



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
BURTON M. CROSS BUILDING, 3RD FLOOR
78 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0078

SERVING THE PUBLIC AND DELIVERING ESSENTIAL SERVICES TO STATE GOVERNMENT

JANET T. MILLS
GOVERNOR

KIRSTEN LC FIGUEROA
COMMISSIONER

*Testimony of Kirsten Figueroa, Commissioner
Department of Administrative and Financial Services
Testifying in Opposition to*

**LD 1814, An Act to Increase Transparency in State Government by Amending Laws
Regarding Persons Attempting to Influence the Competitive Bidding Process and
Lobbyist Reporting During Rule-making Processes**

Sponsored by Sen. Craig Hickman
Before the Joint Standing Committee on Veterans and Legal Affairs

Good afternoon, Representative Supica and members of the Joint Standing Committee on Veterans and Legal Affairs. I am Kirsten Figueroa, Commissioner of the Department of Administrative and Financial Services (DAFS). I am providing testimony in Opposition to this bill because DAFS steadfastly believes that lobbying has no place in the competitive bid process and it is antithetical to upholding an open, competitive, fair and transparent State procurement system.

Maine's policy and procedural framework surrounding the procurement processes include multiple safeguards to ensure that award decisions are made free of outside influence and based upon determinations of best value. Although according to research by the Maine Ethics Commission, 29 other states and the District of Columbia do have disclosure law as proposed by this bill, we are baffled that other states would sanction lobbying related to the competitive bid process given that it undermines the openness, competitiveness and fairness of State procurement and provides openings to call into question the legitimacy of award determinations.

Information v. Inappropriate

State employees, just like legislators, are probably most likely to encounter prospective vendors when they attend conferences. Vendors sponsor conferences to gain access to us: we have to walk by their table on our way to the bathroom; they catch us during breaks; and they have us as seat mates during meals. These conversations can be informative and are often how we learn about innovations.

Sales personnel do reach out to agency personnel; they're trying to make a connection with anyone who will talk to them. MaineIT specifically requires that all technology vendors go through them and that they not reach out to individual agencies. Outside of a procurement process this is not problematic, and agency staff can engage to the extent they deem worthwhile. If, however, this sort of outreach occurs during the procurement process, it is inappropriate on the part of the vendor, and Procurement instructs agency staff to not engage. That being said, neither Procurement, MaineIT, nor agencies have reported improper contact by vendors as a current or significant past issue.

In planning to draft an RFP, conversations with vendors should be limited to information gathering and verifying industry standards. Agencies are encouraged to use neutral resources such as ProcurementIQ and Procurated to develop market intelligence and read reviews of prospective bidders. When drafting of the solicitation commences, all communications with interested parties should cease to prevent all possibility that they influence the shaping of the RFP in their favor. And once an RFP has been released, all communications regarding the RFP, including formally posed questions, must be made through the designated RFP Coordinator.

Finally, evaluation team members each sign an "Agreement and Disclosure Statement" attesting that:

- 1) neither they, nor any member of their immediate family, have personal or financial interest, direct or indirect, in the bidders whose proposal they will review, and
- 2) they have not advised, consulted or assisted any bidder in the preparation of their proposal.

If improper contact during the procurement process did occur, it could compromise the openness, fairness and transparency of the specific bid and undermine the State's competitive bid process. Depending on when it came to light, it would be grounds for Procurement to withdraw the RFP, rescind an award, invalidate an award upon appeal, or terminate a contract.

Put in an Unfair Position

On occasion, though not regularly, lobbyists do reach out to those of us they know from the halls of the State House about a procurement one of their clients has an interest in. Sometimes the conversation they attempt to have with us about out-for-bid or forthcoming procurements is inappropriate and we have to tell them as much. Fortunately, those of us who lobbyists would reach out to are pretty removed from the actual procurement process—we're not drafting RFPs, we're not sitting on evaluation teams—that work is done by the relevant program and project staff. If right now, you asked me about a specific current or recent RFP, I might be peripherally aware of it as a result of the budget and appropriations process, but odds are I wouldn't be able to tell you anything about that procurement that isn't publicly available information.

That being said, lobbyists will push the boundaries of these conversations as far as allowed and that unfairly places all the onus on public servants to shut these conversations down. A situation should not be created where a lobbyist essentially asks a State employee to compromise their professional reputation, career, and job security for the benefit of a corporate entity pursuing a State contract.

Disclosure and transparency don't seem to be effective deterrents in this day and age. Campaign finance reporting doesn't prevent special interests from making contributions aimed at aligning elected officials to their issues; it merely allows interested members of the public to understand their elected officials votes in retrospect. Similarly, the disclosure of lobbying in attempt to influence a competitive bid would reveal both 1) a fundamental unfairness and 2) an arbitrary award decision, both of which are conditions that would invalidate an award upon appeal.

DAFS urges the Legislature to take a stronger stance and make clear that lobbying with respect to an open or anticipated competitive procurement is strictly prohibited, rather than signaling an open season for such lobbying by establishing a mechanism for it to be reported.