

# MAINE STATE LEGISLATURE

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July 27, 1976

Richard Bachelder, Director

Public Improvements

Donald G. Alexander, Deputy

Attorney General

Contract Management

As you requested, I have reviewed the attached proposal relating to contract management to determine if there is any law which would prohibit the State from entering into such an agreement.

My review of the law indicates that the competitive bidding requirements, 5 M.R.S.A. § 1743, viewed in combination with the general provision authorizing the design build concept, 5 M.R.S.A. § 1743-B, would not prohibit this type of arrangement should the Bureau of Public Improvements wish to enter into it. Key factors in this conclusion are:

1. The State would basically be purchasing a professional supervisory service, thus a professional service of the type which needs not be competitively bid pursuant to the provisions of 5 M.R.S.A. § 1743.\*

2. As indicated in the letter to you of May 28, 1976, the State would still control the competitive bidding process. This would be essential as the requirements relating to competitive bidding are spelled out in 5 M.R.S.A. §§ 1743 and 1745 and must be complied with in public improvement projects. The State cannot delegate these requirements to another.

Beyond these provisions there is no provision of law which would prevent the Bureau of Public Improvements from hiring an agent to assist it in supervising and expediting construction of a building or other facility. This is basically what the construction management concept involves. The brochure relating to the construction management concept, at page 3, indicates that the construction management concept can be applied in a number of varying contract situations either multiple construction contracts directly with the owner or a single prime contractor.

DONALD G. ALEXANDER  
Deputy Attorney General

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\* You may wish to re-examine this provision in light of recent Federal Court and agency actions voiding certain professional organization restrictions on competitive bidding.