

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1715

H.P. 1174

House of Representatives, April 25, 1991

Reference to the Committee on State and Local Government suggested and ordered printed.

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

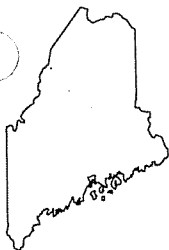
EDWIN H. PERT, Clerk

Presented by Representative ADAMS of Portland.
Cosponsored by Senator PEARSON of Penobscot.

STATE OF MAINE

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

An Act to Establish State Selective Purchasing Standards.



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

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4 Sec. 1. 5 MRSA §1813, sub-§7-A is enacted to read:

6 7-A. Implementing selective purchasing standards. Maintaining lists of restricted and preferred persons or organizations, prescribing the form of required disclosure statements and providing any other rules necessary to accomplish the purposes of subchapter III; and

10 Sec. 2. 5 MRSA §1825-B, sub-§9 is enacted to read:

12 9. Selective purchasing standards. Notwithstanding subsections 1 to 8, purchases from a person or organization doing business with the Republic of South Africa are prohibited unless expressly exempted in section 1827, subsection 3.

18 Sec. 3. 5 MRSA §1825-D, first ¶, as enacted by PL 1989, c. 785, §2, is amended to read:

20 The State Purchasing Agent shall make the public aware of
22 contracts for which bids are being requested and the procedure to
24 be used in reviewing bids, including the statutory prohibitions against purchasing goods and services from the Republic of South Africa, pursuant to section 1827. Rules adopted under this
26 subchapter must include a clear procedure:

28 Sec. 4. 5 MRSA §1825-D, sub-§§1 and 3, as enacted by PL 1989, c. 785, §2, are amended to read:

30 1. Notice. For informing the public about contracts for
32 which proposals are being requested, including information about selective purchasing standards;

34 3. Contract award. For determining successful bidders and
36 awarding contracts, including the form and method of obtaining a written and authorized statement pursuant to section 1827, subsection 3, written notification to all bidders upon an award
38 decision made pursuant to a request for proposals and criteria to
40 be used to resolve tie bids; and

42 Sec. 5. 5 MRSA §1825-D, as enacted by PL 1989, c. 785, §2, is amended by adding at the end a new paragraph to read:

44 A department, agency, authority or institution of State Government shall notify the State Purchasing Agent in writing if contracting for goods and services pursuant to section 1827, subsection 3.

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Sec. 6. 5 MRSA c. 155, sub-c. III is enacted to read:

SUBCHAPTER III

SELECTIVE PURCHASING

§1827. Purchases from Republic of South Africa prohibited

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Comparable low bid or offer" means a responsive and responsible bid or offer that is no more than 10% greater than the lowest bid or offer submitted for goods or services.

B. "Doing business with the Republic of South Africa" means:

(1) Having any operations, leases, franchises, majority-owned subsidiaries, distribution agreements or any other similar agreements in the Republic of South Africa or being the majority-owned subsidiary, licensee or franchise of such a person or organization;

(2) Providing financial services to the government of the Republic of South Africa, including providing direct loans, underwriting government securities, providing any consulting advice or assistance, providing brokerage services, acting as a trustee or escrow agent or otherwise acting as an agent pursuant to a contractual agreement;

(3) Promoting the importation or sale of gold or gold products from the Republic of South Africa; and

(4) Providing any goods or services to the government of the Republic of South Africa, except supplies or services provided for an educational, medical, charitable or religious purpose.

C. "Essential" means necessary in order that an agency or authority may perform its mission, when there is no alternative, to avoid irreparable harm to agency or authority programs.

D. "Franchise" means any person or organization authorized to sell another person's or organization's products or services.

E. "Goods" means any products or services in their final form for use or consumption without additional processing, assembly or manufacturing.

2 F. "Government of the Republic of South Africa" means any
4 public or quasi-public entity operating within the Republic
6 of South Africa, including, but not limited to, municipal,
8 provincial, national or other governmental bodies, including
10 all departments or agencies; public utilities; public
 facilities; or any entity having national interest or
 operational responsibilities. "Government of the Republic
 of South Africa" also includes bantustans and so-called
 "independent" homelands.

12 G. "Licensee" means a person or organization granted
14 permission by another or by the government of the Republic
 of South Africa to exercise a certain privilege or to carry
 on a particular business.

16 H. "Majority-owned subsidiary" means a company that is at
18 least 51% owned by another company.

20 I. "Person or organization" means any individual,
22 partnership, firm, association, corporation or other entity
 or their subsidiaries.

24 2. Prohibitions. The State, including all its departments,
26 agencies, authorities and institutions, shall refrain from doing
28 business with the Republic of South Africa and from purchasing
 any goods that are known to be wholly produced in the Republic of
 South Africa. In addition, except as otherwise provided in this
 section, goods may not be procured from:

30 A. Any person or organization having its principal place of
32 business, corporation or corporate headquarters in the
 Republic of South Africa; or

34 B. Any person or organization functioning as an operation,
36 licensee, franchise or majority-owned subsidiary of any
38 person described in paragraph A or functioning as an agent
 of the government of the Republic of South Africa.

40 3. Exceptions. Notwithstanding subsection 2, any state
42 department, agency, authority or institution may procure goods
 from a person or organization as long as:

44 A. The department, agency, authority or institution
46 certifies in writing to the State Purchasing Agent or, in
 the case of an authority, to the chief operating officer of
 that authority, that the procurement:

48 (1) Consists solely of medical supplies or services
50 intended to preserve or prolong life or to cure,
52 prevent or ameliorate diseases for which there are no
 medical substitutes. The determination that no medical

2 substitutes exist is made by the state department,
3 agency, authority or institution requiring the supplies
4 or services, pursuant to general standards of good
5 medical or professional practice; or

6 (2) Is essential and that compliance with subsection 2
7 would:

8 (a) Eliminate the only bid or offer; or

9 (b) Result in inadequate competition because no
10 comparable low bid or offer is available;

11 B. The person or organization maintains operations in the
12 Republic of South Africa for the sole purpose of reporting
13 the news or providing goods for the provision of
14 international telecommunications; or

15 C. The person or organization doing business in the
16 Republic of South Africa provides only medical supplies.
17 This exemption does not apply when the person or
18 organization provides both medical and nonmedical supplies.

19 4. Preference. The State shall give preference in its
20 purchasing to companies not doing business in the Republic of
21 South Africa.

22 **§1828. State Purchasing Agent; duties regarding selective**
23 **purchasing**

24 1. Duties. The State Purchasing Agent has the following
25 responsibilities regarding the provisions of this subchapter:

26 A. To adopt the necessary rules to carry out this
27 subchapter;

28 B. To use the list of companies doing business with the
29 Republic of South Africa maintained by the Maine State
30 Retirement System and to:

31 (1) Supplement the list with a list of clearly
32 identified companies not doing business with the
33 Republic of South Africa for the purpose of offering
34 purchasing preference pursuant to section 1827,
35 subsection 4;

36 (2) Update the list every 3 months; and

37 (3) Distribute the list to the purchasing agents of
38 all state departments, agencies, authorities and
39 institutions;

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