

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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Legislative Document

No. 1388

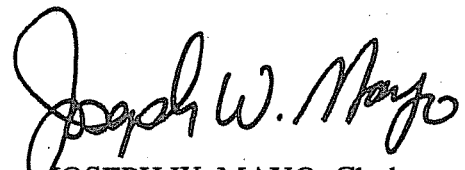
H.P. 1036

House of Representatives, April 30, 1993

**An Act Concerning Reasonable Standards and Procedures for Contracting Services by the State.**

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

  
JOSEPH W. MAYO, Clerk

Presented by Representative DAGGETT of Augusta.  
Cosponsored by Representatives: FARNSWORTH of Hallowell, JOSEPH of Waterville, KERR of Old Orchard Beach, KILKELLY of Wiscasset, Senator: CONLEY of Cumberland.

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

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Sec. 1. 5 MRSA §1816-A is enacted to read:

§1816-A. Personal services contract

1. Conditions; general. Except for contracts requiring specific legislative approval, personal services contracting is permissible when any one of the following conditions occur.

A. The services contracted are not currently available within civil service, can not be performed satisfactorily by civil service employees or are of such a highly specialized or technical nature that the necessary expert knowledge, experience or ability is not available through the civil service system.

B. The services are incidental to a contract for the purchase or release of real or personal property. Contracts under these criteria, known as service agreements, include, but are not limited to, agreements to service or maintain office equipment or computers that are leased or rented.

C. The legislative, administrative or legal goals and purposes can not be accomplished by using persons selected pursuant to the civil service system. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings when there is a clear need for a different outside perspective.

D. A state agency needs private counsel because a conflict of interest on the part of the Department of the Attorney General prevents it from representing the agency without compromising its position. These contracts require the written consent of the Attorney General.

E. The contractor provides equipment, materials, facilities or support services that the State can not feasibly provide in the location where the services are to be performed.

F. The contractor conducts training courses for which appropriately qualified civil service instructors are not and can not be made available.

G. The services are of such an urgent, temporary or occasional nature that the delay incumbent in implementation under civil service would frustrate the purpose.

2           2. Conditions; cost savings. Personal services contracting  
3 is permissible to achieve actual cost savings when all the  
4 following conditions occur.

5           A. The contracting agency clearly demonstrates that the  
6 proposed contract would result in actual overall cost  
7 savings to the State, as long as, in comparing costs:

8                   (1) The State's additional costs of providing the same  
9 service as proposed by a contractor are included.  
10 These additional costs must include the salaries and  
11 benefits of additional staff that would be needed and  
12 the cost of additional space, equipment and materials  
13 needed to perform the function; and

14                   (2) Any continuing state costs directly associated  
15 with a contractor providing a contracted function are  
16 included. These continuing state costs include, but  
17 are not limited to, those costs for inspection,  
18 supervision, monitoring and any pro rata share of  
19 existing costs or expenses, including administrative  
20 salaries and benefits, rent, equipment costs, utilities  
21 and materials.

22           B. The contract does not adversely affect the State's  
23 affirmative action efforts.

24           C. The contract is awarded in accordance with sections  
25 1825-A and 1825-B.

26           D. The contract includes specific provisions pertaining to  
27 the qualifications of the staff that is to perform the work  
28 under the contract, as well as a statement that the  
29 contractor's hiring practices meet applicable affirmative  
30 action and antidiscrimination standards.

31           E. The potential for future economic risk to the State from  
32 potential contractor rate increases or work interruptions is  
33 minimal.

34           F. The contract is with a firm. For the purposes of this  
35 section, "firm" means a corporation, partnership, nonprofit  
36 organization or sole proprietorship.

37           G. The firm to which the contract is awarded has no more  
38 than a total of 3 occupational safety and health, labor law  
39 or environmental violations within the previous 5 calendar  
40 years.

2           H. The potential economic advantage of contracting is not  
3           outweighed by the public's interest in having a particular  
4           function performed directly by State Government.

5           I. The contract does not violate existing state employee  
6           collective bargaining agreements or contain standards of  
7           performance lower than existing state employee collective  
8           bargaining agreements.

9           3. Procedure. Any state agency proposing to execute a  
10          contract pursuant to this section shall notify the Commissioner  
11          of Administrative and Financial Services of its intention. All  
12          organizations that represent state employees who perform the type  
13          of work to be contracted and the joint standing committee of the  
14          Legislature having jurisdiction over appropriations and financial  
15          affairs must be contracted immediately by the Commissioner of  
16          Administrative and Financial Services upon receipt of this notice  
17          so that they may be given a reasonable opportunity to comment on  
18          the proposed contract. Departments or agencies submitting  
19          proposed contracts shall retain and provide all data, including  
20          written findings, and other information relevant to the contracts  
21          and necessary for a specific application of the standards set  
22          forth in subsections 1 and 2. Any employee organization may  
23          request, within 5 days of notification, the Commissioner of  
24          Administrative and Financial Services to review any contract  
25          proposed or executed pursuant to this section. The review must  
26          be conducted in accordance with the Maine Administrative  
27          Procedure Act. Upon such a request, the Commissioner of  
28          Administrative and Financial Services shall review the contract  
29          for compliance with the standards specified in subsections 1 and  
30          2.

31          4. Legislative request. Any state agency denied approval  
32          under this section may request specific legislation to authorize  
33          the execution of the proposed contract.

34          5. Report. The Bureau of General Services shall deliver a  
35          report on personal services contracting by January 31, 1994 and  
36          annually thereafter to the joint standing committee of the  
37          Legislature having jurisdiction over state and local government  
38          matters. The report must include, at a minimum, the number of  
39          requests for personal services contracts considered by the  
40          Department of Administrative and Financial Services, the number  
41          of personal services contracts put out to bid, the cost of the  
42          contracts, the estimated cost to the State if the personal  
43          services had been accomplished within civil service, the number  
44          and type of appeals, the estimated cost of administering the  
45          appeals process and any suggestions for improvement.

