of a member of the Governor’s staff appointed by the Governor, State controller, State budget officer, attorney general, and chief procurement officer. It also includes a chief information officer when the contract is IT-related.

The agency then submits contract documents to OSPS for review and approval through the State’s financial system, Advantage.

### **OSPS roles and responsibilities**

In addition to approving the RFP at the start of the procurement process and the agency evaluation team’s selection documents, OSPS is responsible for reviewing and approving the contract with the successful bidder. OSPS reviews the contract materials that the agency has submitted, including the signed, executed service contract and PJF. If edits are required, OSPS returns them to the agency with comments on all required revisions until an acceptable document is received.

OSPS signs the final PJF and encumbers funds in Advantage. The agency receives email approval from OSPS through Advantage and sends an electronic notification of the fully executed contract to the vendor. Contracts are not considered fully executed and valid before completing final approval of encumbrance via Advantage.

### **Ongoing agency administrative activities**

Agencies are responsible for monitoring and reporting contractor’s performance, managing changes to contracts, maintaining contract-related documents, addressing claims and disputes, and performing closeout activities. If an agency needs to modify the contract amount, extend and/or renew the contract, or modify the contract’s scope of work, a written contract amendment is required. The contract amendment and a new PJF (if the amendment increases the contract amount by more than \$10,000) must be submitted to OSPS for final approval and encumbrance of the additional funds.

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<sup>43</sup> These processes are governed by 5 MRSA § 1825-E. OPEGA did not conduct a detailed review of the appeal or stay request process for the purposes of this review.

<sup>44</sup> Pursuant to 5 MRSA § 1824-B

## ***Appendix E. Statutory and Other Governing Provisions***

### **Employee Handbook**

The State of Maine Employee Handbook notes that a fundamental principle of Maine State Government is that State employees are trustees for all the people and that it is important that State employees avoid any task, circumstance, or outside employment that is in conflict with, or could be viewed to be in conflict with the employee's State job. As described in the handbook, the basic State guideline that governs conflict of interest is that a State employee "may not ask for or accept any good or service that has a monetary value from any person or business that does business or expects to do business with the State."

Because OCP contracting activity follows the same process as all other State agencies, the following section covers the statutory framework for conflicts of interest in contracting activity.

### **Conflict of Interest Statutes**

#### **5 MRSA § 18**

§18. Disqualification of executive employees from participation in certain matters

**1. Definitions.** As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Constitutional officers" means the Attorney General, Secretary of State and Treasurer of State.

B. "Executive employee" means the constitutional officers, the State Auditor, members of the state boards and commissions as defined in chapter 379 and compensated members of the classified or unclassified service employed by the Executive Branch, but it does not include:

- (1) The Governor;
- (2) Employees of and members serving with the National Guard;
- (3) Employees of the University of Maine System, the Maine Maritime Academy and the Maine Community College System;
- (4) Employees who are employees solely by their appointment to an advisory body;
- (5) Members of boards listed in chapter 379, who are required by law to represent a specific interest, except as otherwise provided by law; and
- (6) Members of advisory boards as listed in chapter 379.

C. "Participate in an official capacity" means to take part in reaching a decision or recommendation in a proceeding that is within the authority of the position held by an executive employee.

D. "Proceeding" means a proceeding, application, request, ruling, determination, award, contract, claim, controversy, charge, accusation, arrest or other matter relating to governmental action or inaction, but does not include an employee organization bid or contract to provide agency services under section 1816-B.

E. "Participates in the legislative process" means to provide any information concerning pending legislation to a legislative committee, subcommittee or study or working group, whether orally or in writing

**2. Executive employee.** An executive employee commits a civil violation if the executive employee personally and substantially participates in an official capacity in any proceeding in which, to the executive employee's knowledge, any of the following have a direct and substantial financial interest:

- A. The executive employee or the executive employee's spouse or dependent children;
- B. The executive employee's partners;
- C. A person or organization with whom the executive employee is negotiating or has agreed to an arrangement concerning prospective employment;
- D. An organization in which the executive employee has a direct and substantial financial interest; or
- E. A person with whom the executive employee has been associated as a partner or a fellow shareholder in a professional service corporation pursuant to Title 13, chapter 22-A during the preceding year.

**2-A. Participation in legislative process.** An executive employee commits a civil violation if the employee participates in the legislative process in the employee's official capacity concerning any legislation in which any person described in subsection 2, paragraphs A to E has any direct and substantial financial interest unless the employee discloses that interest at the time of the employee's participation.

**3. Former executive employee.** Former executive employees shall be subject to the provisions in this subsection with respect to proceedings in which the State is a party or has a direct and substantial interest

...

**4. Construction of section.** This section may not be construed to prohibit former state employees from doing personal business with the State. This section shall not limit the application of any provisions of Title 17-A, chapter 25.

**5. Penalty.** A violation of this section is a civil violation for which a forfeiture of not more than \$1,000 may be adjudged.

**6. Application of more stringent statutory provisions.** If other statutory conflict of interest provisions pertaining to any state agency, quasi-state agency or state board are more stringent than the provisions in this section, the more stringent provisions shall apply.

**7. Avoidance of appearance of conflict of interest.** Every executive employee shall endeavor to avoid the appearance of a conflict of interest by disclosure or by abstention. For the purposes of this subsection and subsection 8, "conflict of interest" includes receiving remuneration, other than reimbursement for reasonable travel expenses, for performing functions that a reasonable person would expect to perform as part of that person's official responsibility as an executive employee.

**8. Disclosure of conflict of interest.** An executive employee shall disclose immediately to that employee's direct supervisor any conflict of interest within the meaning of this section.

## 5 MRSA § 18-A

### §18-A. Conflict of interest; contract with the State

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "State entity" means any office, department, agency, authority, commission, board, institution, hospital or other instrumentality of the State.

B. "Executive employee" has the same meaning as set forth in section 19, subsection 1, paragraph D except that "executive employee" includes employees of and members serving with the National Guard and employees of the University of Maine System, the Maine Maritime Academy and the state community colleges.

**2. Prohibition.** An executive employee may not have any direct or indirect pecuniary interest in or receive or be eligible to receive, directly or indirectly, any benefit that may arise from any contract made on behalf of the State when the state entity that employs the executive employee is a party to the contract.

**3. Violative contract void.** Any contract made in violation of this section is void.

**4. Exemptions.** This section does not apply:

A. To purchases by the Governor under authority of Title 1, section 814;

B. To contracts made with a corporation that has issued shares to the public for the general benefit of that corporation;

C. If an exemption is approved by the Director of the Bureau of General Services within the Department of Administrative and Financial Services or the director's designee based upon one of the following and if the director gives notice of the granting of this exemption to all parties bidding on the contract in question with a statement of the reason for the exemption and if an opportunity is provided for any party to appeal the granting of the exemption:

(1) When the private entity or party that proposes to contract with the State and that employs the executive employee, based upon all relevant facts, is the only reasonably available source to provide the service or product to the State, as determined by the director; or

(2) When the director determines that the amount of compensation to be paid to the private entity or party providing the service or product to the State is de minimis; or

D. To a contract by an employee organization to provide agency services under section 1816-B.

## 17 MRSA § 3104

### §3104. Conflicts of interest; purchases by the State

No trustee, superintendent, treasurer or other person holding a place of trust in any state office or public institution of the State shall be pecuniarily interested directly or indirectly in any contracts made in behalf of the State or of the institution in which he holds such place of trust, and any contract made in violation hereof is void. This section shall not apply to purchases of the State by the Governor under authority of Title 1, section 814.

## 5 MRSA § 19

### §19. Financial disclosure by executive employees

**1. Definitions.** As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Appointed executive employee" means a compensated member of the classified or unclassified service employed by the Executive Branch, who is appointed by the Governor and confirmed by the Legislature, or who serves in a major policy-influencing position, except assistant attorneys general, as set forth in chapter 71.

...

**2. Content of statement.** Each executive employee shall annually file with the Commission on Governmental Ethics and Election Practices a statement identifying the sources of income received, positions held and reportable liabilities incurred during the preceding calendar year by the executive employee or members of the executive employee's immediate family. The name and, where applicable, the job title of the individual earning or receiving the income must be disclosed, unless otherwise noted. Each source of income must be identified by name, address and principal type of economic or business activity. If disclosure of this type is prohibited by statute, rule or an established code of professional ethics, it is sufficient for the executive employee to specify the principal type of economic or business activity from which the income is derived.

The statement must identify: [the enumerated components listed in paragraphs A-R].

### **3. Time for filing.**

A. An elected executive employee shall file an initial report within 30 days of the executive employee's election. An appointed executive employee shall file an initial report prior to confirmation by the Legislature.

B. Each executive employee shall file the annual report by 5:00 p.m. on April 15th of each year, unless that employee has filed an initial or updating report during the preceding 30 days or has already filed a report for the preceding calendar year pursuant to paragraph A.

C. An executive employee shall file an updated statement concerning the current calendar year if the income, reportable liabilities or positions of the executive employee or an immediate family member, excluding dependent children, substantially change from those disclosed in the employee's most recent statement. ...

...

### **4. Penalties.** Penalties for violation of this section are as follows.

A. Failing to file a statement within 15 days of having been notified by the Commission on Governmental Ethics and Election Practices is a civil violation for which a fine of not more than \$100 may be adjudged. A statement is not considered filed unless it substantially conforms to the requirements of Title 1, chapter 25, subchapter 2 and is properly signed. The commission shall determine whether a statement substantially conforms to such requirements.

B. The intentional filing of a false statement is a Class E crime. If the Commission on Governmental Ethics and Election Practices concludes that it appears that an executive employee has willfully filed a false statement, it shall refer its findings of fact to the Attorney General.

**5. Rules.** The Commission on Governmental Ethics and Election Practices may adopt or amend rules to specify the reportable categories or types and the procedures and forms for reporting and to administer this section.

**6. Public record.** Statements filed under this section are public records. The Commission on Governmental Ethics and Election Practices shall provide a means for executive employees to file statements in an electronic format that must immediately place the statements on a publicly accessible website. Executive employees shall file statements required by this section using the electronic format prescribed by the commission. If an executive employee can attest to an inability to access or use the electronic filing format, the commission may provide assistance to the employee to ensure proper and timely placement of the required statements on the publicly accessible website.

## ***Appendix F. Legislative History of 5 M.R.S. § 18(7)***

Maine's conflict of interest statute, 5 MRSA §18, was amended in 1988<sup>45</sup> to add subsection 7, requiring executive employees to endeavor to avoid the appearance of a conflict of interest by disclosure or by abstention. The original bill, which was the product of a study conducted by the Joint Standing Committee on State and Local Government, initially proposed a much broader scope for this provision.

Among other things,<sup>46</sup> the bill required executive employees to avoid the appearance of a conflict of interest, and laid out the expectations to achieve this purpose, including:

- In any proceeding, placing the public interest before the employee's private interest;
- Not accepting outside business or other obligations regulated by the employee's agency or organization;
- Not engaging in unprofessional conduct or improprieties that could jeopardize the confidence or trust of the public;
- Rejecting gifts or favors from persons whose influence or interests are likely to be the subject of the employee's action; and
- Disclosing at the beginning of a proceeding any of the following:
  - Any direct or substantial financial interest;
  - Any relationships, including close personal friendships, of the executive employee with any person, firm or organization which is appearing in a proceeding before the agency;
  - Any gifts, loans of more than \$100 provided to the executive employee in the previous 2 years; and
  - Any close personal relationships with any person, firm or organization in a proceeding before the board or agency.

Should there be a conflict as outlined, the executive employee was required to abstain from the proceeding, which included that the executive employee vacate the room in which the proceeding was taking place and avoid contact with those people involved.

Much of the written testimony submitted at the public hearing at the time focused on specific conflict of interest concerns regarding the Board of Pesticides and local and municipal officials. Additional testimony noted that the relevant laws should be strengthened, but also included concerns about inadvertently precluding those with subject matter expertise from serving on regulatory boards, overly burdensome financial disclosure requirements, and the practicability of interpreting certain aspects of the bill—such as what constitutes a “close personal friendship.”

Ultimately, the bill was amended and, with respect to the appearance of a conflict of interest of executive employees, the Joint Standing Committee on State and Local Government rejected the

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<sup>45</sup> [LD 2419, HP 1766, Text and Status, 113th Legislature, Second Regular Session](#)

<sup>46</sup> Provisions in the bill also included, but were not limited to, expanding annual financial disclosure requirements, establishing so-called “revolving door” laws for former executive state employees, boards and commissions, and applying conflict of interest provisions to county and municipal employees.

more prescriptive language in favor of creating a general guideline for executive employees that encourages them to endeavor to avoid an appearance of a conflict of interest by disclosure or abstention.

In 2001, the Legislature passed an amendment to the conflict of interest laws. The amendment:

- Added the provision that a conflict of interest includes receiving remuneration for performing functions that a reasonable person would expect to perform as part of that person's official responsibilities; and
- Enacted 5 MRSA §18-A, expressly prohibiting executive employees from having any direct or indirect pecuniary interest in or receiving or being eligible to receive—directly or indirectly—any benefit that could arise from any contract made on behalf of the State when the state entity that employs the executive employee is a party to that contract.

A newspaper article from the time references a particular situation in which a commissioner had accepted money for travel and expenses and a per-diem salary for work with an organization to which that individual belonged, suggesting that these latter amendments were meant to establish a more explicit nexus between outside employment and State employment that may cause the appearance of a conflict of interest.



*Appendix G. DAFS Agreement and Disclosure Statement*



**STATE OF MAINE**

**DEPARTMENT OF (enter Department)**

**Janet T. Mills**

**Governor**

**(Enter Commissioner)**

**Commissioner**

**AGREEMENT AND DISCLOSURE STATEMENT**

**RFP #: (Insert RFP #)**

**RFP TITLE: (Insert RFP title)**

I, **(print name at right)**

\_\_\_\_\_ accept the offer to become a member of the Request for Proposals (RFP) Evaluation Team for the State of Maine Department of **(enter Department)**. I do hereby accept the terms set forth in this agreement AND hereby disclose any affiliation or relationship I may have in connection with a bidder who has submitted a proposal to this RFP.

Neither I nor any member of my immediate family have a personal or financial interest, direct or indirect, in the bidders whose proposals I will be reviewing. "Interest" may include, but is not limited to: current or former ownership in the bidder's company; current or former Board membership; current or former employment with the bidder; current or former personal contractual relationship with the bidder (example: paid consultant); and/or current or former relationship to a bidder's official which could reasonably be construed to constitute a conflict of interest (personal relationships may be perceived by the public as a potential conflict of interest).

I have not advised, consulted with or assisted any bidder in the preparation of any proposal submitted in response to this RFP nor have I submitted a letter of support or similar endorsement.

I understand and agree that the evaluation process is to be conducted in an impartial manner without bias or prejudice. In this regard, I hereby certify that, to the best of my knowledge, there are no circumstances that would reasonably support a good faith charge of bias. I further understand that in the event a good faith charge of bias is made, it will rest with me to decide whether I should be disqualified from participation in the evaluation process.

**I agree to hold confidential all information related to the contents of Requests for Proposals presented during the review process until such time as the Department formally releases the award decision notices for public distribution.**

**Signature**

**Date**

*Rev. 4/4/2023*