



Memorandum

June 25, 2025

To: Board of Trustees

From: Peter Eglinton, Deputy Director

Re: Resource Innovations Request for Confidentiality Designation

Proposed Motion

Move to deny the request by Resource Innovations, Inc. to designate as a “confidential record” their:

- (a) proposal submitted for the Request for Proposals (RFP) for Electric Vehicle Rebate Program Support Services (EM-018-2025), and
- (b) portions of the proposal as described in the letter sent to Staff from Alexander Tkacz dated June 4, 2025.

Background

Resource Innovations, Inc. is a private company that provides rebate fulfillment and customer support services for demand side management programs such as those administered by the Trust. Resource Innovations recently submitted a bid in response to EMT’s Request for Proposals (RFP) for Electric Vehicle Rebate Program Support Services (EM-018-2025).

The bidder was given clear, explicit notice in advance of their submission that all bids submitted in response to this RFP are considered “public records” subject of Maine’s Freedom of Access Act and will not be treated as confidential.

The instructions in the Trust’s RFP are explicit:

Section 1.8 (Proposal Confidentiality)

Information provided to the Trust is subject to the Maine Freedom of Access Act (FOAA), 1 M.R.S. §§ 401 et seq., unless there is a specific confidentiality exemption in the Efficiency Maine Trust Act, 35-A M.R.S. §10106. Bidders should assume that all information submitted in response to this RFP will be considered public records available for public inspection pursuant to the Maine FOAA following announcement of an award decision. (Emphasis added.)

Moreover, prior to the due date for submitting bids, the Trust publicly posted on its website the Staff’s “Responses to Questions” document for the RFP to select EV Program Support Services. In these responses, the Trust clearly stated in the very first Q&A on the list that bids submitted for this RFP would not be treated as “confidential”, as follows:

Q1: Are bids considered confidential?

A1. No.

Despite this guidance, Resource Innovations included the following language at the front of their proposal:

Some of the descriptive materials in this proposal are proprietary and confidential information of Resource Innovations and shall not be disclosed or reproduced, in whole or in part, to any third party or used for any purpose other than to evaluate this proposal or otherwise in connection with the resulting contract, without the prior written consent of Resource Innovations. Resource Innovations maintains all ownership rights to this proposal and the information it contains. Resource Innovations, in accordance with any applicable rules and regulations, shall be entitled to notification of any request for disclosure, and Resource Innovations reserves the right to take any and all action necessary and appropriate to protect the information from release and maintain its confidentiality.

Resource Innovations, "Proposal for EV Program Support Services," April 17, 2025, p. (i).

On May 29, 2025, the Trust Staff notified Resource Innovations that the Trust had received a FOAA request for all proposals and bid scoring information and indicated our intention to disclose the requested records. Staff noted that the generalized claim in the proposal from Resource Innovations does not, by itself, establish that the content is confidential under Maine law. Staff also shared that the information will be treated as a public record and, absent a finding by the Trust Board that certain information meets the requirements for confidential treatment, must be disclosed consistent with Maine's FOAA law. Staff further informed the bidder that the Trust would not undertake to determine whether any proposal or part of any proposal is confidential or otherwise protected from disclosure without a written request.

In response, Alexander Tkacz (Associate General Counsel for Resource Innovations) sent a letter to Staff on June 4, 2025, identifying the following elements of the proposal that Resource Innovations considers as "confidential and proprietary":

- Pricing
- Program design
- Any mention of clients, partners, distributors, and contractors by name
- Cover letter and Executive Summary (which Mr. Tkacz says contains a summary of their approach and design)
- Staffing
- Resumes

Mr. Tkacz also provided a heavily redacted version of the Resource Innovation proposal, obscuring the items listed above. The letter itself is labeled as "confidential." The main concern expressed in the letter is that the enumerated information could hold potential value for competitors, disadvantaging Resource Innovations in future bids.

Because Resource Innovations has made a request that certain information be designated as confidential and not subject to disclosure, Staff is bringing this matter to the Board to review and make a determination as to whether the information specified by Resource Innovations should be treated as confidential under the Efficiency Maine Trust Act and Maine's FOAA law.

Section 10106 of the Efficiency Maine Trust Act provides in pertinent part:

§10106. Freedom of access; confidentiality.

The proceedings of the board and records of the trust are subject to the freedom of access laws, Title 1, chapter 13, except as specifically provided in this section.

1. Confidential records. The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. A record obtained or developed by the trust that:

(1) A person, including the trust, to whom the record belongs or pertains has requested be designated confidential and that the board has determined contains information that gives the owner or a user an opportunity to obtain a business or competitive advantage over another person who does not have access to the information, except through the trust's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains; or

(3) Contains information about the energy usage profile of an identifiable customer of a transmission and distribution utility in the State or an identifiable customer of a distributor of heating fuel or other energy source; and

B. A financial statement or tax return.

The social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the trust is confidential.

....
(*Emphasis added.*)

For the Board to find that the information provided by Resource Innovations warrants confidential treatment, it must make a determination as to whether the specific information “contains information that gives the owner or a user an opportunity to obtain a business or competitive advantage over another person who does not have access to the information” or includes information “access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment.”

Staff Recommendation

The Staff recommends denying the “confidential” designation for the contents of the bid, including but not limited to the information enumerated in the letter from Resource Innovations

The Trust is bound by law to abide by the Maine Freedom of Access Act and the Efficiency Maine Trust Act. The Resource Innovations proposal document, along with all other proposal documents, became a public record after notification of contract award (April 28, 2025). Had the bid contained *bona fide* proprietary or otherwise confidential information, and had the Board found that the information meets

the definitions required for confidential treatment under Maine law, the Staff could have made an exception to the obligation to disclose the information contained in the bid.

Resource Innovations did not take proper steps to prevent or limit disclosure of the proposal document prior to submission. The specific information identified by Mr. Tkacz is routinely disclosed by State agencies and is important to the public transparency of procurement conducted by public or quasi-state agencies, such as the Trust, using public funds. In the case of staffing and resumes, Staff notes that all of the individuals listed have public profiles on the online app LinkedIn. The disclosure of the proposal will not affect competition for the awarded contract, which Resource Innovations lost. The same information on their competitors is available to Resource Innovations for future procurements.