

**Remarks of Elaine Clark, Commissioner
Department of Administrative and Financial Services**

**Before the Committee on
Government Oversight**

February 13, 2026

Good afternoon, Senator Hickman, Representative Mastraccio, and members of the Committee on Government Oversight. I am Elaine Clark, the Commissioner of the Department of Administrative and Financial Services.

You asked me to attend today's meeting to answer some questions about the state auditor's 2024 findings, and about Procurement Justification Forms that become Notices of Intent or "NOI"s when approved and posted.

The letter that precipitated your invitation makes some disturbing allegations, and because of that I appreciate being invited to this meeting today to have the opportunity to address them. I am disheartened by how the audit results in the report have been characterized.

Saying that the "procurement practices of the State of Maine involving the award of sole-source contracts are already beyond suspect" is unfair, not to mention entirely demoralizing to the professional staff at OSPS, some of whom I have been working with for more than 20 years. It was jarring to read the allegation that "fraud has corroded the foundation of and now permeated Maine's entire Executive Branch." It is my intent to refute these statements.

A few facts:

- OSPS processes more than \$2.1 billion in state procurements.
- Reviews close to 11,000 contracts per year, including renewals, extensions, and amendments.
- However, the total number of procurement contracts that were reviewed by the State auditor in 2024 was 45, with a value of \$7,390,713 – not the misleading sum of \$2.1 billion.
- A full \$5,000,000 of that amount is one blanket financial assistance contract for economic aid to farmers with confirmed PFAS contamination at their farms and who have ceased selling most or all their products commercially. DACF is providing direct financial support to these farms potentially equivalent to up to two years of lost gross income. OSPS simply encumbered funds for the Maine DACF "Producer PFAS Income Replacement" Program. The reimbursements were intended to be issued to producers meeting the criteria of the program.

- This is not a public procurement; rather, it is a financial assistance grant Program and accordingly was not characterized correctly in the audit finding, which DAFS pointed out in writing to the State Auditor.
- Backing out the \$5 million grant, leaves approximately \$2,390,713 for discussion, just over 1/10th of a percent of the total processed by OSPS.
- Approximately 20% of the NOIs submitted are rejected by OSPS.
- The number of NOIs approved has declined substantially (by about 45%) during the current administration:

2016 – 2,035

2017 – 2,092

2018 – 2,109

2019 – 2,142*

2020 – 1,171

2021 – 1,056

2022 – 1,286

2023 – 1,420

2024 – 1,512

2025 – 1,134

**In 2019, OSPS transitioned mid-year from a manual posting system to a fully automated system, and due to issues with auto numbering during testing, the number may be overstated.*

Purpose of the Audit

The Executive Branch supports the concept of independent audits. The purpose of the 2024 audit was an independent review of the state's compliance with federal program requirements. The audit report, which is sent to our federal counterparts, is the first step in the formal findings reporting process. The point is that none of this is finalized until the federal government has done its evaluation, and we have not yet received its evaluation of the state auditor's 2024 findings regarding OSPS.

The annual audit process is complex, comprehensive, and detailed work. The Office of the State Controller (OSC) coordinates the Administration's audit response process. The Administration takes each audit finding seriously and has systems in place to ensure that findings are properly addressed and corrected.

- The Administration responds to each finding, in agreement or disagreement, with pertinent information to support the administration's position.
- The OSC performs comprehensive reviews to ensure that responses to findings are accurate, fairly stated, and well-reasoned.
- In addition to providing responses to audit findings, agencies must also submit corrective action plans, which are reviewed by OSC to ensure they will address the relevant audit findings.

The OSC agreed with OSPS in its responses to the 2024 audit, as discussed below.

It is critical to know that despite the various disputes between OSPS and the Auditor, the 2024 Audit did not indicate any evidence of wrongdoing, fraud, waste or abuse. The Auditor did not refer anything to the Office of Attorney General or Office of State Controller for follow-up as defined in Title 5 §200-C and §1541 (e.g., fraud, waste, abuse).

Disputed Findings

The State Auditor recorded 8 findings (quoted below) relating to the OSPS. OSPS as supported by the Office of State Controller disagreed in writing in whole or in part with 7 (DAFS/OSPS written responses underlined, additional comments in italics).

1. "Of the 23 Federal contracts included in the sample, 5 did not contain required Federal Award information in accordance with regulations."

OSPS disagrees with the OSA's claim that federal contract management is OSPS's responsibility. Based on 2 CFR 200.1, state agencies are the recipients of federal awards, while OSPS does not receive federal funds or manage program activities. Contract management in Maine is decentralized to the State agencies.

This was misassigned to OSPS as it was not the recipient of the funds.

The State Auditor audits procurement centrally for various federal programs. The FY 2024 audit finished with "no findings noted during testing." Another way of saying this is: The federal programs audit for the same time period by the State Auditor yielded no findings for OSPS.

2. “While contracts are not considered valid until fully signed, a majority of contracts and PJFs tested were signed after the start date of the contract, ranging from 3 days to 187 days later, as follows:

- 18 of 31 PJFs tested were signed after the contract start date.
- 24 of 45 contracts tested were signed after the contract start date.”

OSPS disagrees with these findings. The dates on the PJF are clearly labeled as "Proposed Dates," intended for internal review and not indicative of finalized timelines. Contract signing and management are the responsibilities of the contracting agency, not OSPS.

3. “In the application of sole-source justification as a waiver of the State’s competitive bidding process, reasonable investigation by the Director of BGS is statutorily required; however, 16 of 31 PJFs tested were designated as sole-source and there was no documentation to support reasonable investigation by the Director occurred as required.”

OSPS finds this exception inaccurate as it does not consider the complete Procurement Justification Form (PJF)/Notice of Intent (NOI) process. Agencies justify their requests in the PJF, which OSPS reviews. PJFs are publicly posted, allowing vendors to protest claims, ensuring accountability.

I will review each of the 16 PJFs and you will hear why this finding should have been resolved.

4. “One contract was approved and encumbered as a sole-source contract subsequent to work being completed. As a result, an invoice was generated prior to the start of the contract.”

We agree an invoice was generated prior to the start of the contract. OSPS will review relevant procedures with staff to ensure compliance in the future.

Corrective action was taken. OSPS reviewed relevant procedures with staff to ensure compliance in the future.

5. “Documentation to support performance of a cost analysis as required by State policy could not be provided for any of the 45 procurement actions tested.”

OSPS disagrees with this finding. The auditor overlooked established processes. Relevant documents often stem from formal solicitations, with rigorous cost analyses in place. The Auditor's claims rely on outdated policies. An updated Policy Manual, due for release in 2025, will clarify current practices.

Note: due to additional procedural changes, the Policy Manual will be released in 2026.

6. “OSPS did not review existing Low-Cost Service Contracts (LCSC) prior to approval of new contracts to the same vendor. Of the 7 LCSCs tested, 4 were to vendors already engaged in more than one LCSC with the Department within the same 12-month period, which is prohibited by State policy. One Department had 7 concurrent LCSCs with the same vendor.”

The reference to our guidance regarding LCSCs is only partially accurate. Agencies can have multiple LCSC agreements with the same vendor under certain conditions. "Stacking" avoids proper procurement processes. We review relevant documents when stacking is suspected, and two LCSC contracts from fiscal year 2023 indicate possible stacking.

7. “OSPS did not request or review information related to vendor performance during the contract amendment process. None of the 14 amendments tested included documentation to support a review and determination of satisfactory vendor performance in line with terms and conditions of the existing contracts.”

OSPS disagrees with this finding; it relies on outdated practices. Contract management has been decentralized, and OSPS does not sign contracts or oversee vendor performance—these responsibilities lie with the agency.

8. “Of the 8 IT-related contracts tested, 2 contracts were approved through OSPS without documentation of OIT review or approval as required by statute.

OSPS acknowledges that one IT-related contract was not reviewed by MaineIT as required. However, the other contract was signed prior to the establishment of the formal IT procurement process for LCSCs, and approval was not required at that time. Additionally, this contract falls outside the audit scope for fiscal year 2023.”

We will provide greater detail on all these audit responses if requested. Our written responses to the findings were not responded to by the state auditor.

16 NOIs

There are seven criteria for waivers of competitive procurement in statute, including when the Governor or Governor’s designee deems that an emergency exists, or when a specific item or service is available from only one source, or when the goods or services cost less than \$25,000.

However, many of the 16 contracts were exempt from PJFs and procurement as they were existing contracts that simply rolled into a new fiscal year, and others were legitimate sole sources.

7 were multi-year contracts that rolled into new fiscal years. New PJFs were not required.

1 was listed as a “single source” in error. The contract had been competitively bid with awards made following the RFP process.

1 was a fiscal year 2024 PJF from DHHS to provide funding to all the 8 District Attorney offices for Victim Advocacy services as funded by the federal Victims of Crime Advocacy or VOCA program. Each of the offices received \$55k. This was reviewed and found acceptable by OSPS.

1 was for contract language change related to a new schedule due to unavoidable delays in two areas. The amendment changed the workplan and was accepted and approved by the federal CDC. In fact, the provider was named in the workplan for the program in question and approved by the U.S. CDC.

1 was a PJF for a single source vendor who had demonstrated unique qualifications for marine geotechnical work to design marine retaining walls for boating facilities.

1 was an amendment to add two additional trainings to a 2-year-old contract.

1 was a contract pursuant to an approved MJRP business case. The grant award was made to specific workforce boards who then distributed grant funds.

1 was a language change and no-cost date extension for a grant.

1 was an amendment to remove “LLC” from a provider’s business name for a contract directed to a provider by a Maine court.

1 was a fiscal year 2024 contract submitted under a 'Willing and Qualified' classification. The contract is for appraisal services for a unique area where there is a very limited pool of appraisers that are qualified to assess the value of potentially conserved forest lands and who can perform appraisals that meet the requirements of federal funding sources.

"Willing and Qualified" designation is used when there is an insufficient number of providers to meet program needs. It is based on a federal model set out in the Code of Federal Regulations. These PJFs are posted on the OSPS website for the life of the contract to encourage additional vendors to apply to get on the list of providers.

Conclusion

OSPS with the support of the Office of State Controller refuted 7 of 8 state audit findings in writing, however no changes were made to the disputed findings by the auditor despite explanatory information.

The sixteen audit findings criticizing NOIs were incorrect. As you can see, most of the contracts or amendments, or year-end rollovers, were not subject to competitive procurement.

I hope this has been helpful and clarified that OSPS is a hardworking unit with major responsibilities that each and every employee takes seriously, using professional standards and judgment. It is unfortunate that through a series of misinterpretations, the letter dated January 8, 2026, was submitted to this Committee.