

MAINE STATE LEGISLATURE

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OFFICE OF
THE GOVERNOR

NO. 2016-001
DATE March 3, 2016

**AN ORDER RE-ESTABLISHING THE STATE PROCUREMENT REVIEW
COMMITTEE**

WHEREAS, it is the intention of the Administration to maintain a balanced state budget and to restore that balance as rapidly as possible whenever it appears threatened; and

WHEREAS, it is prudent to oversee the expenditures of State agencies in the purchase of goods and services, without unduly disrupting public services; and

WHEREAS, it is essential that all State agency purchases of goods and services be implemented in as efficient and cost-effective manner as possible, consistent with applicable State and Federal laws and guidelines; and

WHEREAS, administrative review by the expert State procurement agencies and the Governor's Office of all major purchases of goods and services by State agencies is necessary in order to ensure prudent financial and operations management; and

WHEREAS, it is prudent that departments and agencies have the benefit of legal advice regarding their procurement and contracting;

NOW, THEREFORE, I, Paul R. LePage, Governor of the State of Maine, do hereby repeal Executive Order 07 FY 10/11 and re-establish the State Procurement Review Committee for the administrative review and authorization of all major State agency purchases of goods and services that are subject to the jurisdiction of the Division of Purchases, Department of Administrative and Financial Services, as follows:

Membership

The State Procurement Review Committee shall be composed of the Governor's Chief Legal Counsel, or designee, and the following members of the Department of Administrative and Financial Services: The Director of the Division of Purchases (hereinafter, "the Director"), or designee, who shall serve as Committee Chair; the State Budget Officer, or designee; and the State Controller, or designee. The Chief Information Officer, or designee, shall be an additional member when the matter under consideration is related to information technology subject to his/her authority under 5 M.R.S.A. Chapter 163, Subchapter I.

Responsibilities

A. State departments and agencies subject to 5 MRSA, Chapter 155, shall submit to the Committee for approval, through the Director, all requests for proposals, whether for contracts for services or grant programs, as well as any contract for service or grant renewals or amendments valued at \$1 million or more. Requests for proposals, grant awards and contracts of less than \$1 million in value may be approved at the discretion of the Director, who is authorized to require additional review by one or more additional Committee members, at the Director's discretion.

B. State Departments or agencies which intend to enter into a contract that will be subject to the Committee's approval, before issuing a public request for proposals or bids or, in the case of an existing contract, before seeking approval to renew, extend, amend or otherwise alter the contract, may timely request and obtain legal advice from the Attorney General regarding the terms of the proposal whenever more than \$3 million could reasonably be expected to be expended as a result of the request for proposals or bids or as a result of the contract, renewal, extension, amendment or other change that is being proposed for approval by the Committee.

C. The State Procurement Review Committee may timely seek legal advice from the Attorney General regarding any proposed contract when the Committee determines the contract: (1) may expose the State to substantial risk in the event of nonperformance; or (2) could reasonably be expected to incur cost to the state in excess of \$3 million over the full term of the proposed contract, exclusive of extensions or amendments. The Committee also may seek legal review by and consult with the Attorney General on any contractual matter subject to the Committee's approval.

D. The State Procurement Review Committee and the Director may approve the award of any grant or contract when the Committee is satisfied that: (1) the service to be performed under the grant or contract cannot be economically provided by State Government; (2) the award of the grant or contract is the most economical, effective and appropriate means of fulfilling a demonstrated need; (3) the award of the grant or contract will not impair the ability of the department or agency to meet its statutory duties and responsibilities under other State laws; and (4) the award of the grant or contract does not diminish the impact of statewide or other budgetary cost-savings initiatives, particularly with regard to personal services.

E. A non-competitive contract may be approved by the Director, or by the Committee for purchases over \$1 million, only when accompanied by written justification that satisfies the requirements of the Director and of the Committee. The requirements of the Director may include that (1) the services are critical or essential to agency responsibilities or operations; (2) insufficient staffing or expertise is available from within the department or through other governmental entities; (3) the supplies and/or services required are unique to a specific contractor; or (4) time is of the essence through no fault of the Department and only one known source can meet the Department's needs within the required timeframe; and (5) the Department has exercised due diligence in determining that the costs, fees or rates negotiated are fair and reasonable.


F. Any State department or agency awarding a contract or grant to an independent party, must receive the approval of the State Procurement Review Committee or the Director, as required by this Order. The awarding agency shall submit all requests for proposals, proposed contracts, contract amendments, related contract bid documents, as well as any requests for grant proposals or grant awards to the State Procurement Review Committee for certification of need as well as for documentation of compliance with applicable State and Federal law and financial guidelines. The Committee may, at its sole discretion, require additional information from the agency, reject the contract or grant, or require modification of the contract or grant in order to meet the requirements and objectives of this Executive Order.

This Executive Order is intended only to improve the internal management of the executive branch, and it is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the State of Maine or its agencies or any person.

This Executive Order does not alter the authority of the Director of the Bureau of General Services, as 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. This Executive Order does not apply to contracts that are not subject to 5 M.R.S.A. Chapter 155.

This Executive Order is not intended to modify the ability of the heads of State agencies to make open market purchases for goods and services valued at up to \$5,000.00 without prior approval, except in cases where the Director has determined that the open market limit does not apply.

The effective date of this Executive Order is March 3, 2016.



Paul R. LePage, Governor