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SERVING THE PUBLIC AND DELIVERING ESSENTIAL SERVICES TO STATE GOVERNMENT

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*Testimony of Anya Trundy, Deputy Commissioner  
 Department of Administrative and Financial Services  
 Testifying Neither For Nor Against*

**LD 857, An Act to Increase Government Transparency in the Procurement of Goods and Services**

Sponsored by Rep. David Boyer  
*Before the Joint Standing Committee on State and Local Government*

Senator Baldacci, Representative Salisbury, and members of the Joint Standing Committee on State and Local Government: I am Anya Trundy, a Deputy Commissioner for the Department of Administrative and Financial Services. I am providing testimony today Neither For Nor Against LD 857, and will recommend that the Committee amend the bill so that some of the bill's objective can be accomplished within existing resources.

The vast majority of the documents identified in LD 857 are already readily available on the Office of State Procurement Services' website, allowing interested parties to access these documents for themselves. The retention of Procurement documents are governed by the applicable document retention schedules maintained by the Maine State Archives.

	<b>State Issued Bid Documents</b>	<b>Bid Proposals</b>	<b>Evaluation Packets</b>	<b>Contracts</b>
<b>RFP</b>	Online Archive back to 2017.	Public Document Available upon request. Require confidentiality review.	Online	Online
<b>RFA (Grants)</b>	Online Archive back to 2017.	Public Document Available upon request. Require confidentiality review.	Online	Online
<b>RFI</b>	Online Archive back to 2018.	Public Documents Available upon request. Require confidentiality review.	Online	Online
<b>RFQ (Commodities)</b>	Online	Public Document Available upon request. Require confidentiality review.	Online	Online
<b>NOI</b>	Procurement Justification Form Posted for 7 Days	N/A	N/A	Online

There are two types of procurement documents that are public documents, but that cannot currently be accessed via self-service on Procurement's website and would require an interested party to identify and request the desired documents.

The first type of documents are the bid proposals submitted in response to competitive solicitations for bids. Bid proposals are typically hundreds of pages in length each and for each solicitation there are often multiple proposals received, sometimes 20-30 proposals. Procurement's existing website architecture does not have the capacity to support the volume of these files.

Additionally, both the State and bidders may have valid confidentiality concerns regarding information contained in bid proposals that State statute exempts from disclosure under the Freedom of Information Act. Approximately 20% of the bid proposals that the State receives are marked CONFIDENTIAL in part by the bidder because their proposal contains proprietary business information, such as trade secrets. Furthermore, a significant portion of the State's procurement is technology-related and there are details contained within the bid documents that are sensitive and could compromise the security of the State's systems and Mainer's personally identifiable information stored in those systems if made public. Prior to releasing requested bid proposals, they are reviewed by both Procurement and the Attorney General's Office for the presence of sensitive information that is statutorily protected. Bidders are informed that their bid proposal have been requested and will be made public, and given the opportunity to assert that information contained within is statutorily protected and should be redacted. Given the volume, length, and technical sophistication of bid proposals, review is only completed when bid proposals are requested by an interested party. Were the necessary review required up-front so that every bid proposal received could be immediately posted online once an award had been made, several additional staff positions would be required within Procurement, and likely additional attorney support within the Attorney General's Office.

The second type of these documents are Notifications of Intent (NOIs) to Waive Competitive Bidding.

Statutorily there are seven (7) limited circumstances under which the requirement of competitive bidding may be waived by the Director of the Bureau of General Services. They are found under 5 MRS §1825-B(2) and are:

*A. The procurement of goods or services by the State for county commissioners pursuant to Title 30-A, section 124, involves the expenditure of \$2,500 or less, and the interests of the State would best be served;*

*B. The Director of the Bureau of General Services is authorized by the Governor or the Governor's designee to make purchases without competitive bidding because in the opinion of the Governor or the Governor's designee an emergency exists that requires the immediate procurement of goods or services;*

*C. After reasonable investigation by the Director of the Bureau of General Services, it appears that any required unit or item of supply, or brand of that unit or item, is procurable by the State from only one source;*

*D. It appears to be in the best interest of the State to negotiate for the procurement of petroleum products;*

*E. The purchase is part of a cooperative project between the State and the University of Maine System, the Maine Community College System, the Maine Maritime Academy or a private,*

*nonprofit, regionally accredited institution of higher education with a main campus in this State involving:*

- (1) An activity assisting a state agency and enhancing the ability of the university system, community college system, Maine Maritime Academy or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State to fulfill its mission of teaching, research and public service; and*
- (2) A sharing of project responsibilities and, when appropriate, costs;*

*F. The procurement of goods or services involves expenditures of \$25,000 or less, in which case the Director of the Bureau of General Services may accept oral proposals or bids; or*

*G. The procurement of goods or services involves expenditures of \$10,000 or less, and procurement from a single source is the most economical, effective and appropriate means of fulfilling a demonstrated need.*

NOIs consist primarily of a completed Procurement Justification Form in which the contracting agency articulates its rationale and statutory basis for pursuing a single source contract. NOIs are currently posted on Procurement's website for a seven-day period for the purpose of providing the vendor community and interested members of the public the opportunity to review the issuing Agency's single source rationale and statutory basis for that action. This is one of the most highly trafficked websites in State Government. Vendors and interested parties that wish to protest the use of a non-competitive bid process may file a challenge. Challenges are reviewed by Procurement and sent to the issuing Agency for a formal response. Procurement then decides whether the Agency's original single source justification remains valid and can proceed or doesn't hold up and necessitates a competitive bid process.

The contracts resulting from NOIs are readily available via self-service on Procurement's website, however an interested party would need to know something about the contract they are looking for, such as the service contracted or the vendor awarded, to be able to find the contract. There is currently no way to look back through the State's NOIs or search contracts originating from an NOI.

In brainstorming a solution to the current lack of look back surrounding NOIs, that Procurement could implement within existing resources, Procurement would like to propose the creation of a simple listing of NOIs going forward, likely compiled in an Excel spreadsheet, that would be made available on Procurement's website. It wouldn't have the dynamic capability of the RFP/RFA/RFI archives that directly link to the related documents, but it would include information that would allow interested parties to search for the resulting contract and provide transparency into the State's use of waivers of competitive bidding.

Lastly, DAFS asks the Committee to provide clarity about what documents are specifically meant by "all underlying supporting documents" and "any related financial agreements." DAFS is not clear what is meant by these phrases. DAFS would also request the paragraph's final clause be amended to defer to record retention schedules adopted by the Maine State Archives pursuant to 5 MRS §95-B that Procurement currently abides by.