

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 844

S.P. 305

In Senate, March 14, 1995

**An Act to Improve Efficiency in Contracting and Program Evaluation for
Social Services.**

(EMERGENCY)

Reference to the Committee on Human Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator PENDEXTER of Cumberland.
Cosponsored by Senators: CLEVELAND of Androscoggin, HARRIMAN of Cumberland,
Representatives: BRENNAN of Portland, DAGGETT of Augusta, MAYO of Bath.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 **Whereas,** current laws mandating a request-for-proposal
procedure for social service contracts awarded by the State are
overly burdensome as state agencies have struggled to develop
8 appropriate request-for-proposal procedures by administrative
rulemaking; and

10
12 **Whereas,** current laws governing requests for proposals in
the social services are overly burdensome on providers by
deflecting valuable human and fiscal resources from the provision
14 of services to citizens of the State; and

16 **Whereas,** the national and statewide trend in the evaluation
of community service providers is towards performance-based
18 contracts; and

20 **Whereas,** the request-for-proposal procedure unnecessarily
duplicates the service evaluation function carried out through
22 performance-based contracting; and

24 **Whereas,** in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
26 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
28 safety; now, therefore,

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

32 **Sec. 1. 5 MRSA §20005, sub-§6,** as amended by PL 1993, c. 349,
§21, is further amended to read:

34 **6. Contracts and licensing.** Through the director:

36 A. Administer all contracts with community service
38 providers for the delivery of alcohol and drug abuse
services;

40 B. Establish operating and treatment standards and inspect
42 and issue certificates of approval for approved treatment
facilities, drug abuse treatment facilities or programs,
44 including residential treatment centers, and community-based
service providers pursuant to section 20024 and subchapter
46 V; and

48 C. Ensure community participation by funding regional
alcohol councils to:

50 (1) Assist in the development of comprehensive state
52 plans, the review of the effectiveness of existing

- 2 policies and services, and the identification of unmet needs;
- 4 (2) Review and comment on proposed grants and contracts;
- 6 (3) Increase public awareness and participation;
- 8 (4) Supply general reference information; and
- 10 (5) Advocate for individuals in need of assistance.

12 The director shall ensure that councils are funded in a
14 manner that recognizes local differences in cost and travel
16 distances and allows equal provision of services in each
18 geographic area to the extent that funds are available
within the office for this purpose.

20 The director may delegate contract and licensing duties under
22 this subsection to the Department of Human Services, the
24 Department of Corrections or the Department of Mental Health and
26 Mental Retardation as long as that delegation ensures that
28 contracting for alcohol and other drug abuse services provided in
30 community settings are consolidated within the Department of
Human Services, that contracting for alcohol and other drug abuse
services delivered within correctional facilities are
consolidated within the Department of Corrections and that
contracting for alcohol and other drug abuse services delivered
within mental health and mental retardation facilities are
consolidated within the Department of Mental Health and Mental
Retardation.

32 The director may not delegate contract and licensing duties if
34 that delegation results in increased administrative costs.

36 ~~The director may not issue requests for proposals for existing
38 contract services until the director has adopted rules in
accordance with the Maine Administrative Procedure Act to ensure
40 that the reasons for which existing services are placed out for
bid and the performance standards and manner in which compliance
42 is evaluated are specified and that any change in provider is
accomplished in a manner that fully protects the consumer of
services.~~

44 ~~Any new contract must be awarded through a request for proposal
46 procedure and 1/3 of the contracts of \$100,000 per year or more
that are renewed must be awarded through a request for proposal
48 procedure at least every 2 years.~~

50 ~~The director shall establish a procedure to obtain assistance and
52 advice from consumers of alcohol and other drug abuse services
regarding the selection of contractors when requests for
proposals are issued;~~

2 **Sec. 2. 5 MRSA §20005-A, sub-§2,** as enacted by PL 1993, c.
737, §1, is amended to read:

4 **2. Performance-based contract.** The director shall ensure
that all agreements to purchase alcohol or other drug abuse
6 services entered into on or after ~~July 1, 1995~~ January 1, 1995
are performance-based contracts.

8 **Sec. 3. 5 MRSA §20005-A, sub-§§4 to 9** are enacted to read:

10 **4. Contract term.** Unless good cause is shown, all
12 performance-based contracts have a minimum term of 3 years. The
director shall develop an implementation schedule to ensure that
14 all contracts do not terminate in the same year.

16 **5. Requests for proposals.** The principal method for
18 evaluating community service providers is through the system of
performance-based contracting. However, the director may award
20 contracts through a request-for-proposal procedure in the
following circumstances:

22 A. A service contract that is valued at \$500,000 per year
24 or more and is new or has been held by one agency for 8
years or more;

26 B. The director determines that the provider has breached
the existing contract;

28 C. The provider has failed to correct deficiencies cited by
30 the director;

32 D. The director determines that the provider is inefficient
34 or ineffective in the delivery of services and is unable or
unwilling to improve its performance within a reasonable
36 time; or

38 E. The provider can not or does not respond to a
reconfiguration of service delivery requested by the
40 director.

42 **6. Request-for-proposal guidelines.** The director shall
adhere to the following guidelines when developing or modifying
44 rules for the request-for-proposal procedure.

46 A. Unless good cause is shown, the director shall publicly
announce in newspapers of general circulation throughout the
48 State the intent to rebid a contract one year in advance of
its termination date.

50 B. The director shall require any interested party to
52 submit a notice of intent to bid at least 3 months before
the date bids will be accepted as a precondition to

2 submitting a formal bid. The notice of intent must contain
3 minimal requirements that demonstrate a prospective bidder's
4 competence and ability to comply with the requirements of
5 the contract.

6 C. The director shall hold at least one informational
7 meeting at least 3 months before the due date for submission
8 of the notice of intent pursuant to paragraph B. An
9 informational meeting must be advertised in newspapers of
10 general circulation with the location, date, time and
11 purpose of the meeting. At the meeting the director shall
12 provide detailed information to any interested party about
13 the contract to be rebid pursuant to this subsection,
14 highlight anticipated major changes from the previous
15 contract and respond to questions.

16 D. If only one community service provider submits a notice
17 of intent to bid, the director shall enter into a negotiated
18 contract with that provider in accordance with the
19 procedures established for performance-based contracts.

20
21 **7. Relationship with community service providers.** The
22 director and the community providers awarded contracts pursuant
23 to this section shall establish a cooperative relationship that
24 enables the director to ensure that citizens of the State receive
25 quality services while allowing providers to deliver those
26 services in the most efficient and cost-effective manner. The
27 director shall maintain oversight over community service
28 providers to ensure the quality of services provided and allow
29 the providers substantial discretion in the daily operation of
30 their agencies.

31
32 **8. Reporting requirements.** In determining the amount and
33 type of data to be gathered by community service providers, the
34 director shall consider the costs to community service providers
35 associated with gathering data and reporting it to the State.
36 Unless good cause is shown, the director shall require annual
37 fiscal reports from providers. The director may require staff
38 reports if a provider has experienced a change in staffing level.

39
40 **9. Decision-making time frame.** The director shall consider
41 the costs to community service providers associated with delays
42 in decision making by the director's office staff and endeavor to
43 respond to the questions and requests of providers in a manner
44 that minimizes the costs of delay.

45
46 **Sec. 4. 22 MRSA §12-A, sub-§2,** as enacted by PL 1993, c. 737,
47 §2, is amended to read:

48
49 **2. Performance-based contract.** The commissioner shall
50 ensure that all agreements to purchase social services entered

2 into on or after July---1,---1997 January 1, 1995 are
performance-based contracts.

4 **Sec. 5. 22 MRSA §12-A, sub-§§4 to 9** are enacted to read:

6 4. Contract term. Unless good cause is shown, all
performance-based contracts have a minimum term of 3 years. The
8 commissioner shall develop an implementation schedule to ensure
that all contracts do not terminate in the same year.

10 5. Requests for proposals. The principal method for
12 evaluating community service providers is through the system of
performance-based contracting. However, the commissioner may
14 award contracts through a request-for-proposal procedure in the
following circumstances:

16 A. A service contract that is valued at \$500,000 per year
18 or more and is new or has been held by one agency for 8
years or more;

20 B. The commissioner determines that the provider has
22 breached the existing contract;

24 C. The provider has failed to correct deficiencies cited by
the commissioner;

26 D. The commissioner determines that the provider is
28 inefficient or ineffective in the delivery of services and
is unable or unwilling to improve its performance within a
30 reasonable time; or

32 E. The provider can not or does not respond to a
34 reconfiguration of service delivery requested by the
commissioner.

36 6. Request-for-proposal guidelines. The commissioner shall
adhere to the following guidelines when developing or modifying
38 rules for the request-for-proposal procedure.

40 A. Unless good cause is shown, the commissioner shall
42 publicly announce in newspapers of general circulation
throughout the State the intent to rebid a contract one year
in advance of its termination date.

44 B. The commissioner shall require any interested party to
46 submit a notice of intent to bid at least 3 months before
the date bids will be accepted as a precondition to
48 submitting a formal bid. The notice of intent must contain
minimal requirements that demonstrate a prospective bidder's
50 competence and ability to comply with the requirements of
the contract.

2 C. The commissioner shall hold at least one informational
3 meeting at least 3 months before the due date for submission
4 of the notice of intent pursuant to paragraph B. An
5 informational meeting must be advertised in newspapers of
6 general circulation with the location, date, time and
7 purpose of the meeting. At the meeting the commissioner
8 shall provide detailed information to any interested party
9 about the contract to be rebid pursuant to this subsection,
10 highlight anticipated major changes from the previous
11 contract and respond to questions.

12 D. If only one community service provider submits a notice
13 of intent to bid, the commissioner shall enter into a
14 negotiated contract with that provider in accordance with
15 the procedures established for performance-based contracts.

16 7. Relationship with community service providers. The
17 commissioner and the community service providers awarded
18 contracts pursuant to this section shall establish a cooperative
19 relationship that enables the commissioner to ensure that
20 citizens of the State receive quality services while allowing
21 providers to deliver those services in the most efficient and
22 cost-effective manner. The commissioner shall maintain oversight
23 over community service providers to ensure the quality of
24 services provided and allow the providers substantial discretion
25 in the daily operation of their agencies.

26 8. Reporting requirements. The commissioner shall consider
27 the costs to community service providers associated with
28 gathering data and reporting it to the State. Unless good cause
29 is shown, the commissioner shall require annual fiscal reports
30 from providers. The commissioner may require staff reports if a
31 provider has experienced a change in staffing level.

32 9. Decision-making time frame. The commissioner shall
33 consider the costs to community service providers associated with
34 delays in decision making by the commissioner's office staff and
35 endeavor to respond to the questions and requests of providers in
36 a manner that minimizes the costs of delay.

37 Sec. 6. 34-B MRSA §1208-A, sub-§2, as enacted by PL 1993, c.
38 737, §3, is amended to read:

39 2. Performance-based contract. The--commissioner--shall
40 ensure--that--any--agreement--with--the--board--of--the--regional
41 authority--for--Region-V--established--pursuant--to--Public--Law--1991,
42 chapter--781,--Part--C--entered--into--on--or--after--July--1,--1994--is--a
43 performance-based contract. The commissioner shall ensure that
44 all agreements to purchase human services entered into on or
45 after July--1,---1997 January 1, 1995 are performance-based
46 contracts.

52

2 **Sec. 7. 34-B MRSA §1208-A, sub-§§4 to 9** are enacted to read:

4 4. Contract term. Unless good cause is shown, all
6 performance-based contracts have a minimum term of 3 years. The
8 commissioner shall develop an implementation schedule to ensure
10 that all contracts do not terminate in the same year.

12 5. Requests for proposals. The principal method for
14 evaluating community service providers is through the system of
16 performance-based contracting. However, the commissioner may
18 award contracts through a request-for-proposal procedure in the
20 following circumstances:

22 A. A service contract that is valued at \$500,000 per year
24 or more and is new or has been held by one agency for 8
26 years or more;

28 B. The commissioner determines that the provider has
30 breached the existing contract;

32 C. The provider has failed to correct deficiencies cited by
34 the commissioner;

36 D. The commissioner determines that the provider is
38 inefficient or ineffective in the delivery of services and
40 is unable or unwilling to improve its performance within a
42 reasonable time; or

44 E. The provider can not or does not respond to a
46 reconfiguration of service delivery requested by the
48 commissioner.

50 6. Request-for-proposal guidelines. The commissioner shall
52 adhere to the following guidelines when developing or modifying
rules for the request-for-proposal procedure.

 A. Unless good cause is shown, the commissioner shall
publicly announce in newspapers of general circulation
throughout the State the intent to rebid a contract one year
in advance of its termination date.

 B. The commissioner shall require any interested party to
submit a notice of intent to bid at least 3 months before
the date bids will be accepted as a precondition to
submitting a formal bid. The notice of intent must contain
minimal requirements that demonstrate a prospective bidder's
competence and ability to comply with the requirements of
the contract.

 C. The commissioner shall hold at least one informational
meeting at least 3 months before the due date for submission
of the notice of intent pursuant to paragraph B. An

2 informational meeting must be advertised in newspapers of
4 general circulation with the location, date, time and
6 purpose of the meeting. At the meeting the commissioner
8 shall provide detailed information to any interest party
10 about the contract to be rebid pursuant to this subsection,
12 highlight anticipated major changes from the previous
14 contract and respond to questions.

16 D. If only one community service provider submits a notice
18 of intent to bid, the commissioner shall enter into a
20 negotiated contract with that provider in accordance with
22 the procedures established for performance-based contracts.

24 **7. Relationship with community service providers.** The
26 commissioner and the community service providers awarded
28 contracts pursuant to this section shall establish a cooperative
30 relationship that enables the commissioner to ensure that
32 citizens of the State receive quality services while allowing
34 providers to deliver those services in the most efficient and
36 cost-effective manner. The commissioner shall maintain oversight
38 over community service providers to ensure the quality of
40 services provided and allow the providers substantial discretion
42 in the daily operation of their agencies.

44 **8. Reporting requirements.** The commissioner shall consider
46 the costs to community service providers associated with
48 gathering data and reporting it to the State. Unless good cause
50 is shown, the commissioner shall require annual fiscal reports
52 from providers. The commissioner may require staff reports if a
54 provider has experienced a change in staffing level.

56 **9. Decision-making time frame.** The commissioner shall
58 consider the costs to community service providers associated with
60 delays in decision making by the commissioner's office staff and
62 endeavor to respond to questions and requests of providers in a
64 manner that minimizes the costs of delay.

66 **Sec. 8. 34-B MRSA §3604, sub-§3, ¶E,** as amended by PL 1993, c.
68 624, §1, is repealed.

70 **40 Sec. 9. 34-B MRSA §3604, sub-§3, ¶F,** as enacted by PL 1991, c.
72 452, §1, is repealed.

74 **Sec. 10. 34-B MRSA §3604, sub-§3, ¶G,** as enacted by PL 1993, c.
76 624, §2, is repealed.

78 **46 Sec. 11. 34-B MRSA §6203, sub-§1, ¶H,** as amended by PL 1991, c.
80 452, §2, is further amended to read:

82 H. Ensure that rules are adopted that specify the
84 procedures by which a parent or guardian of a child in need
86 of treatment may appeal decisions made relative to services
88 provided by the bureau; and

2 **Sec. 12. 34-B MRSA §6203, sub-§1, ¶I**, as amended by PL 1991, c.
452, §3, is further amended to read:

4 I. Provide a comprehensive system of support services,
6 including respite care, to families with children in need of
treatment.

8 **Sec. 13. 34-B MRSA §6203, sub-§1, ¶¶J and K**, as amended by PL
1993, c. 624, §3, are repealed.

10 **Sec. 14. 34-B MRSA §6203, sub-§1, ¶L**, as enacted by PL 1993,
12 c. 624, §4, is repealed.

14 **Sec. 15. Retroactivity.** This Act takes effect retroactively to
16 January 1, 1995.

18 **Emergency clause.** In view of the emergency cited in the
preamble, this Act takes effect when approved.

20

STATEMENT OF FACT

22

24 This bill eliminates the mandatory request-for-proposal
26 procedure for social service contracts between community service
providers and the Department of Human Services, the Department of
28 Mental Health and Mental Retardation and the Office of Substance
Abuse. It directs the agencies to ensure that all agreements to
purchase services from community service providers are
performance-based contracts.