LePage promised transparency, but multimillion-dollar contract awards remain in the shadows

Each year, Maine state government uses millions of taxpayer dollars to purchase thousands of goods and services from outside organizations. Usually through a competitive bidding process, the state aims to select businesses and nonprofits that will provide the highest quality results for the lowest price.

But as the LePage administration touts and ramps up competitive procurement, it is nearly impossible for Maine residents to know how much state money is being spent on contracted services, which private businesses and nonprofit organizations receive large state contracts, and why those vendors won the work.

During his 2010 election campaign, Gov. Paul LePage said he would run the most transparent administration in state history. But he has indicated no timeline for when he plans to make information about successful bids more available, even though a new state law requires cost-savings information associated with competitive contracts to be made public online.

Other states — and even some publicly funded statewide Maine organizations and agencies — already list their procurement information online.

The conversation about contracting transparency is relevant now because the LePage administration has switched up longstanding contracts and outsourced existing government services, often without extensive explanation. It has made it difficult for observers to gain insight into many of its decisions: LePage has limited the amount of information his administration releases to legislators and vowed not to talk to the media.

LePage has also cut out an internal review step for proposed contracts. In March, he signed an executive order eliminating a requirement for the attorney general's office, with which he's often sparred, to examine proposed contracts worth $3 million or more for legal issues.

Without public oversight of contract awards, there's a higher risk of government officials awarding contracts for personal gain — responsible for billions in lost public U.S. dollars each year, according to transparency experts.

"Contract publication can help journalists and citizen watchdog groups to monitor decisions and ensure that decision makers are held accountable," said Shruti Shah, vice president of programs and operations for the advocacy group Transparency International-USA.

Lack of public awareness of procurement results can also result in contract awards for substandard vendors and confusion among residents about who's responsible for carrying out their public services. The state contracts with outside organizations to do everything from outreach to communities about preventing lead poisoning among children, to marketing campaigns that attract people to take positions with Maine companies.

The Center for Public Integrity, a nonpartisan investigative news organization, gave Maine a failing score last year for its lack of public access to the results of major bids.

Little info on contract decisions

Legislators, service providers and members of the public have expressed a desire to see greater clarity around contracting at a time when the LePage administration has sought to increase the number of services it puts out to bid and has privatized some work previously carried out by state workers.

In an April email, Maine Department of Health and Human Services spokeswoman Samantha Edwards said DHHS alone has sought to increase competition by issuing 100 to 125 requests for proposals this year compared with an average of 30 to 35 per year when the administration took office.

“The procurement process produces accountability among providers and ensures that Maine taxpayers receive the best value for the dollars they expend on services. This is a key priority for the Administration,” she wrote.

The administration has also changed up some long-standing contracts without much explanation, inevitably raising questions about its intentions.

For instance, the LePage administration recently eliminated 27 public health coalitions across the state called Healthy Maine Partnerships that were the result of years of statewide planning and have been in place for more than a decade. It will replace them with five contracted organizations that will each tackle a specific public health issue. The administration has declined to answer questions from lawmakers about why it’s changing the public health response structure.

And this spring, the Maine Department of Health and Human Services quietly handed off a $23-million contract for home visiting services to a nonprofit without even going out to bid.

In some cases, contracted firms are performing work previously done by state employees. Earlier this year, the LePage administration announced it was moving forward with plans to privatize a work training program for welfare recipients, cutting 51 state jobs by the end of the year.

And last year, Democratic lawmakers criticized a plan to outsource maintenance and operations of the Casco Bay Bridge in Portland to the Florida-based FDI Services through a contract worth $3.8 million over five years.

In many cases, the newly privatized services don't appear to be actually cutting costs, and it's unclear how the new vendor will do a better job than the state employees they are replacing, said Mary Anne Turowski, director of politics and legislation for the Maine State Employees Association, which represents the majority of state workers.

For example, the New York firm the LePage administration chose to carry out job training and placement for welfare recipients will rely on a workforce of 140 employees for a program that 81 state employees have run historically — and will rent 16 offices instead of using existing state offices in the same cities.

"Any light we can shed on the work the state is doing with contracts we think is within the public's interest," Turowski said.

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The state periodically posts online advertisements for public bid opportunities, called requests for proposals. Also available online are the state's requests to pursue no-bid contracts. The Center for Public Integrity found procurement officials do recuse themselves from cases where they may have a conflict of interest.

But the state doesn't routinely post information about the vendors that win the contracts. While it has an online system for people to see the award results for requests for quotations, it does not have a similar one for requests for proposals.

The state tends to use requests for quotations for relatively low-cost commodities such as brochures or equipment. The state usually uses requests for proposals to seek outside organizations to provide services, such as legal help for juvenile cases or trash pickup for National Guard bases.

“This limits free and easy access — requiring the public, including unsuccessful bidders, to track down officials and wait for responses,” according to a 2015 report by the Center for Public Integrity.

The lack of clarity on contract awards differs from the approach taken by several other states including Michigan, Virginia, Tennessee, Georgia and Illinois, which all post the names of vendors awarded state contracts on sortable online portals.

Those online systems can save states money, according to a report by the nonprofit National Association of State Procurement Officers. The report encourages states to adopt policies and procedures that use electronic bidding, evaluation, awarding and reporting of contracts — cutting down on paper and mailing costs, and reducing the cost of responding to public records requests.

The Maine Department of Transportation and the University of Maine System already post information about vendors that win contracts. Doing so is an easy task that requires “minimal costs and labor,” said Rudy Gabrielson, chief procurement officer for the UMaine system.

“We are just posting the name of the company that won the bid,” he said.

New law but still no transparency

Last year, the Maine Legislature supported a bill requiring the state to publish information online about the cost savings of newly awarded contracts, compared with doing the same work in-house or going with a previous contractor. The LePage administration opposed the legislation.

Greater transparency is needed, especially under the LePage administration, which has created a policy of routinely barring department heads from attending legislative hearings, said the bill’s sponsor, Rep. Roland Danny Martin, D-Sinclair.

“The intent is to make things more transparent,” Martin said. “The public needs to know if privatizing these contracts will bring cost savings as the administration seems to claim is the case.”

Maine people know how to contact state employees if there’s a problem with the work they do, said Ginette Rivard, then-president of the Maine State Employees Association. But can they reach contractors doing the work of state government?

“The sheer volume of contracts and amount of money is so high it could be extremely difficult for average Mainers at any given time to easily find out what work is being contracted out, who was chosen to do the work, the terms of the contract, the rate of pay, whether the work was completed to contract specifications, and whether the state actually got its money’s worth from the contract,” she told lawmakers.

But providing the cost-benefit information would require additional staff and could present misleading cost-benefit comparisons, said Kevin Scheirer, director of the state Division of Purchases, in his opposing testimony.

Cost-benefit comparisons are not always “apples to apples” since not every request for proposal contains the same scope of services as the contract it is replacing, and departments would need to adjust estimates for inflation, he said.

“Calculating savings may not be possible for many contracts,” he said. “The scope of this bill is far reaching and the result of enacting it will likely have unintended consequences.”

In 2014, about 5,300 service contracts and amendments passed through the Division of Purchases.

The bill, LD 1166, ultimately became law without the governor's signature because LePage missed the deadline to veto it. (It was among 65 bills the state Supreme Court affirmed should be considered law despite the governor's protests.)

The cost was estimated to be about $40,000 for fiscal year 2016-2017 for a part-time employee to track and analyze contract information, and post the results online.

Today the information is still not posted on a state website.

David Heidrich, a spokesman for the Maine Department of Administrative and Financial Services, said the department is in the process of creating the rules needed to implement the law, but did not say when that work would be completed.

Martin, the bill sponsor, continues to wait. "I assume they are going to adhere with the law, but that is not always the case with this administration," he said. "The general public deserves to know where their taxpayer dollars are being spent."

LePage has made some government transparency reforms since taking office in 2011. The state, for example, now posts no-bid contract notices online for seven days, allowing vendors and others to comment.

His administration has also created a website called Maine Open Checkbook that shows state government spending data, including department payments and employee compensation. While it shows the federal and state money spent by various state agencies that receive public funding, it gives little insight into how those expenditures factor into individual contracts.

LePage introduced legislation to tighten financial disclosure requirements for lawmakers and certain executive employees, Heidrich said. He also started

holding Saturday office hours to meet with constituents and hear their concerns.

“Governor LePage has a number of accomplishments that have made state government more transparent,” he said.

Secrecy surrounding committee review

In Maine, the State Procurement Review Committee reviews and authorizes service contracts costing $1 million or more. The committee was created by a 2010 executive order by former Gov. John Baldacci and includes the governor’s chief legal counsel, the director of the Division of Purchases, the state budget officer, and the state controller. The state’s chief information officer is also included during information technology-related requests.

When contracts could expose the state to substantial risk of non-performance or when they cost more $3 million, the executive order required the committee to seek legal advice from the attorney general. But following a separate executive order by LePage in March, that attorney general review became optional.

Today, the committee’s chairman is Scheirer, who was appointed director of the Division of Purchases in August. Other members include Melissa Gott, who, as the state budget officer, prepares the governor’s budget; Jim Smith, who oversees all computer technology for the state as the chief information officer; Douglas Cotnoir, who handles the state’s accounting duties as state controller; and the governor’s chief legal counsel Avery Day, a former staffer for U.S. Sen. Susan Collins and former Pierce Atwood lobbyist.

Members of the committee review contract awards “individually,” according to Heidrich. He didn’t say how, exactly, they make decisions individually or whether they conduct meetings that are open to the public.

So far this year, the committee has reviewed 114 contracts. In 2015, it reviewed 132, Heidrich said.

The attorney general's office does not track contract reviews, but "certain divisions of our Office have reported recently that fewer contracts are being sent here for review since the Executive Order on procurement was revised in March for unknown reasons," spokesman Timothy Feeley wrote in an email.

Heidrich declined to say how many contracts the procurement committee sent to the attorney general's office for legal analysis.

It makes good business sense to have an attorney assess a contract of any size before signing it, Feeley said, adding, "Our office is charged with ensuring that the contract is legal, that the terms are enforceable and that the taxpayers' money and services are not at risk."

The BDN filed a Freedom of Access Act request on Sept. 15 seeking all proposed contracts over $1 million reviewed by the procurement review committee since the executive order was issued and all correspondence among procurement committee members related to those contracts.

Officials from the Department of Administrative and Financial Services have so far acknowledged the request via email but, more than a month later, have still not provided an estimate of how long it will take to comply with the request, which they are required to do by law within a reasonable timeframe.

Even if the administration were to release the documents as the law requires, the public should not have to go through hoops to receive information, said Shah of Transparency International-USA.

"Transparency is not achieved if a government grudgingly allows access to certain documents related to procurement or if you can get access eventually by making [Freedom of Information Act] requests," she said.

“All too often, we hear stories about how competitive bids lose out because officials award the contracts to their friends and associates,” Shah added. “This information should be made available publicly in an open data format that is easy to use and access.”

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