

MAINE STATE LEGISLATURE

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April 23, 1943

J. A. Mossman, Commissioner

Finance and Budget

The Attorney General

Emergency Contracts Authorized by the Governor and Council

I have your memo of April 15th. Note that R. S. Chapter 54, Sections 41 and 42, provides for bids on all jobs costing \$1,000.00 or more except emergency work and State road work.

I assume that the jobs for repairing the walks and steps at the State House was regarded as an emergency. The fixed fee of \$600.00 furnished no incentive for the contractor to make a long job, and if we regard the job itself as an emergency, then the procedure was proper.

The job of remodeling the Vickery & Hill building; alterations to the Highway building in connection with removing the Bureau of Health and constructing the new restaurant in the State House puts us in a little different situation. It is my understanding that the contractor purchased the materials which were billed to him and reported to the State at a unit price in excess of the amount he actually paid. The difference between that price and the amount he actually paid was a "contractor's discount" recognized as perfectly proper in the trade and something which was not concealed in dealing with the State. The information given to me by the architect was that the particular contractor whom he employed was the only one available; that because of the nature of the job the contractor was unable to arrive at a net figure which he felt he could safely set on the cost of doing the job; that the contractor is a thoroughly reliable man and that he agreed to purchase the materials billing the State at the price which the State would have to pay if it bought directly, and taking a part of his compensation from the "contractor's discount"; taking the balance of his compensation for handling the job from a percentage added to the hourly wage of the workmen he used on the job. This latter arrangement is a "cost plus a percentage of cost" contract but such a contract is prohibited in our laws only in connection with the Civilian Defense Act. These particular jobs do not come within the provisions of the Civilian Defense Act and the only question to be raised is whether or not there should have been advertising for bids under R. S. Chapter 54, Sections 41 and 42.

Inasmuch as two of the jobs have been completed and the third is nearing completion, I am informed and payments have been made, I think it is too late to raise the question as to whether or not these jobs were properly "emergency" so as to justify procedure without bids.

J. A. Mossman, Commissioner of Finance and Budget
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In connection with the electrical work at the State School for Girls at Hallowell, the language of your memorandum suggests that the work is still in the future. However, the total cost is not to exceed \$570.50 and the statutory provision in regard to bids applies only to contracts in amounts of \$1,000.00 or over. Here again it is my understanding that there is but one contractor available, due to the War conditions, so there could be no competition. If the contractor is reliable the most practicable way of handling the job under present conditions seems to me to be to let it out on an hourly basis with a provision that the total cost shall not exceed a certain amount. It has been my experience that in times of labor shortage as the present when there are plenty of jobs for workmen to turn to they are not inclined to put in extra time on any particular job. Even if they are not driven by any urge to give a full day's work for a day's pay (which is, I believe, still a strong motivating force of our State of Maine workmen) there is the desire to get a job done and get on to something new which we all recognize in ourselves. This natural urge will help to keep the cost of the job down when it is being done on an hourly basis.

Frank J. Cowan
Attorney General

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