

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1020

H.P. 715

House of Representatives, March 11, 1991

Received by the Clerk of the House on March 7, 1991. Referred to the Committee on State and Local Government and 1400 ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative FOSS of Yarmouth.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act Regarding the Bidding Process for Municipal Projects.

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

2
3 Sec. 1. 5 MRSA §1747, as repealed and replaced by PL 1989, c.
4 483, Pt. A, §20, is repealed and the following enacted in its
5 place:

6 §1747. Questionnaire as prebid qualification

7
8 The public official may require from any person proposing to
9 bid on public work duly advertised a standard form of
10 questionnaire and financial statement containing a complete
11 statement of the person's financial ability and experience in
12 performing public work before furnishing that person with plans
13 and specifications for the proposed public work advertised.

14
15 The Director of the Bureau of Public Improvements, after
16 consultation with the appropriate department head or school
17 superintendent or, when a project managed by the bureau is
18 involved, on behalf of the bureau, may refuse to release plans
19 and specifications to a contractor for the purpose of bidding on
20 a project or program when the director finds that:

21
22 1. Untimely completion. The contractor has not completed a
23 prior construction project or projects in a timely manner as
24 evidenced by the failure to complete the project or projects
25 within 30 days of the completion date established in writing and
26 agreed to by the contractor and the failure to complete the
27 project or projects in a timely manner was clearly the
28 responsibility of the contractor and:

29
30 A. The failure to complete the contract in a timely manner
31 caused a significant hardship for the owner as evidenced by:

32
33 (1) An inability to occupy a facility by a publicly
34 established date;

35
36 (2) An inability to use recreational facilities within
37 a period appropriate to their intended use;

38
39 (3) The exposure of facility occupants or users to an
40 unacceptable health or safety risk; or

41
42 (4) The necessity to complete the project at
43 significant additional cost to the owner; or

44
45 B. There is a pattern of incomplete work as evidenced by 2
46 or more instances over the previous 24 months in which
47 projects failed to reach project closeout within 60 days
48 after substantial completion had been certified and those
49 failures were clearly the responsibility of the contractor;
50

2 2. Incomplete work. The contractor has established a
3 pattern evidenced by 2 or more instances during the previous 24
4 months in which projects or programs of a similar nature were
5 left incomplete and the failure to complete was clearly the
6 responsibility of the contractor;

7 3. Insufficient resources. In the opinion of the director,
8 the contractor does not have sufficient resources to complete the
9 project. Evaluation of insufficiency may include:

10 A. Reports from bonding companies or other recognized
11 financial evaluation sources;

12 B. Evidence of the lack of financial resources adequate to
13 provide the needed materials and labor and complete the
14 project in the normal course of events; or

15 C. Evidence of inadequate technical and managerial skills
16 that will be applied to the project or program by personnel
17 employed by or clearly available to the contractor;

18 4. Misconduct. The contractor has been convicted of
19 collusion of fraud or any other civil or criminal violation
20 relating to construction projects; or

21 5. Unacceptable quality. In the opinion of the director,
22 the contractor has established a pattern evidenced by 2 or more
23 instances within the previous 24 months in which the failure to
24 provide acceptable quality of work in completed projects resulted
25 in significant hardship or significant additional costs for the
26 owner.

27 Sec. 2. 5 MRSA §1749, first ¶, as repealed and replaced by PL
28 1989, c. 483, Pt. A, §21, is amended to read:

29 Any contractor dissatisfied with, or public official
30 directly affected by, the Director of the Bureau of Public
31 Improvements' decision under ~~section 1747~~ to withhold or release
32 plans and specifications to the contractor may appeal the
33 decision to the Commissioner of Administration within 5 calendar
34 days of the ~~receipt of notice from the director that the~~
35 ~~contractor has been excluded from receiving plans and~~
36 ~~specifications or the director has refused to accept the~~
37 ~~contractor's bid~~ notice of the director's decision. The appeal
38 process shall must be conducted at the discretion of the
39 commissioner, ~~but must be~~ completed and a final decision rendered
40 within 5 calendar days after the contractor's written notice of
41 appeal unless extended by the commissioner. The decision of the
42 commissioner shall ~~be~~ is final and binding. Any contractor who
43 requests a hearing under this section shall ~~be~~ allowed to may
44 receive plans and specifications for a particular duly advertised
45 public improvement and bid on that improvement. The bid of any
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2 contractor submitted under this section may be disallowed upon
final decision of the commissioner.

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STATEMENT OF FACT

8 The low bid process required in public construction projects
may lead to contracts being awarded to firms with a history of
10 failure to provide quality work in a timely manner. This bill
expands and clarifies the evaluation criteria by which the
Director of the Bureau of Public Improvements judges the
12 performance of a contractor under the established
prequalification process.