

# MAINE STATE LEGISLATURE

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(Governor's Bill)

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ONE HUNDRED AND EIGHTH LEGISLATURE

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**Legislative Document**

**No. 1729**

H. P. 1502

House of Representatives, April 28, 1977

Referred to Committee on Performance Audit. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Perkins of Blue Hill.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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**AN ACT Pertaining to the Granting of Preference in the Letting of  
State Contracts to State of Maine Resident Bidders.**

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

5 MRSA §§ 1825 to 1828 are enacted to read:

§ 1825. Purpose

The purpose of sections 1825 to 1828 is to provide the Governor of the State with a mechanism for granting a preference in the letting of state contracts to state resident bidders, who have substantial economic ties with the State and who contribute to the state's economy when sufficient offsetting benefits would be realized by the State in terms of state employment and generation of state and local tax revenues through the exercise of this mechanism.

§ 1826. Maine Instate Preference Committee

1. Membership. There is established a committee to be designated as the Maine Instate Preference Committee to be comprised of the following voting members: The Governor; State Controller; Attorney General; Commissioner of Manpower Affairs; Commissioner of Finance and Administration and State Tax Assessor.

2. Bid substitution. The Governor may direct and order the State Purchasing Agent or other contracting offices to award a contract to a bidder, other than the lowest responsible bidder, whenever such bid substitution in the committee's judgment would best promote the public interest of the State.

3. Preferential bidding form. The Maine Instate Preference Committee may request any bidder on a state contract to prepare and submit a preferential bidding form.

4. Meetings. The committee shall meet upon the request of the Governor.

#### § 1827. Preferential bidding form

The Bureau of Purchases shall, within 180 days after the effective date of this Act, prepare a form, to be designated preferential bidding form, to be used in conjunction with state contracts awarded through public bid. The purpose of such form is to assist the committee in determining whether a bidder has substantial economic ties with the State and contributes heavily to the state's economy so that an informed determination can be made as to whether the award of a state contract to the lowest bidder is in the public interest of the State. The preferential bidding form shall include requests for the following information: The address of the bidder's principal place of business; the location of where each item to be supplied under a proposed contract will be manufactured if such contract is a purchasing contract; the place of origin of the component parts and raw materials of each item if such contract is a purchasing contract; the number of employees who are residents of the State which the bidder anticipates employing, including employees to be employed by any subcontractor of the bidder, on such awarded state contract; the number of persons employed by the bidder within the State for each of the past 3 years; the number of state residents employed by the bidder in each of the past 3 years; the bidder's payroll in the State for each of the past 3 years; the amount of taxes paid to the State and local governments within the State for each of the past 3 years; the amount of unemployment insurance payroll tax remitted to the State for each of the past 3 years; the amount of state personal income tax withheld on its employees for each of the past 3 years; the municipal corporations within the State to whom local real property tax payments have been remitted for each of the past 3 years and the amounts thereof, respectively; and any other information deemed relevant and necessary by the Bureau of Purchases to carry out the intent of this section.

The preferential bidding form shall be made available by the Bureau of Purchases and other contracting offices to any firm requesting it.

The completed preferential bidding form may be voluntarily submitted by a bidder along with its bid for any state contract.

The Bureau of Purchases and other contracting offices shall have the power to request any bidder to submit a completed preferential bidding form, under oath, provided that nothing contained herein or in any other section of law shall be construed to require any bidder to submit a preferential bidding form or prohibit such bidder from withdrawing its original bid.

#### § 1820. Award

Notwithstanding the provisions of Title 5, section 1816, when bids are submitted for any contract awarded by bid, the contract shall be awarded to the lowest responsible bidder unless such bidder's bid is rejected and another

bidder's bid substituted therefor upon the initiative, recommendation and action of the Governor, provided that such action may only be taken by the Governor under extraordinary circumstances and if all voting members of the committee, as described and constituted in section 1826, agree in writing with the initiative, recommendation and action of the Governor and further provided that such substituted bid is within 2% of the lowest bid.

In considering the rejection of the lowest bidder's bid and the substitution of another bid, the Governor and the voting members of the committee shall consider all the information submitted upon the preferential bidding forms, as described and constituted in section 1827, and may reject the lowest and other bidders' bids and substitute therefor another bid if, in their considered opinion, such action would best promote the public interest of the State, having taken into consideration the extent to which competing bidders have economic ties with the State and contribute to the state's economy, as well as the impact of such action upon the level of employment opportunities for state residents and the level of state and local business and personal tax revenues to be generated by such action.

When rejecting the lowest and other lower responsible bidders' bids and substituting therefor another bid, the Governor and the other voting members of the committee shall prepare a statement for each bid submitted lower than the substituted bid, in writing, containing the findings of fact upon which their action was based. Such statements shall be provided to the State Purchasing Agent or any other appropriate contracting offices at the time of the notification and notification of the bid substitution shall be made available by the Bureau of Purchases to the general public no later than 5 days after such bid substitution.

The State Purchasing Agent or other contracting offices, upon receipt of notification of a bid substitution pursuant to this section, shall let such contract to the substituted bidder, provided that all of the provisions of this section and other applicable sections of law and regulations are complied with and such award shall be final and not appealable in any proceeding or action before any court of this State, except solely upon a showing that the procedural provisions relating to approving a bid substitution as provided by this section have not been complied with. The court may not review the basis for the Governor's initiative and recommendation, and the action of the Governor in making such substitution with the requisite votes of the members agreeing to such substitution.

### STATEMENT OF FACT

The purpose of this bill is to provide the Governor with a mechanism for granting a preference in the letting of state contracts to state resident bidders and to establish the Maine Instate Preference Committee.