

MAINE STATE LEGISLATURE

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STUDY OF STATE PURCHASES FROM SMALL BUSINESSES

Joint Standing Committee on
Business Legislation

106th Legislature

Senate

John H. Cox, Chairman
Bennett D. Katz
Guy A. Marcotte

House

Claude N. Trask, Chairman
Edwin F. Maddox
John A. Donaghy
Calvin H. Hamblen
Patrick T. Jackson, Jr.
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AUGUSTA, MAINE

State of Maine
Senate Chamber
Augusta, Maine 04330


April 11, 1975

Legislative Council
State House
Augusta, Maine

Gentlemen:

In accordance with S.P. 365, an order directing the Committee on Business Legislation of the 106th Legislature to study state purchasing policy in regard to small businesses, I enclose the committee's final report to the 107th Legislature.

Very truly yours,



John H. Cox, Chairman
Business Legislation Committee
106th Legislature

JHC/ac
encl

INTRODUCTION

The Joint Standing Committee on Business Legislation of the 106th Legislature was directed by a Joint Order of the Legislature to study the means by which the State, through the Bureau of Purchases, purchases property and services, particularly in respect to policy in regard to small businesses. The committee was directed to determine whether or not legislation was needed to ensure that a fair proportion of the State's purchases are made from small businesses. The committee was to determine the feasibility of designating certain purchases as set aside for bidding only by small businesses and directing the Bureau of Purchases to hire a small business procurement specialist. A copy of the study order is attached as Appendix A.

PROCEDURE AND MEETINGS OF THE COMMITTEE

The committee held its first meeting on the study after the Special Session of the 106th Legislature, on July 31, 1974. The principal speaker invited to address the committee was Mr. Don Hathaway, Assistant to the Associate Administrator for Procurement, United States Small Business Administration, Washington, D.C. Also invited were Mr. Thomas McGillicuddy, District Director of the Small Business Administration, Augusta, and Mr. Linwood F. Ross, State Purchasing Agent.

Mr. Hathaway focussed his presentation on the Small Business Association's model Small Business Procurement and Property Sales Act, a copy of which is attached as Appendix B. The S.B.A. is advocating such legislation throughout the country as part of its policy of promoting small businesses. Similar legislation has been adopted in several states including Illinois, Indiana and Wisconsin.

The bill establishes a definition, for its purposes, of a small business as one independently owned and operated and not dominant in its field of operation. Because of the variety of conditions within different industries and businesses, no definite dollar volume or number of employees is included in the definition. The Bureau of Purchases would be directed to actively seek out small businesses for the bidding lists, to publicize state purchasing procedures, and to divide proposed procurement into smaller quantities, where feasible, to permit greater participation by small businesses. The Bureau would also establish a small business set-aside program for purchases and also a program for small businesses to receive a fair share of State property being sold.

State Purchasing Agent Linwood F. Ross responded that such a program was unnecessary for Maine. Except for a few items purchased in bulk, the majority of state purchases were currently being made from businesses that would be considered "small" under virtually any definition. Mr. Ross estimated that 70% of the

dollar volume of state purchases was from small businesses, although the Bureau does not keep records on such categories.

The members of the committee had a number of questions about the procedures of the Bureau. Many of them reported complaints from small business constituents who had the feeling that the state procedure was restrictive and not really open to such businesses.

The committee, therefore, determined that further study of state procedures was necessary, that a public invitation should be issued to small businesses to attend the next meeting or to write to the committee to express any grievances or comments about state procedures and that the State Department of Commerce and Industry should be invited to contribute at the next meeting. A press release was issued to notify small businessmen of the next meeting, which was scheduled for September 11, 1974.

At the hearing on September 11, the principal speaker was Deputy Commissioner Richard L. Kelso of the Department of Commerce and Industry. He felt that small businessmen basically needed information about the State's purchasing system and that many of them felt they would not have any success in making bids. He stated that there had been no cooperation between his department and the Bureau of Purchases and that there should be a policy of cooperation in informing and assisting businesses in this area.

The only written statement presented in advance of the hearing was from Mr. Henry Villaume of Howell Laboratories, Inc., of Bridgton, a statement supported by Mr. Austin Harris of Harris Company, Portland. Both are active in the Small Business Association of New England. They supported the general concept of the Small Business Administration's model legislation. Their primary suggestion was that conferences should be held in different parts of the State to inform small businesses about state purchases and procedures. Such conferences would be similar to one that Senator Hathaway had recently arranged to inform Maine businessmen about Federal contract availability and procedures. A copy of Mr. Villaume's written statement is attached as Appendix C.

RECOMMENDATIONS OF THE COMMITTEE

In its deliberations on the subject after the hearings, the committee concluded that the model legislation was not appropriate for Maine basically for the reasons that Mr. Ross had presented in opposition to the proposal. However, the committee did feel that there was a serious problem in the lack of information about the purchasing process and that this contributed to the failure of many small businesses to attempt to take part in the process even though they might have the capacity to make successful bids.

The committee decided that the first step in encouraging greater participation would be to inform small businesses by directing the Bureau of Purchases to prepare a manual on state

purchasing. The committee recommends that legislation to require this be submitted to the 107th Legislature. The proposed legislation calls for the manual to include a copy of the statutes and regulations on state purchases, a detailed policy statement and explanation of procedure, in non-technical language, and a list of items purchased by the State. Copies of the manual are to be distributed to the Governor, the Legislature, the Department of Commerce and Industry and the Small Business Administration. The committee felt that preparation and printing of the manual would be within the in-house printing capability of the Bureau of Purchases, and that, therefore, no appropriation would be necessary for the printing.

A copy of the proposed legislation is attached as Appendix D.

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STATE OF MAINE

In Senate March 27, 1974

~~Ordered~~

WHEREAS, present statutory provisions governing the State's purchases of property and services fail to designate that a fair proportion of the State's purchases be placed with small businesses; and

WHEREAS, the vast majority of businesses in Maine are small, but in spite of their size are still capable of fulfilling the State's needs for property and services; and

WHEREAS, the United States Government and the majority of states in the United States have existing legislation which ensures that a portion of their purchases are made from small businesses; now, therefore, be it

ORDERED, the House concurring, that the Legislative Council be authorized and directed, through the Joint Standing Committee on Business Legislation, to inquire into the manner in which the Department of Finance and Administration, through the Bureau of Purchases, presently purchases property and services, particularly in respect to any policy of purchasing from small businesses, and to determine whether or not legislation is needed to ensure that a fair proportion of the State's purchases are made from small businesses. Such study is to also include, but not be limited to,

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County:

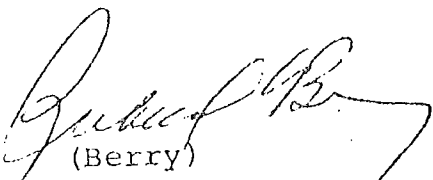
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determining the feasibility of designating certain state purchases to be as small business set asides, and all invitations to such bids be restricted to small businesses; and also to study the possibility of the Bureau of Purchases designating a contract negotiator to serve as a small business procurement specialist; and be it further

ORDERED, that the Bureau of Purchases be directed to provide the Council and committee with such information and other assistance as they deem necessary or desirable to carry out the purposes of this Order; and be it further

ORDERED, that the Council report its findings and recommendations, including all necessary implementing legislation, to the next regular session of the Legislature.

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NAME:

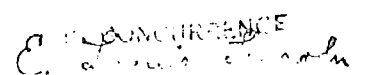
COUNTY: Cumberland

HOUSE OF REPRESENTATIVES

HOUSE OF REPRESENTATIVES

COMMITTEE ON

CONFERENCE



CLERK

STATE OF _____

SMALL BUSINESS PROCUREMENT AND PROPERTY SALES ACTSection 1. PURPOSE AND GENERAL POLICY.

It is recognized by this State that the essence of the American economic system of private enterprise is free competition; and that only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. Such competition and resulting economic well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of this State, therefore, to aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts for property and services for the State (including but not limited to contracts for maintenance, repair, and construction) be placed with small business enterprises, and to insure that a fair proportion of the total sales of State property be made to such enterprises.

Section 2. DEFINITIONS.A. Small Business Concern.

For the purposes of this Act, a small business concern shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation. In addition to the foregoing criteria, the Department of _____, in making a detailed definition may use these criteria, among others:

Number of employees and dollar volume of business. Where the number of employees is used as one of the criteria in making such definition for any of the purposes of this Act, the maximum number of employees which a small business concern may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and to take proper account of other relevant factors. Further, it is intended that the establishment of any detailed definition utilize criteria promulgated by the U. S. Small Business Administration. In this regard reference is made to Part 121, Chapter I, of Title 13 of the Code of Federal Regulations.

B. Concern.

A concern is any business entity organized for profit with a place of business located in the United States and which makes a significant contribution to the U. S. economy through payment of taxes and/or use of American products, material and/or labor, etc. "Concern" includes, but is not limited to an individual, partnership, corporation, joint venture, association or cooperative.

C. Dominance in the Field of Operation.

A concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether the dominance exists, consideration shall be given to all appropriate factors, including

volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

D. Small Business Set-Asides.

A small business set-aside includes any procurement or property sale totally or partially set aside for exclusive participation of small business concerns.

Section 3. ADMINISTRATION

- A. The Department of _____ shall be responsible for carrying out the policies of this Act. This Department shall, to the extent consistent with the best interest of the State:
- (i) attempt to locate additional qualified small business suppliers by all appropriate methods, particularly where only a limited number of small business concerns are on bidders lists;
 - (ii) give wide publicity to State purchasing procedures;
 - (iii) publicize proposed procurements by use of advance notices or other appropriate methods;
 - (iv) include all established and qualified potential small business suppliers on the bidders mailing lists;
 - (v) send solicitations to all firms on the appropriate list, except that where less than a complete list is to be used at least a pro rata number of small business concerns shall

be solicited;

- (vi) divide proposed procurement of supplies and services, except construction, into quantities not less than economic production runs, so as to permit bidding on quantities less than the total requirements; allow the maximum time practicable for preparation and submission of bids, proposals, or quotations; where feasible; establish delivery schedules which will encourage small business participation.

B. This Department shall establish and administer a small business set-aside program for all purchases including, but not limited to, contracts for maintenance, repair and construction. Said small business set-aside program shall operate in accordance with the following:

- (i) Procurements shall be set aside for exclusive small business participation if it can be determined that there is a reasonable expectation that bids and offers will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices. And in addition, partial small business set-asides of total procurement requirements will be considered and applied where that criterion for total set-asides is not met, but where the procurement is economically severable into two or more parts, and where it is anticipated that one or more small firms has the technical competency and

productive capacity to furnish a severable portion of the procurement at a reasonable price. In the case of partial small business set-asides, it is intended that a "reasonable price" be not more than the award amount of an equal quantity of the same procurement on the non-set-aside portion thereof.

- (ii) All set-aside designations, total or partial, shall be made prior to the solicitation for bids and offers as provided by law. The solicitation shall identify the small business size standard, and require each bidder/offeror to identify his size (large or small) pursuant to that standard. Bids from large concerns on procurements set aside for small business or portions of a procurement set aside for small business shall be rejected. Awards on set-aside procurements shall be made to the lowest responsive and responsible small business bidder in accordance with the laws and procurement regulations of this State.
- (iii) In the event responsive competitive bids at reasonable prices are not obtained as a result of the small business set-aside solicitation, or bids thereon are received from only firms demonstrated to be not responsible, the small business set-aside designation may be cancelled and the procurement readvertised on an unrestricted basis. Small bidding firms will be notified of the small business

set-aside cancellation, the reason(s) for bid rejection, and the State's intent to readvertise the procurement on an unrestricted basis.

- (iv) All laws and existing and future procurement regulations pertaining to solicitations, bid evaluations, contract awards and other procurement matters shall apply, as consistent, to procurements set aside for small business. In the event of conflict, the provisions of this Act shall prevail.

C. In accordance with Section 1 of this Act, it is also intended that small business receive a fair share of State property being disposed. All State property sales activity shall be oriented to implement this policy. Any department involved in such sales shall be authorized to reserve portions of or the entire State property offering for exclusive bidding by small business concerns where a reasonable expectation exists that offers will be obtained from a sufficient number of small firms so that awards will be at reasonable prices. The small business set-aside sale shall, as applicable, follow the same procedures set forth in paragraph B. of this Section 3. Firms bidding on State property offered for sale shall be deemed small when they meet the definition therefor set forth in Section 2 of this Act.

D. A small business officer shall be appointed by the Department of _____ . The chief responsibility of this

officer shall be in matters concerning small business. He shall advise the Head of the Department on small business, and shall represent his Department in negotiations and discussions with other Departments on small business matters. The small business officer shall be responsible directly to the appointing authority and shall not be subject to the direction of procurement, technical, or project personnel. The small business officer shall perform the following specific duties, as determined to be appropriate by the appointing authority:

- (i) He shall maintain a program designed to locate capable small business sources for current and future procurements.
- (ii) He shall coordinate inquiries and requests for advice from small business concerns on procurement matters.
- (iii) Prior to issuance of solicitations or contract modifications for additional supplies or services in excess of \$1,000, he shall determine that small business concerns will receive adequate consideration, including initiation of set-asides. This determination may be made jointly with the procurement officer or may be in the form of a recommendation to him. Disagreements between the small business officer and the procurement officer on proposed set-aside action shall be resolved by the appointing authority or his designee, whose decision shall be final.
- (iv) If small business concerns cannot be given an opportunity

to compete because adequate specifications or drawings are not available, unless there are sufficient and valid reasons to the contrary, initiate action with appropriate technical and contracting personnel to ensure that necessary specifications or drawings for the current or future procurements, as appropriate, are available.

- (v) He shall participate in determinations concerning responsibility of a prospective contractor whenever small business concerns are involved.
- (vi) When a small business firm's bid has been rejected for nonresponsiveness or nonresponsibility, the small business officer, upon request, shall aid, counsel and assist that small business firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards.

Section 4. ANNUAL REPORT.

The Chief of the Department of _____ shall make a report on December _____ of each year of operations under this Act to the General Assembly. It is intended that the report indicate the progress being made toward obtaining the objectives of this Act. The reporting data shall include comparative contract and contract award figures of procurement actions with small business concerns. The data shall also include figures quantifying contract awards to small firms which resulted from small business set-asides (total and partial). One measure

of progress may be the comparison of small business award activity with previous fiscal years.

WRITTEN STATEMENT BY:

Mr. Henry F. Villaume, President
Howell Laboratories, Inc.
Bridgton, Maine 04009
(207) 647-3327

and representing: Smaller Business Association of New England, Inc.
69 Hickory Drive
Waltham, Massachusetts 02154
(617) 890-9070

11 September 1974

Senators:

First, may I thank you very much for this opportunity to present a small business-
man's view on the problems generated by Federal procurement procedures in an
increasingly dynamic marketplace.

Howell Laboratories, Inc. is a very small business, manufacturing special,
packaged, fluid handling and purification systems such as air dehydrators. We
design, test and build systems to customer performances specifications. We are
primarily suppliers of a product and not in the engineering design business alone.

The Company was founded in 1964 by Mr. C. F. Howell. It is presently owned by
approximately 30 private investors primarily from within the State of Maine. We
have approximately 40 employees with several engineers to provide the technical
expertise required in the design of the special systems manufactured.

HLI does approximately 80% of its scant one million dollar sales level with the
Department of the Navy. A significant number of our employees are former service-
men, particularly the Navy, so that we feel a special empathy for their problems.
We do almost no business through the State of Maine procurement offices.

SBANE is an Association of smaller businessmen who have joined forces to present
a unified voice on common problems to legislative groups such as your own as well
as provide services which can be provided a group more effectively than to in-
dividual small businessmen. Together with my statement is some printed material
further describing the functions, services and people of SBANE.

First, I feel that the purchasing record of performance with small businesses of 70% of the dollar volume by the State of Maine is an exemplary one. There is very little that we could expect to accomplish that might improve on this record. The State of Maine purchasing groups evidently recognize the value of a small business in responding with a timely product and/or timely service to meet State needs.

The State purchasing groups are responsive to the requests for speakers from various groups of small businessmen within the State for speakers to inform members of the specialized techniques and procedures to be followed in dealing with a State purchasing agency. These dinner meetings are good and much appreciated.

We might only suggest a refinement of this practice that would be more of a training session for State of Maine small businessmen to last a half day at the vocational centers such as SMVTI or CMVTI. This would permit a full and comprehensive covering of procedural points as well as goods or services required by the State of Maine. This would avoid the frustration of attempting to cover a broad topic in a 25 minute talk at the very end of a busy day for both audience and speaker.

Meetings of this type could be coordinated through the various industry groups within the State now such as:

SBANE
Maine Metal Products Association
Associated Industries of Maine

The Small Business Administration and DCASR (Defense Contract Administration and Services Region) in Boston provide guidance programs to all major federal government subcontractors that are aimed at improving their small business posture. Soliciting information from these agencies may be of assistance in providing training material for new employees within the State purchasing offices. It could also be useful for updating policy manuals within the purchasing groups.

These small suggestions may be of some small assistance in perpetuating what seems to be a very successful program of splitting State procurements between large and small businesses.

Thank you for this opportunity to make our comments on this problem of assuring small business its fair share.

HOWELL LABORATORIES, INC.
HU

AN ACT to Require the Bureau of Purchases to Publish a Manual on State Purchasing.

Be it enacted by the People of the State of Maine, as follows:

5 MRSA §1825 is enacted to read:

§1825. Manual on state purchasing

The Bureau of Purchases shall prepare and publish a manual on state purchasing. The manual shall include a copy of the statutes and of the bureau's regulations, a detailed statement in non-technical language of the policy of state purchases and of the bidding procedure, and a list of items purchased by the bureau. Copies of the manual shall be distributed to the Governor, the Legislature, the Department of Commerce and Industry and the United States Small Business Administration, and copies shall be made available to the citizens of Maine. The manual shall be revised biennially.

STATEMENT OF FACT

The bill is the result of a study by the Joint Standing Committee on Business Legislation of the 106th Legislature on the policy of the Bureau of Purchases with respect to small businesses within the State.

The purpose of the bill is to provide more information, especially to small businesses, about the state purchasing system and thereby to encourage greater participation in bidding for state purchases. The bill would accomplish this by requiring the Bureau of Purchases to publish and distribute a manual on state purchasing.