

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)



118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 945

S.P. 294

In Senate, February 11, 1997

An Act to Establish Basic Standards and Procedures for Personal Services Contracting by the State.

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator DAGGETT of Kennebec.
Cosponsored by Representative KONTOS of Windham and
Senator NUTTING of Androscoggin, Representative: GREEN of Monmouth.

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

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

6 **§1816-A. Personal services contracting**

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

10 A. The services contracted are not currently available within a state agency, 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.

12 B. The services are incidental to a contract for the purchase or lease 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.

14 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.

16 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 the agency's position. A contract entered into under this condition requires the written consent of the Attorney General.

18 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.

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

22 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 H. The contracting agency demonstrates a quantifiable
3 improvement in services that can not be reasonably
4 duplicated within existing resources.

5 2. Conditions; cost savings. Personal services contracting
6 is permissible to achieve actual cost savings when all the
7 following conditions are met.

8
9
10 A. The contracting agency clearly demonstrates that the
11 proposed contract would result in actual overall cost
12 savings to the State as long as, in comparing costs:

13
14 (1) The State's costs of providing the same service as
15 proposed by a contractor are included. These costs
16 must include the salaries and benefits of additional
17 staff that would be needed and the cost of additional
18 space, equipment and materials needed to perform the
19 service; and

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

28
29 B. The contract does not adversely affect the State's
30 affirmative action efforts.

31
32 C. The contract is awarded in accordance with section
33 1825-B.

34
35 D. The contract includes specific provisions pertaining to
36 the qualifications of the staff that is to perform the work
37 under the contract, as well as a statement that the
38 contractor's hiring practices meet applicable affirmative
39 action and antidiscrimination standards.

40
41 E. The potential for future economic risk to the State from
42 potential rate increases or work interruptions by the
43 contractor is minimal.

44
45 F. The contract is with a firm or a licensed, registered or
46 otherwise professionally qualified individual. For the
47 purposes of this section, "firm" means a corporation,
48 partnership, nonprofit organization or sole proprietorship.

49
50 G. The potential economic advantage of contracting is not
51 outweighed by the public's interest in having a particular
52 function performed directly by State Government.

2 H. The contract does not contain standards of performance
3 or employee qualifications lower than existing state
4 standards or minimum qualifications.

6 3. Procedure. Any state agency proposing to execute a
7 contract exceeding \$15,000 pursuant to this section shall notify
8 the Commissioner of Administrative and Financial Services of its
9 intention. All organizations that represent state employees who
10 perform the type of work to be contracted must be contacted
11 immediately by the commissioner upon receipt of this notice so
12 that they may be given a reasonable opportunity to comment on the
13 proposed contract. Departments or agencies submitting proposed
14 contracts shall retain and provide all data, including written
15 findings, and other information relevant to the contracts and
16 necessary for a specific application of the standards set forth
17 in subsections 1 and 2. Within 3 business days of receipt of the
18 notice from the commissioner, any organization that represents
19 employees may request that the commissioner review any contract
20 proposed or executed pursuant to this section. The review must
21 be conducted in accordance with the Maine Administrative
22 Procedure Act. Upon such a request, the commissioner shall
23 review the contract for compliance with the standards specified
24 in subsections 1 and 2.

26 **Sec. 2. Application.** This Act applies to proposals for new
27 contracts and the renewal process for existing contracts as they
28 occur on and after the effective date of this Act.

30

32

SUMMARY

34

36

38

This bill establishes minimum standards that must be met by State Government before it contracts for personal services outside of the civil service system. Notice of intent to contract must be given to organizations that represent employees.