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DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES  
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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 in Opposition to*

**LD 1125, An Act Regarding the Impact of Certain Nonemergency Transportation Services  
Contracts on Community Action Agency Programs**

Sponsored by Rep. William Bridgeo  
*Before the Joint Standing Committee on Health and Human Services*

Senator Ingwersen, Representative Meyer, and members of the Joint Standing Committee on Health and Human Services: I am Anya Trundy, a Deputy Commissioner for the Department of Administrative and Financial Services (DAFS). I am providing testimony today in Opposition to LD 1125, An Act Regarding the Impact of Certain Nonemergency Transportation Services Contracts on Community Action Agency Programs.

DAFS assumes that this bill was submitted in reaction to the Department of Health and Human Service's (DHHS) recent award for Maine Non-Emergency Medical Transportation Services, which is currently being appealed by two of the non-prevailing bidders that are also Community Action Agencies (CAA). At this juncture in time, the State's award decision has been upheld upon Administrative Appeal, and by the Superior Court in one of the two cases, with the other case still pending.

As LD 1125 is drafted, it is not explicit how DHHS would "consider the financial impact that such a contract would have on programs provided by an entity designated as a community action agency;" however, DAFS assumes the bill's intent is for that consideration to occur inside of the competitive bid evaluation process to advantage the CAA. DAFS would strongly discourage the Committee from establishing such a preference in statute, which would run counter to the principles of competition, openness and transparency that are essential to fairly administering State contracting without favoritism. Procurement policies and processes are established to uphold these tenets and yield the best value for the State—taking into consideration both cost and quality—when spending taxpayer dollars and providing services to Maine residents.

DAFS fully recognizes that there is often a tension between best value for the State and the prospective financial impact felt by bidders located in your communities. Winning a State contract can present a transformative opportunity for an awardee, but DAFS acknowledges it can be a double-edged sword: losing a State contract can be devastating to an incumbent provider who has become accustomed to, and perhaps financially dependent upon, receiving a certain award. However, Procurement receives an approximate average of six (6) submissions per solicitation, so it is a simple mathematical reality that the competitive bid process yields more disappointed bidders than successful awardees.

If an unsuccessful bidder feels that an award was fundamentally unfair, they can appeal the decision. Appeals are a routine part of a competitive, open, and transparent process—in and of itself, an appeal is not indicative of a systemic issue. Procurement's adherence to process and standards is intended to minimize the number of awards appealed and subsequently the number of awards invalidated. Procurement administers more than 200 competitive solicitations annually and on average 2% of awards are appealed, with more than half of those award decisions upheld upon appeal. It's also true that the total value appealed tends to account for a disproportionate percentage of the total value of all awards—this is because it's often worth filing an appeal simply due to the value of the contract at play, either for the unsuccessful bidder's own financial benefit or to deny a competitor the benefit.

In the case of Non-Emergency Medical Transportation Services, DHHS was soliciting very specific services that are federally funded. In the procurement of services, the State's primary concerns are the vendor's qualifications and demonstrable ability to deliver the specific services covered under the prospective contract, and consideration of the indicated level of quality of service relative to cost. In this instance, reimbursement rates are actuarially established and accepted by bidders; therefore variation in bid amount was not a component of this evaluation. Bidders for this contract, whether a for-profit or non-profit, are holding themselves out as the best provider of non-emergency medical transportation services; the other services that either a non-profit or for-profit may provide are not relevant to this solicitation. Further, OMB Circular A-87 specifically stipulates that Medicaid funds may not be used to pay for or subsidize non-Medicaid programs, this applies downstream as well. As DHHS has further detailed in their testimony, DHHS cannot, in accordance with the Medicaid funding supporting this contract, consider the financial impact upon CAAs or the other benefits they provide to the communities they serve.

In closing, it seems that this bill is asking the State of Maine to put a thumb on the scale for Community Action Agencies in competitive procurements for Non-Emergency Medical Transportation Services, in such a way that could or would result in Community Action Agencies winning high dollar contracts for which another bidder was objectively determined to be the most capable and qualified provider of non-emergency medical transportation services. Any attempt to engineer the outcome of a particular high-dollar procurement will undermine the overall credibility of State contracting. When bidders-at-large question the fairness of the entire procurement process, it will reduce the number of bids that the State receives in response to RFPs, in turn diminishing the competitiveness of the bids that the State has to choose from. Robust competition is in the State's interest: it incentivizes vendors to be better than each other and ensures that the State gets the best value. Conversely, when there isn't sufficient competition, the quality of services often suffers and that is when we and you hear from dissatisfied constituents.

DAFS strongly urges the Committee to vote this bill Ought Not to Pass. I am happy to answer any questions from the Committee now, and can be available for the work session.