

OPEGA Review Request Summary
Prepared for the Government Oversight Committee

Review Request Topic: Request for Proposal & Appeal Processes
Legislative Sponsor: Rep. Arthur Bell
Date Presented: May 14, 2021

Topic/Program

- The Request for Proposal (RFP) process as used by the Department of Public Safety (DPS) and overseen by the Department of Administrative and Financial Services (DAFS).
- The process for appeal of contract awards administered by DAFS.

Program Description/Background

- Maine's RFP process is overseen by the DAFS Division of Procurement Services (Procurement).
- State agencies, such as DPS, seeking to contract for goods and services develop an RFP based on their needs, which is then reviewed by the DAFS Contract Review Committee for approval prior to issuance by the agency.
- After issuing the RFP, the agency reviews the proposals received and makes the award decision.
- The contract award decision is subject to DAFS Contract Review Committee approval.
- There is an appeal process administered by the DAFS Appeal Panel that is available to any person who bids on a contract and who is adversely affected by that contract award decision.

Specific Details

- This review request was initiated by a citizen whose company responded to an RFP issued by the DPS, Bureau of Highway Safety and was not awarded the contract. The contract was awarded to the incumbent contractor.
- The requestor contends the RFP was improperly structured to ensure the incumbent would retain the contract.
- The requestor appealed the contract award decision to the DAFS Appeal Panel. The panel invalidated the award, finding "fundamental unfairness" due to: (a) a specific certification eligibility requirement contained in the RFP, and (b) a lack of sufficient detail in the RFP scope of work for a bidder to develop an accurate and competitive cost proposal.
- The requestor contends that no remedy was provided for his time and expenses associated with the proposal submission or the appeal of the contract award.

Possible Areas of Focus Based on Review Request

- Effectiveness of the RFP process, including RFP development and approval, agency review of proposals and contract award decisions.
- Effectiveness of the appeal process regarding contract awards.
- The extent to which the state does or could provide a remedy to the appellant when an award is invalidated.

Cost

- The RFP that prompted this request received bids greater than \$700,000 for the first year and included four 1-year renewal periods, with a potential total value of \$3.5 million or more, over five years.

Past or Current Reviews Relating to this Topic

- In September of 2008, OPEGA issued a report titled: *State Contracting for Professional Services: Procurement Process*. This review was part of a broader effort to identify opportunities for improving the State's financial situation at that time. Conducted in conjunction with OPEGA's study of State Administration Staffing, it was intended to focus on contracts for services supporting executive level functions.
- No other reviews identified.

Additional Materials

- ✓ E-mail from Rep. Bell to GOC chairs.

Subject:

FW: "OPEGA Review Request" for Tidesmart.Global

From: abell9086@aol.com <abell9086@aol.com>

Sent: Saturday, January 2, 2021 7:46 PM

To: Libby, Nathan <Nathan.Libby@legislature.maine.gov>; McDonald, Genevieve

<Genevieve.McDonald@legislature.maine.gov>; Kruk, Matthew <matthew.kruk@legislature.maine.gov>

Subject: "OPEGA Review Request" for Tidesmart.Global

This message originates from outside the Maine Legislature.

Dear Honorable Nathan Libby, Honorable Genevieve McDonald, and Acting Director of OPEGA Mathew Kruk,

I am following up on my constituent Steve Woods' request for an OPEGA review of the recent Maine Bureau of Highway Safety's "Sports Marketing Services" procurement and the agency's incumbent contract with Alliance Sports Marketing.

I have read Steve's review request and discussed the matter with him. I think he's made a compelling case that this procurement was improperly structured to ensure the incumbent would retain the work. In fact the Maine Dept. of Administrative and Financial Services agreed, and invalidated the award to ASM due to "fundamental unfairness."

The issue now is that the MeBHS will soon reissue the RFP, and Steve is concerned that the same bias that tainted the first round of the procurement will persist. Steve is calling on OPEGA to investigate the procurement and ASM's incumbent contract with the state for evidence that the relationship between ASM and the BeBHS is simply too cozy, to the detriment of potential bidders like himself and the public at large.

Whether this merits an investigation from OPEGA or some other form of oversight is beyond my ability to say at this stage. If in your roles you have observed prior anti-competitive conduct by MeBHS, this may indeed merit a formal inquiry. Otherwise, it may be more prudent to let the second round of this procurement play out to see if they get it right this time. Either way, I can attest to Steve Woods' integrity and spirit of public service, and for that reason I hope you can take the time to consider whether his request merits further action from your offices.

If I can be of any assistance, please don't hesitate to reach out.

Thank you,

Arthur Bell

Maine State Representative, District 47 (Yarmouth, Chebeague, Long Island)