

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals  
(may include minor formatting differences from printed original)



LORING COMMERCE CENTRE

January 29, 2013

The Honorable Justin L. Alfond, President of the Maine Senate  
3 State House Station  
Augusta, ME 04333-0003

The Honorable Mark W. Eves, Speaker of the House of Representatives  
2 State House Station  
Augusta, ME 04333-0002

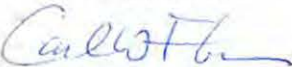
Re: 5 MRSA Section 12023  
Quasi-independent entity report

Dear Senator Alfond and Representative Eves:

Please find enclosed the report of the Loring Development Authority of Maine (LDA), a quasi-independent state entity, as required by 5 MRSA Section 12023. We understand that by February 1, 2014 and annually thereafter, LDA must submit a report to the State of Maine Legislature as outlined in 5 MRSA Section 12023.2.

Please don't hesitate to contact me with any questions.

Very truly yours,



Carl W. Flora

Cc: LDA Board of Trustees

Enclosure

Report to the State of Maine Legislature  
Quasi-independent State Entity – Title 5 MRSA Section 12022

Loring Development Authority of Maine

The Loring Development Authority of Maine hereby submits the following report as required by Title 5 MRSA Section 12023.

**I. ADOPTION OF POLICIES AND PROCEDURES.**

On October 24, 2012, the Loring Development Authority of Maine (LDA) Board of Trustees identified and/or adopted the following policies and procedures:

**1. Policy on Selection of Vendors (procurement policy):** This was an existing policy of LDA. See attached Procurement Policy. It was noted that Sections 12022 and 12023 require the retention for 5 years of records relating to procurements exceeding \$10,000 that were not competitively procured, including written justification and evidence of approvals; also a list of such procurements exceeding \$10,000 must be submitted annually by February 1 to the Executive Director of the Legislative Council.

**2. Policy on Contributions:**

**A. Small financial contributions.** The LDA Board may approve an amount in the annual budget for small contributions to support projects, activities or events of local nonprofit organizations or units of government which have economic significance for the communities affected by Loring's closure. Such contributions shall not exceed in monetary or in-kind value the sum of \$250 unless specifically authorized by the Board. The President & CEO shall within 3 months following the end of each of LDA's July 1 to June 30 fiscal years report to the Board any such contributions made during the fiscal year.

**B. Personal property donations.** The President & CEO is authorized to donate items of personal property belonging to the LDA to any of the impact communities (as defined in the LDA's enabling legislation) or governmental or quasi-governmental entities or non-profit entities operating within the impact communities, if a single item no longer has utility for the LDA, and has an estimated value of \$500 or less. The President & CEO shall first ascertain that the item of personal property proposed for donation will be kept and used within the geographic area of the impact communities and will be used for legitimate governmental, charitable, educational or other commonly accepted non-profit purposes and that such use has a value to the public in excess of the estimated value of the item. The LDA Board may approve a donation of personal property with an estimated value in excess of \$500 if it determines that the contribution or donation meets the same criteria. The President & CEO shall within 3 months following the end

of each of LDA's July 1 to June 30 fiscal years report to the Board any such donations made during the fiscal year.

**3. Policy on Travel, Meals, and Entertainment:** The LDA's policy on reimbursement of business expenses shall be as set forth in the LDA's Employee Handbook (Adopted: August 9, 1995; Revised: July 1, 2010), Section VII., "Expense Reimbursement". (Attached) Note: these policies apply to all LDA employees and violation thereof may be grounds for discipline, including dismissal, of an employee.

This policy does not apply to an employment contract where a vehicle or vehicle allowance is identified as part of a larger compensation package that is negotiated in good faith.

**Records and Reporting.** The President & CEO shall maintain records relating to Procurements; Travel, Meals and Entertainment expenses; and, Contributions and submit annual (fiscal year July 1 to June 30) reports as required by Title 5 MRSA section 120123 subparagraph 2.

<< END of Policies adopted October 24, 2012 >>

## **II. IMPLEMENTATION AND COMPLIANCE MONITORING OF PROCEDURES REQUIRED BY TITLE 5 MRSA SECTION 12022.**

**1. Implementation status:** The policies and procedures set forth above were either (1) already in effect; or (2) effective immediately following adoption, except that the annual budget for FY 14 will be the first to contain separate line items, subject to specific Board approval as part of each annual budget, for 1) contributions; and 2) travel, meals and entertainment.

**2. Compliance measures:** In addition to applying and enforcing the policies noted above according to their express terms, the LDA will undertake the following measures to further assure compliance with the policies and procedures:

**A.** The President & CEO will maintain a list of procurements in excess of \$10,000 that were not competitively made; will assure that a written justification is created and retained for 5 years and will file reports of such procurements annually in accordance with Section 12023.

**B.** Additionally, all LDA agents and attorneys of record (except LDA staff) are to be advised in writing that they are to not engage in any activity that would require them to register as a lobbyist while engaged on behalf of LDA.

**C.** Additionally, LDA intends to 1) monitor records and reports as required by its newly adopted policy outlined above; 2) continue to comply with its procurement policy, ensuring proper selection of vendors; 3) continue to observe and enforce the travel and expense reimbursement policies that exist; 4) observe the new policy regarding contributions to units of government and non-profit organizations; 5) confirm that LDA's agents, consultants and attorneys have received and understand the written notifications advising of the restrictions against lobbying activities contained in Section 12022.6 and advising such persons that they have not been retained for any lobbying activity on behalf of LDA that would require them to register as a lobbyist; and 6) weigh

all decisions regarding use of the LDA's resources against the legitimate goals and mission established for the LDA in its enabling legislation.

**Attachments:**

LDA Procurement Policy

LDA Employee Handbook, Section VII., "Expense Reimbursement"

**LORING DEVELOPMENT AUTHORITY**  
**PROCUREMENT POLICY & GUIDELINES**

**1. GENERAL PROVISIONS**

The Loring Development Authority (LDA) is an autonomous authority of the State of Maine and therefore is not subject to the State's administrative processes for procurement of goods and services through third parties. However, because the LDA does procure substantial goods and services through various vendors, it is in the best interests of the LDA, the general public as well as the vendors to establish a simple, expedient and fair procurement process.

In general, these policies attempt to strike a balance between a variety of interests. For example, small procurements will require the lowest level of formality because the potential savings from a formal, competitive procurement process may quickly be offset by the administrative costs of a more formal procurement procedure. Conversely, the greatest potential savings exists with larger procurements which justify a more exhaustive, time-consuming and expensive procurement procedure.

This policy applies to the LDA and to those employees of the LDA whose assigned duties require them to make purchasing or contracting decisions. There are many criteria that the LDA may use for selecting a particular vendor over others, and LDA employees should develop (in advance of the solicitation of bids) any specific or unique criteria that will assure that the chosen vendor delivers a satisfactory product or service that meets the LDA's needs. The LDA employee should also take into account any of the following general considerations, to the extent applicable:

- A. Initial cost
- B. Suitability for intended purpose or operation
- C. Initial quality
- D. Potential maintenance costs
- E. Availability of parts and service work
- F. Terms of warranty
- G. Need for quick delivery
- H. Potential cost savings resulting from more competition among bidders
- I. Avoidance of purchases based on family relationship, friendship or other loyalties based on non-relevant factors
- J. Whether a potential vendor fits any established preference
- K. Past performance of vendor

**2. TYPES OF PROCUREMENT PROCEDURES**

The type of procurement process will initially be determined by the anticipated or estimated level of expenditure, as follows:

- A. Contracts up to \$2,500. No formal procurement process is required. However, the LDA employee shall use their discretion to secure the goods or services which represent the best value for the LDA. To do this, the employee:
  - 1) should be generally familiar with the product or service sought;

- 2) should be generally familiar with the vendors or suppliers of the particular product or service, particularly those who are local businesses; and
  - 3) should engage in comparison shopping where possible and to the extent appropriate in light of the level of expenditure involved.
- B. Contracts between \$2,501 and \$20,000. The LDA employee shall attempt to obtain competitive bids between at least three (3) potential vendors. The solicitation of bids from potential vendors may be conducted in any manner deemed feasible, including communication by telephone, e-mail, letter, or personal visit, and not all potential vendors need be contacted in the same manner. Where time is not a factor, some form of public notice is encouraged especially where the universe of potential vendors is not well known to the LDA. The LDA employee may use his/her discretion to establish the method of receiving bids which may include oral bids accepted over the phone.
- C. Contracts over \$20,000. The LDA employee should develop a more formal bid process which should contain the following elements:
- 1) a written notice of the procurement effort (i.e., Request for Proposals, Request for Qualifications, etc.) published in one or more newspapers, trade publications or other media designed to reach a wide selection of potential vendors;
  - 2) a detailed written RFP or RFQ to provide to interested parties. This should include information on the scope of the project, the credentials or characteristics that qualified candidates will possess, the selection criteria in addition to price which will be evaluated, bid submission deadlines and other procedures, dates of any prebid conferences and whether attendance at the same is mandatory, and any other relevant information or procedure developed to make the bidding process competitive and fair. Unless otherwise stated in the RFP, a public opening of sealed bids is not required.

The LDA President & CEO may modify the applicability of the above procedures to a particular procurement if, in his/her discretion, the modification will serve the best interests of the LDA.

### **3. SPECIAL SERVICES AND SOLE SOURCE CONTRACTS**

A single source or special services contract may be awarded only when the LDA's President & CEO has determined, in his/her discretion, that the product or service needed by the LDA:

- A. is available only from a sole source;
- B. is of such narrow scope or constraints that the need can be met satisfactorily only by a single source;
- C. is of such compelling urgency that operations would be seriously impaired by delay inherent in normal competitive procedures; or
- D. otherwise is the most economical, effective and appropriate means of fulfilling a demonstrated need.

### **4. LIST OF INTERESTED VENDORS**

The LDA maintains a list of vendors with an expressed interest in providing particular products or services to the LDA. The LDA regularly consults this list when procuring products or services. As a courtesy, the LDA will attempt to notify vendors on this list of upcoming or pending procurements in which particular vendors may have an interest. Vendors who wish to be

added to the list must submit a letter of interest clearly stating the types of products, services and contracts which they have a demonstrated ability to provide and in which they have a significant interest.

## **5. APPEAL PROCEDURE**

Any aggrieved party may appeal any decision of the LDA awarding any contract by submitting a written notice of appeal within 15 days of the decision.

- A. **Stays.** The aggrieved party may also request a stay of the contract award decision, if performance under the contract awarded has not already begun. A stay may be issued upon a showing that substantial irreparable harm will result to the petitioner, there is a reasonable likelihood of success on the merits, and there is no substantial harm to adverse parties or to the LDA and the general public. The failure to grant a stay shall not deprive the petitioner of an opportunity to a hearing.
- B. **Right to Hearing.** The President & CEO or Vice President & General Counsel, as hearing officer, shall conduct the hearing within a reasonable time, but not exceeding 20 days, following the receipt of notice of appeal. If the appeal raises substantial questions concerning the procurement process, raises serious questions concerning the integrity of a member of the LDA staff, or raises significant financial or policy issues, the President & CEO may designate a three (3) member appeal committee to hear and decide the appeal. No person may serve as hearing officer or as a member of an appeal panel if he or she has any direct or indirect personal, professional or financial conflict of interest or if that person's participation creates the appearance of an impropriety.
- C. **Conduct of Hearing.** The petitioner has the burden of proof and burden of persuasion with respect to any alleged facts that would provide the basis for any requested relief. Other interested parties, including other vendors submitting bids or proposals to the LDA, shall be provided notice and an opportunity to be heard. The rules of evidence and the rules of civil procedure shall not apply to proceedings under this policy, but may be consulted to assist in the evaluation of the admissibility of evidence or the weight to be given thereto, and to assist in establishing procedures for the conduct of the hearing.
- D. **Frivolous Appeals.** The hearing officer or the appeal panel, as appropriate, may dismiss any appeal found to have been brought on frivolous grounds.
- E. **Decision and Remedy.** At the conclusion of the hearing, the hearing officer or appeal panel must issue a decision addressing the following items, as applicable:
  - 1) Whether the procurement policy and procedure of the LDA was followed
  - 2) If the established policy and procedure was followed, whether the procedure itself resulted in an inappropriate contract award
  - 3) If there were deviations from the procurement policy or established procedure, whether the deviations had a material effect on the award decision resulting in an inappropriate contract award
  - 4) If an inappropriate contract award was made, whether to invalidate the contract award decision. (In determining whether to invalidate a contract award, the hearing officer or appeal panel should consider how such action might affect the LDA's operations and whether and to what extent the invalidation would provide significant relief to the aggrieved party)



5) Whether to affirm the contract award appealed from

## **6. LOCAL PREFERENCE**

It is the policy of the LDA to encourage business with local vendors. In any case where substantially identical proposals are received from a bidder within Maine and a bidder from outside Maine, preference in the award of the contract shall be given to the business based within Maine. In any case where substantially identical proposals are received from a bidder within Aroostook County, and a bidder from outside Aroostook County, preference in the award of the contract shall be given to the business based within Aroostook County.

This policy may be modified only by action of the LDA Board of Trustees.

Effective Date: June 28, 2000

## **VII. EXPENSE REIMBURSEMENT**

### **BUSINESS TRAVEL EXPENSES**

Employees will be reimbursed for reasonable business travel expenses incurred while on assignment away from their normal work locations. All business travel must be approved in advance by the President & CEO.

Employees whose travel plans have been approved should make all travel arrangements through the most economical means available.

When approved, the actual costs of travel, meals, lodging, and other expenses directly related to the business travel will be reimbursed by the LDA. Employees are expected to limit expenses to reasonable amounts.

Expenses that generally will be reimbursed include the following:

- \*A. Airfare for travel in coach or economy class, or the lowest available fare.
- \*B. Car rental fees will normally be for compact or mid-sized cars unless otherwise justified.
- \*\*C. Fares for shuttle or airport bus service, where available.
- \*\*D. Costs of public transportation or other ground travel.
- \*\*E. Taxi fares, if other lower cost transportation is not available or appropriate.
- \*\*F. Mileage costs for use of personal cars, only when less expensive transportation is not available. The per mile reimbursement rate will be at the IRS established rate.
- \*G. Cost of standard accommodations in reasonably priced hotels, motels, or similar lodgings, or required lodging in connection with sponsor.
- \*H. Reasonable cost of meals when traveling or a business meal. Receipts are required if claiming more than \$25.00
- \*\*I. Tips not exceeding 20% of the total cost of a meal or 20% of taxi fare.
- \*J. Charges for telephone calls, fax, and similar services required for business purposes.
- \*K. Charges for one personal telephone call each day. Phone call should not exceed fifteen (15) minutes.

\*L. Charges for laundry and valet services, only on trips of five or more days.

\*\*M. Parking, tolls and other miscellaneous expenses.

\*Receipt required.

\*\*Itemized list for each day of amount spent for each applicable area.

The following are examples of expenses that are non-reimbursable: baby-sitting, personal entertainment, in-room movies, traffic fines, haircuts, health club services, etc.

It is impossible to anticipate every situation that may be encountered while traveling on LDA business. Therefore, the LDA expects each employee to exercise good judgment and discretion when incurring travel expenses. Any expenditure not specifically covered under these guidelines will have to be approved by the President & CEO or his designee.

An employee may request an advance for business travel. If the advance is more than the travel expense the employee will reimburse the LDA for the excess amount. Employee may authorize the LDA to deduct excess amounts from regular pay.

Any employee who is involved in an accident while traveling on business must promptly report the incident to the President & CEO. Vehicles owned, leased, or rented by LDA may not be used for personal use without prior approval.

When travel is completed, employee must submit completed travel expense reports within thirty (30) days. Expense report must be prepared in ink or typewritten. Forms completed in pencil will not be accepted. Applicable receipts for all individual expenses of five dollars or more should accompany reports.

Employees should contact their supervisor for guidance and assistance on procedures related to travel arrangements, expense reports, reimbursement for specific expenses, or any other business travel issues.

Employee will receive regular pay while traveling on business. Hourly employees who must travel to attend meetings, training or seminar outside of their normal duty hours or on non-scheduled workdays will be paid overtime as applicable in accordance with the LDA's overtime policy.

Abuse of the Business Travel Expenses policy, including falsifying expense reports to reflect costs not incurred by the employee, may result in disciplinary action, up to and including termination of employment.

## REIMBURSEMENTS

The LDA will reimburse employees for the use of their own vehicles in the performance of LDA services at the IRS established rate.

Claims for mileage reimbursements must include the purpose for which private vehicle was used and the mileage for each use.

The LDA will also reimburse employee for expenses incurred which are directly related to LDA business.

Claims for expense reimbursement will be submitted with a bill and substantiating documentation, i.e.: copy of credit card slip; restaurant check; copy of phone bill with calls circled.

Falsification of claims may result in disciplinary action.

### EXPENDITURES

No invoice will be paid, regardless of the dollar amount, without the approval of the President & CEO or his designee.

Any individual expenditure in excess of \$5,000 will require any two of the following signatures:

- A. President & CEO
- B. Director of Finance and Accounting
- C. Facilities Manager
- D. LDA Board of Trustees Treasurer

Any single expenditure in excess of \$50,000 will require Board of Trustee approval prior to disbursement, except when the expenditure is provided for in the annual budget or is otherwise provided for in accordance with the by-laws.

The Director of Finance and Accounting will develop an accounting system for the LDA and its operations and insure it is maintained ready for an audit at all times. The Director of Finance and Accounting is responsible for monitoring expenditures of funds and transferring money between accounts as needed to meet the needs of the LDA. The Director of Finance and Accounting will determine trends to identify high cost areas and recommend procedures to reduce expenditures, take advantage of discounts and insure that proper reimbursements can be realized.