



STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

Paul R. LePage  
GOVERNOR

May 3, 2017

Treasurer Terry Hayes  
39 State House Station  
Burton M. Cross Building, 3<sup>rd</sup> floor  
111 Sewall Street  
Augusta, ME 04333

Treasurer Hayes:

I am writing in regards to your recent Request for Proposal (RFP) for bond counsel. You elected to submit your office's conditional award that resulted from the RFP for review by the State Procurement Review Committee (SPRC). As you know, the SPRC did not approve your conditional award. You recently requested a meeting with me to discuss the issue, but cancelled the meeting a few days later. I understand that you have indicated that you are not interested in following the Committee's guidance that you reissue the RFP. I am concerned that you are not willing to follow the advice of the executive branch review panel that you elected to submit your conditional award to for review. I am further concerned that delaying the issuance of a new RFP for bond counsel services will result in the State's inability to issue authorized bonds in the coming months.

The SPRC did not approve the conditional award that resulted from your RFP for two primary reasons. First, the SPRC found that the distribution of points in the qualification and experience section of the RFP, specifically the requirement regarding quality of services provided to other state treasuries and government agencies, may have dissuaded otherwise qualified counsel from submitting proposals. On review, it seems that the instructions were inconsistent with the application form. It is also apparent that this requirement, as presented, severely limited the number of bids received for these services and likely influenced the scoring of the two proposals that were submitted. Second, the SPRC noted a significant difference between your office's budget estimate for this contract and the cost for services proposed by the successful bidder.

I believe that if you took the feedback from the SPRC and issued a new RFP that is not overly restrictive in the area of past experience with state treasuries, a number of qualified Maine law firms will submit competitive bids. I believe there are several Maine law firms capable of providing these services, and even if they are not ultimately selected, they



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should at least be afforded the chance to compete. The RFP you issued appears designed to preclude such Maine firms from the process. When expending taxpayer dollars for a public purpose, I believe the State should seek to use Maine companies when those companies have the ability to provide the needed services at a competitive price. I believe that the issuance of a new RFP that addresses the SPRC's concerns will result in a fairer competitive bidding process and likely a better value contract for Maine taxpayers.

Moreover, I am gravely concerned that your delay in issuing a new RFP to seek a best-value contract for the State will result in jeopardizing the issuance of authorized bonds in the coming months. As you know, these bonds are primarily intended for upcoming transportation projects through the Maine Department of Transportation. If bonds are not issued, MaineDOT will have to stop advertising for highway and bridge projects for the rest of the calendar year and approximately \$20 million of multimodal projects for the current year will be cancelled. Overall, not issuing the bonds could put nearly \$600 million for transportation projects at risk. If no bonds are issued, MaineDOT estimates that approximately 4,500 construction jobs will be lost this summer. In short, it would be a disastrous situation.

The Executive Branch is willing, able and ready to assist you in getting a new RFP for bond counsel out for bids as soon as possible to avoid the loss of this needed funding for pending transportation projects. However, I will insist that the SPRC's concerns are addressed and that the new RFP results in a fairly designed process that will allow more Maine law firms to compete for these legal services.

Thank you,



Paul R. LePage  
Governor



STATE OF MAINE  
**OFFICE OF THE STATE TREASURER**  
39 State House Station, Augusta, ME 04333-0039  
[www.maine.gov/treasurer](http://www.maine.gov/treasurer)

TERRY HAYES  
State Treasurer  
KRISTI L. CARLOW  
Deputy State Treasurer

May 3, 2017

Governor Paul LePage  
Office of the Governor  
1 State House Station  
Augusta, ME 04333-0001

RE: Treasurer's contract for Bond Counsel

Governor LePage:

In response to your letter of May 3, 2017:

1. Treasury did not elect to submit its award for bond counsel services to the State Procurement Review Committee (SPRC).
2. Treasury submitted its contract award for bond counsel to the Bureau of Purchases for the sole purpose of having the contract processed into the statewide accounting system.
3. On April 24<sup>th</sup>, I requested a meeting with you during the week of April 24<sup>th</sup>. On April 27<sup>th</sup> I was informed that you did not have time to meet with me until May 9<sup>th</sup> or 10<sup>th</sup>.
4. I made the decision to execute the contract for bond counsel on April 27<sup>th</sup>. I canceled my request for a meeting with you on April 28<sup>th</sup> because by May 9<sup>th</sup> or 10<sup>th</sup> I no longer needed to take up your time on this issue.
5. Treasury will not be issuing a new RFP for bond counsel as a contract has been awarded and executed (dated 5/1/17).
6. On March 30 Treasury emailed your office to request a list of authorized but unissued bonds to be included in the June sale, asking for that information by April 14<sup>th</sup>.
7. Treasury is poised to proceed with the anticipated bond sale in June. The Official Statement is being updated. Review with the rating agencies is scheduled. We are waiting to hear back from your office regarding the authorized but unissued amounts to be included. Treasury needs this information from you no later than Wednesday, May 10<sup>th</sup>.

Sincerely,

A handwritten signature in cursive script that reads "Terry Hayes".

Terry Hayes  
Treasurer, State of Maine

Cc: Commissioner Rosen, Commissioner Bernhardt



STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

Paul R. LePage  
GOVERNOR

May 4, 2017

Treasurer Terry Hayes  
39 State House Station  
Burton M. Cross Building, 3<sup>rd</sup> floor  
111 Sewall Street  
Augusta, ME 04333

Treasurer Hayes:

In response to my letter, you state that Treasury did not elect to submit its award for bond counsel services to the State Procurement Review Committee (SPRC) for review or approval and that you only submitted the contract award for bond counsel to the Division of Purchases for the sole purpose of having the contract processed through the statewide accounting system. I take issue with this statement.

With regards to SPRC review and approval, this was a condition specified by Treasury as part of the RFP and contract award process. Your March 9th letter to bidders notifying them of the conditional contract award stated that the "award decision is conditioned upon final approval by the State Procurement Review Committee and successful negotiation of a contract." Moreover, your RFP stated that the "final decision regarding the award of the contract will be made by representatives of OST subject to approval by the State Procurement Review Committee." (pg. 11). The RFP also stated that any allocation of funds would be final upon a successfully negotiated and execution of a contract "subject to the review and approval of the State Procurement Review Committee." (pg. 12.) It is clear from the RFP and your letter to bidders that your office expected and intended this RFP to be submitted to SPRC review for approval. I cannot fathom why you would deny that your office agreed to this process given that you specifically required it in your written communications to bidders.

Your office elected to utilize the Division of Purchases' RFP process to obtain bids for bond counsel services. OST worked with the Division to develop the RFP. Bid proposals were specified to be delivered to the Division of Purchases and the RFP stated that all appeals regarding the award decision would be governed by Title 5 MRSA section 1825-E and Chapter 120—the statute and rules governing the competitive bid process for the Bureau of General Services, Division of Purchases. State agencies use the Division of Purchases'



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process to competitively bid for many types of goods and services. They do so because it is a fair process that is designed to lead to the best value contract for the State.

I understand that you did not like the feedback you received as a result of the SPRC review; however, that review is part of the process you elected to utilize in order to bid for bond counsel services and it is my expectation as Governor that the process be followed to allow for a fair and competitive bidding process.

As stewards of taxpayer resources and the public trust, it is important that our procurement practices are conducted with integrity. As I have previously stated, whenever possible, we must ensure that opportunities to bid on work for the state not preclude Maine companies and organizations that have the requisite ability to provide the needed services at a competitive price.

The executive branch remains willing and ready to assist you in conducting a new, fairer and more competitive process to obtain bond counsel that addresses the SPRC's concerns.

Sincerely,

  
Paul R. LePage  
Governor

P.S.

Terry,  
leaders have to make tough decisions  
at time, irrespective of what they  
personally believe. Sometimes we find  
ourselves not knowing what we do not  
know. When enlightened we should  
do what is right, drawing a line  
in the sand, hurts you, those  
who are trying to get it right  
and most of all the Maine  
people.  
Regards,  
Paul



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TERRY HAYES  
State Treasurer  
KRISTI L. CARLOW  
Deputy State Treasurer

May 4, 2017

Governor Paul LePage  
Office of the Governor  
1 State House Station  
Augusta, ME 04333-0001

RE: Treasurer's contract for Bond Counsel

Governor LePage:

In response to your letter from earlier today:

We have a significant disagreement regarding the authority to contract for bond counsel on behalf of the State.

I suggest that we acknowledge our differences on this matter and set them aside for the immediate future to ensure that Maine's needs for bond investment in June and throughout the summer and fall are met without disruption.

We can revisit the disagreement in July when jobs, roads, and other infrastructure investments are not at risk.

As I noted in my letter of May 3<sup>rd</sup>, Treasury is poised to proceed with the anticipated bond sale in June. The Official Statement is being updated. Review with the rating agencies is scheduled. We are waiting to hear back from your office regarding the authorized but unissued amounts to be included. Treasury needs this information from you no later than Wednesday, May 10<sup>th</sup>.

Sincerely,

A handwritten signature in cursive script that reads "Terry Hayes".

Terry Hayes  
Treasurer, State of Maine

Cc: Commissioner Rosen, Commissioner Bernhardt



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**TERRY HAYES**  
State Treasurer  
**KRISTI L. CARLOW**  
Deputy State Treasurer

March 9, 2017

Locke Lord, LLP  
Attn: Walter J. St. Onge  
111 Huntington Avenue  
Boston, MA 02199  
[walter.stonge@lockelord.com](mailto:walter.stonge@lockelord.com)

**SUBJECT:** Notice of Conditional Contract Award under RFP # 201612229, Bond Counsel

Dear Mr. St. Onge,

This letter is in regard to the Request for Proposals (RFP), issued by the State of Maine Office of the State Treasurer for Bond Counsel. The Department has evaluated the proposals received using the evaluation criteria identified in the RFP, and the Department is hereby announcing its conditional contract award to the following bidder:

- Locke Lord, LLP

The bidder listed above received the evaluation team's highest ranking. The Department will be contacting the aforementioned bidder soon to negotiate a contract. As provided in the RFP, the Notice of Conditional Contract Award is subject to execution of a written contract and, as a result, this Notice does NOT constitute the formation of a contract between the Department and the apparent successful vendor. The vendor shall not acquire any legal or equitable rights relative to the contract services until a contract containing terms and conditions acceptable to the Department is executed. The Department further reserves the right to cancel this Notice of Conditional Contract Award at any time prior to the execution of a written contract.

As stated in the RFP, following announcement of this award decision, all submissions in response to the RFP are considered public records available for public inspection pursuant to the State of Maine Freedom of Access Act (FOAA). 1 M.R.S. §§ 401 et seq.; 5 M.R.S. § 1825-B (6).

This award decision is conditioned upon final approval by the State Procurement Review Committee and the successful negotiation of a contract. A Statement of Appeal Rights has been provided with this letter; see below.

Thank you for your interest in doing business with the State of Maine.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Hayes".

Terry Hayes  
State Treasurer