

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1770

H. P. 1342

House of Representatives, April 3, 1975

On Motion of Mr. Bustin of Augusta referred to Committee on Legal Affairs. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Carter of Winslow.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Relating to State, County and Municipal Procurement of
Engineering, Architectural and Construction Consultant Services.

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

5 MRSA c. 153, sub-c. I-A is enacted to read:

SUBCHAPTER I-A

PROFESSIONAL SERVICES EVALUATION BOARD

§ 1761. Membership; term; compensation

The Professional Services Evaluation Board is established to be composed of 5 members, 3 of whom shall be appointed by the Governor for a term of 4 years and until their successors are qualified and they shall be removed by him for just cause. The appointed members shall be composed of one person and no more, who is an architect, engineer or construction consultant and any one person who is a town manager. The deputy commissioner for planning and administration of the Department of Transportation shall be a member ex officio. The Director of the Bureau of Public Improvements shall be a member ex officio and chairman of the board. The appointed members of the board shall receive \$20 a day for the time actually spent in the discharge of their duties and their necessary expenses.

§ 1762. Powers and duties

The board shall have the following powers and duties.

1. Rules and regulations. To make rules and regulations subject to the approval of the Commissioner of Finance and Administration for the purposes of carrying out this subchapter.

2. Approve requests. No contracts for procurement of architectural, engineering or construction consultant services shall be entered into without the prior written approval of a majority of the board by any agency, instrumentality or political subdivision of the State for any project which is to be funded in any part with state or local tax revenues. All requests for permission to enter into such contracts shall be submitted to the board in accordance with regulations to be issued by the board. No such request shall be approved when it appears to the board that the requested services are readily available from personnel within an agency, instrumentality or political subdivision of the State.

A. Exception. This requirement for board approval shall not apply to contracts of less than \$2,500 nor of contracts of less than \$5,000 which are for preliminary studies, preliminary plans and cost estimates made for the purpose of obtaining electoral approval of a proposed project.

3. Public announcements. The board shall require a public announcement to be given in a uniform manner in every case when it approves a request for an expenditure for such services in excess of \$2,500. The announcement shall include a general description of the architectural, engineering or construction consulting services to be procured and it shall state the manner in which interested firms may receive information about the procurement. In addition, announcements shall be mailed on each occasion to firms which have requested such notification.

4. Comprehensive information. Upon request, the board shall furnish to any interested firm a comprehensive description of the nature and scope of the professional services to be procured, which description shall be prepared by the agency, instrumentality or political subdivision of the State which is seeking these services.

5. Selection. The board shall open all bids at a session open to the public. The board shall select the lowest responsible bidder, taking into consideration the qualities of the services to be performed and the professional and financial capabilities and prior performances of the bidders. The board shall promptly inform the agency, instrumentality or political subdivision of the State seeking the procurement and all bidders of its selection with a statement of the reasons for such selection.

6. Errors and omissions; insurance. The board may require bidders to carry errors and omissions insurance in such amount and for such purposes as it deems appropriate.

7. Truth-in-negotiation certificate. No contract shall be granted in excess of \$15,000 unless the bidder first executes a truth-in-negotiation certificate under oath stating that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. The certificate shall contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums where the board determines the price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. Such adjustments shall be directed by the board within one year following the completion of the contract.

8. Contingency fees prohibited. No one shall pay or receive a contingent fee in connection with obtaining board approval of a contract request, nor shall anyone enter into any agreement to pay or receive such a fee. No contract shall be granted unless the bidder files a statement under oath with the board that he has not employed or retained any person other than a bona fide employee working solely for the bidder, to solicit or secure the contract grant and that he was not paid or agreed to pay any person other than a bona fide employee working solely for the bidder, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the grant of this contract. Any contract obtained in violation of this subsection shall be voidable in the board's discretion and the sum of 10 times the prohibited fee shall be deducted from the contract price or recoverable in an action at law by the board.

A. Any person who violates any of these provisions shall, upon conviction, be guilty of a felony and punished by a fine of not more than \$10,000 or by imprisonment for not more than 10 years, or by both.

9. Board fees. The board shall charge a fee for processing each request for contract approval and for each request for board advisory aid, such fee to be paid at the time of filing each such request, and such fee to be in accordance with a schedule published by the board. The board shall establish a schedule of fees, after public hearing and with the approval of the Commissioner of Finance and Administration, which schedule of fees shall be set in relation to the reasonable costs of hearings, publication, notification, record keeping and administration of such requests by the board, provided that no such fee shall exceed \$500. All moneys so derived shall be used solely for this purpose, and if any such moneys are not expended during the year in which they were collected, the unexpended balance shall not lapse, but shall be carried as a continuing account available for the purposes specified, until expended.

10. Board employees. The board may employ, subject to the Personnel Law and subject to the approval of the Commissioner of Finance and Administration, such clerical and administrative personnel as it finds necessary to carry out the provisions of this subchapter.

§ 1763. Basis for fees

All fees for architectural, engineering and construction consultant services procured by contract under this subchapter shall be limited solely to a fee based upon a fixed percentage of the designer's actual and reasonable estimate of the cost of the completed structure. No such contracts shall permit a fee based upon "Cost plus a Percentage of Cost." The fee shall not be increased by a cost overrun on the designer's estimate.

§ 1764. Board advisory aid

In circumstances when board approval is not necessary, any agency, instrumentality or political subdivision of the State may submit a request to the board for advisory aid in procuring architectural, engineering or construction consultant services. The board shall render such aid as is reasonably feasible.

STATEMENT OF FACT

The purpose of this bill is to require contracts for architectural, engineering or construction consultant services which are funded in any part by the State or local tax revenues to be procured on a competitive bid basis. Board supervision of procurement of such services will reduce expenses, increase the quality of performance and curb favoritism.