

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 62

H. P. 53

House of Representatives, January 10, 1979

Referred to the Committee on State Government. Sent up for concurrence.

EDWIN H. PERT, Clerk

Presented by Mr. Vincent of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

**AN ACT Relating to the Procurement of Engineer and Architectural Services by
State Government Agencies.**

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

5 MRSA §§ 1751 and 1752 are enacted to read:

§ 1751. **Engineering or architectural services**

1. **Definitions.** For the purposes of this section and section 1752, unless the context otherwise indicates, the following words shall have the following meanings.

A. "Agency" includes the State, its agencies, municipalities, political subdivisions and school districts.

B. "Agency head" includes individuals designated by an agency to negotiate an architectural or engineering contract.

C. "Firm" includes individuals, firms, partnerships, corporations, associations and other legal entities.

2. **Procedure for procurement of services.** Each agency within the State shall prepare a description of its procedures for procurement of architectural or engineering services. For any proposed project, the total cost of which shall be in excess of \$100,000, where architectural or engineering services are needed, the

agency head shall review and consider the current statements of qualifications, performance data and availability of not less than 3 members of the architectural or engineering profession. He shall, for the purpose of negotiation, arrange the firms deemed to be best qualified in order of preference in accordance with the prescribed procedures of that agency.

3. Negotiation of contract. The agency head for any proposed project under subsection 2, shall negotiate a contract with the most qualified firm for architectural or engineering services at compensation which the agency determines is fair and reasonable to that agency. In making that determination the agency shall take into consideration the estimated value of the services to be rendered, the scope of the services, their complexity and their professional nature.

4. Failure of negotiations with first firm. If the agency is unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price deemed to be fair and reasonable to that agency, negotiations with that firm shall be terminated and the agency head shall then undertake negotiations with the firm deemed to be 2nd most qualified. Should the agency head be unable to negotiate a satisfactory contract with the 2nd most qualified firm, negotiations shall be terminated and the agency head shall then undertake negotiations with the firm deemed to be 3rd most qualified.

5. Selection of further firms. If the agency is unable to negotiate a satisfactory contract with any of the 3 selected firms, it shall select additional firms in order of their competence and qualifications and attempt to negotiate contracts in accordance with this section until agreement is reached.

§ 1752. Prohibition against contingent fees

Each contract entered into by an agency for architectural or engineering services shall contain a prohibition against contingent fees as follows: "The firm offering professional services swears that it has not employed or retained any company or person, other than a bona fide employee working primarily for the firm offering architectural or engineering services to solicit or secure this agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working primarily for the firm offering architectural or engineering services, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this agreement." For the breach or violation of this provision, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of the fee, commission, percentage, gift or consideration.

STATEMENT OF FACT

The purpose of this bill is to require that the State, its agencies, municipalities, political subdivisions and school districts when involved in construction projects with a cost of over \$100,000, follow set procedures for the procurement of architectural or engineering services which will help insure that the architects and engineers are qualified and competent and that the services are obtained at a fair and reasonable price for the agency.

The bill also prohibits the payment of contingent fees or other consideration for obtaining engineering or architectural service contracts financed from public funds.