

University of Maine System
Board of Trustees
at the University Maine System, Rudman Board Room

February 9, 2018

Audit Committee

Present: Committee Members: Michelle Hood, Chair, James Donnelly, Lisa Eames (by phone), James Erwin (at USM), Norman Fournier (by phone), Mark Gardner (by phone), Kelly Martin (at UMFK) and Karl Turner (at USM). **Chancellor:** James Page. **System Staff:** Ellen Doughty, Tracy Elliott, Ryan Low (at UMA), Mark Schmelz, Sarah Harebo, Chip Gavin (at USM) and James Thelen.

Committee Members Absent: none

Trustee Hood called the public session of the meeting to order and thanked everyone for participating.

On a motion by Trustee Gardner, which was seconded by Trustee Fournier, and by unanimous vote of Trustees present, the Audit Committee went into Executive Session under the following provisions:

- 1 MRSA Section 405 6-A to discuss the evaluation of personnel and the consideration and discussion of appointments, employment and duties.
- 1 MRSA Section 405 6-C to discuss the condition, acquisition or disposition of real property or economic development if premature disclosure of the information would prejudice the competitive or bargaining position of the UMS.
- 1 MRSA Section 405 6-E to consult with its attorney concerning legal rights and duties of the university.

Executive Session. The public was excused for the meeting.

On a motion by Trustee Donnelly, which was seconded by Trustee Turner, the Audit Committee agreed to conclude the Executive Session.

Reconvene of the public session. The public was invited back into the meeting.

Privileged Review of UMaine Energy Services RFP Process. Chancellor Page and Trustee James Erwin excused themselves from this discussion. General Counsel and Chief of Staff Mr. James Thelen provided a privileged report to the Audit Committee in Executive Session of a confidential investigation conducted by the Office of General Counsel regarding reported claims of improper influence and/or conflicts of interest associated with University of Maine Energy Solutions RFP #2016-43.

On a motion by Trustee Donnelly, which was seconded by Trustee Fournier, the Audit Committee approved the following resolution.

Having considered General Counsel's report, as well as the University of Maine System procurement and conflict of interest policies and the Committee's own chartered duties and

responsibilities, it is recommended that the Committee adopt the following resolution and findings:

Whereas, the University of Maine System Board of Trustees Audit Committee is charged with monitoring the adequacy and integrity of the University of Maine System's internal controls, financial reporting, compliance with legal and regulatory requirements and ethics reporting; and

Whereas the Audit Committee has the authority to direct or supervise an investigation into any matter within the scope of its duties and responsibilities, and, in connection with any such investigation, has the authority to utilize the System staff and other resources or to employ outside counsel or consultants at System expense; and

Whereas, a February 4, 2018 article in the Maine Sunday Telegram/Portland Press Herald PPH reported that a third party outside the University of Maine System made statements to other third parties suggesting that University of Maine employee Jake Ward may have provided assistance to a bidder responding to University of Maine RFP 43-16 in violation of University of Maine System policy; and

Whereas, a December 24, 2017 article in the Maine Sunday Telegram/Portland Press Herald noted that the James W. Sewall Company, of which UMS Chancellor James Page was CEO before becoming UMS Chancellor in March 2012, was one of several business entities involved in litigation over attempts to acquire the Old Town Mill for uses included in ConEdison Solutions's project proposal submitted in response to University of Maine RFP 43-16; and

Whereas, UMS Board Chair James Erwin determined that the law firm at which he is a partner, Pierce Atwood, represents a business entity involved in the acquisition of the Old Town Mill; and

Whereas, UMS General Counsel James Thelen reported to the Committee that he investigated all facts available regarding the above-described matters, reviewed relevant System policies related to procurement and conflicts of interest, and provided legal advice regarding the same to the Committee in a properly-authorized executive session on this date,

Now, therefore, the UMS Board of Trustees Audit Committee finds and/or directs as follows:

1. That UMS General Counsel Thelen's investigation was appropriate in scope and independence and sufficient, under this Committee's supervision, to meet and discharge the Committee's responsibilities to investigate and monitor compliance with legal and regulatory requirements and UMS policy.
2. That the University of Maine's Vice President for Innovation and Economic Development, Jake Ward, had no role in developing University of Maine RFP 43-16 or the criteria by which responding bidders would be evaluated or scored. Based on this determination, the Committee accepts Vice President Ward's

statement that he did not provide assistance to any bidder responding to University of Maine RFP 43-16. The Committee further finds that, based on all available evidence reviewed by General Counsel Thelen and independently reviewed by the Committee, University of Maine RFP 43-16 has to date been conducted in accordance with all applicable UMS policies.

3. That UMS Chancellor Page has no role or responsibility, and has had no involvement, in the University of Maine RFP 43-16 process to date, and it is determined that he has no present conflict under System policy relative to that RFP. However, should any contract proposal be brought forward for Board approval that includes work performed by the James W. Sewall Company, to avoid the appearance of conflict, the Chancellor should recuse himself from any direct or indirect participation in the approval process, and UMS General Counsel should take appropriate action to ensure the same.
4. That the Committee recognizes that UMS Board Chair Erwin, a member of this Committee, did not participate in the consideration of this matter or resolution given his law firm's representation of a business entity involved in the Old Town Mill acquisition. Because no contract is before this Committee or the Board at this time involving any benefit to the owners of the Old Town Mill, the Committee finds that no further action is necessary, but encourages Chair Erwin to review the matter further and advise the Board should these circumstances change.

Adjournment.

Ellen Doughty
Interim Clerk