

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date August 6, 1975

To Joseph E. Stephenson, State Purchasing Dept. Bureau of Purchases
Agent

From Donald G. Alexander, Assistant Dept. Attorney General

Subject Bidders List Application


Your memorandum to this office of July 3, 1975, indicates that you are developing a Bidder's List Application. You also ask: "Would there be any difficulty under Title 5 § 1816, paragraph 6 (we assume you mean paragraph 4), or other sections of the law refusing to add to a registry any company that does not appear to be a responsible supplier based upon answers received in the application." The answer is, generally speaking, no.

Discussion

Paragraph 4 of § 1816 authorizes the development of a registry of "responsible" suppliers. The term "responsible" gives your office some discretion in examining potential suppliers and determining whether or not to add them to the list based on certain criteria of responsibility. To this opinion, however, we would add two cautionary notes:

1. You should develop and publish a system of uniform criteria upon which to evaluate the data you gain from the Bidder's List Application. Such criteria would avoid any potential for unequal treatment and provide a clear basis for your policy decision in refusing to add certain potential suppliers to the list, should those decisions ever be questioned in court. The examples you provide in your memorandum of types of potential suppliers which you might refuse to add to the registry of suppliers should be published in a regulation along with other categories which you might refuse to add.

2. You should be very careful in implementing the policies interpreting the word "responsible" to assure that you do not restrict competition by refusing to deal with potential suppliers simply because they are new to the field. Thus in developing policies for effectuating your decisions not to accept certain persons who apply to be on the suppliers registry, you should assure that there is sufficient basis for consideration of responsible, though new, potential suppliers.


DONALD G. ALEXANDER
Assistant Attorney General

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