

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 776

S.P. 211

In Senate, February 13, 2001

An Act to Authorize the Department of Transportation to Use the Design-Build Method of Project Delivery.

Submitted by the Department of Transportation pursuant to Joint Rule 204.
Reference to the Committee on Transportation 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 SAVAGE of Knox.
Cosponsored by Representative FISHER of Brewer and
Senators: O'GARA of Cumberland, SMALL of Sagadahoc, Representatives: COLLINS of
Wells, MAYO of Bath, McKENNEY of Cumberland, McNEIL of Rockland, WHEELER of
Bridgewater.

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

2 Sec. 1. 23 MRSA §753-A is enacted to read:

4 §753-A. Design-build contracts

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

12 A. "Best value" means the highest overall value to the
14 State, considering quality and cost.

16 B. "Department" means the Department of Transportation.

18 C. "Design-build contracting" means a method of project
20 delivery whereby a single firm is contractually responsible
22 to perform design, construction and related services.

24 D. "Major participant" means any firm that would have a
26 major role in the design or construction of the project as
28 specified by the department in the request for proposals.

30 E. "Project" means the highway, bridge, railroad, pier,
32 airport, trail, ferry vessel, building or other improvement
34 being constructed or rehabilitated, including all
36 professional services, labor, equipment, materials, tools,
38 supplies, warranties and incidentals needed for a complete
40 and functioning product.

42 F. "Proposal" means an offer by the proposer to design and
44 construct the project in accordance with all
46 request-for-proposals provisions for the price contained in
48 the proposal.

 G. "Proposer" means an individual, firm, corporation,
limited liability company, partnership, joint venture, sole
proprietorship or other entity that submits a proposal.
After contract execution, the successful proposer is the
design-builder.

 H. "Quality" means those features that the department
determines are most important to the project. Quality
criteria may include quality of design, constructability,
long-term maintenance costs, aesthetics, local impacts,
traveler and other user costs, service life, time to
construct and other factors that the department considers to
be in the best interest of the State.

2 2. Authorization. Notwithstanding section 753 or any other
3 provision of law, the department may use design-build contracting
4 to deliver projects. The department may evaluate and select
5 proposals on either a best-value or low-bid basis.

6 The department retains the authority to terminate the contracting
7 process at any time, to reject any proposal, to waive
8 technicalities or to advertise for new proposals if the
9 department determines that it is in the best interest of the
10 State.

12 3. Prequalification. The department may require that firms
13 be prequalified to submit proposals. If the department requires
14 prequalification, it shall give public notice requesting
15 qualifications from interested firms in at least 2 newspapers
16 distributed in the State. The department shall issue a
17 request-for-qualifications package to all firms requesting one in
18 accordance with the notice.

20 Interested firms shall supply, for themselves and all major
21 participants, all information required by the department. The
22 department may investigate and verify all information received.
23 All financial information, trade secrets or other information
24 customarily regarded as confidential business information
25 submitted to the department is confidential.

26 The department shall evaluate and rate all firms submitting a
27 conforming statement of qualifications and select the most
28 qualified firms to each receive a request for proposals. The
29 department may select any number of firms, except that, if the
30 department fails to prequalify at least 2 firms, the department
31 shall readvertise the project.

34 4. Request for proposals. If the department requires
35 prequalification, it shall issue a request for proposals to those
36 firms prequalified. If the department does not require
37 prequalification, it shall give public notice of the request for
38 proposals in at least 2 newspapers distributed in the State.

40 The request for proposals must set forth the scope of work,
41 design parameters, construction requirements, time constraints
42 and all other requirements that have a substantial impact on the
43 cost or quality of the project and the project development
44 process, as determined by the department. The request for
45 proposals must include the criteria for acceptable proposals.
46 For projects to be awarded on a best-value basis, the scoring
47 process and quality criteria must also be contained in the
48 request for proposals. In the department's discretion, the
49 request for proposals may provide for a process for the
50 department to review conceptual technical elements of each

2 proposal before full proposal submittal for the purposes of
3 identifying defects that would cause rejection of the proposal as
4 nonresponsive. All such conceptual submittals and responses are
5 confidential until award of the contract. The request for
6 proposals may also provide for a stipend upon specified terms to
7 unsuccessful proposers that submit proposals conforming to all
8 request-for-proposals requirements.

10 5. Low-bid award. If the basis of the award of responsive
11 proposals is lowest cost, then each proposal, including the price
12 or prices, must be sealed by the proposer and submitted to the
13 department as one complete package. The department shall award
14 the design-build contract to the proposer that submits a
15 responsive proposal with the lowest price, if the proposal meets
16 all request-for-proposals requirements.

18 6. Best-value award. If the basis of the award of
19 responsive proposals is best value, then each proposal must be
20 submitted by the proposer to the department in 2 separate
21 components, which are a sealed technical proposal and a sealed
22 price proposal. These 2 components must be submitted
23 simultaneously.

24 The department shall first open, evaluate and score each
25 responsive technical proposal, based on the quality criteria
26 contained in the request for proposals. The request for
27 proposals may provide that the range between the highest and
28 lowest quality score of responsive technical proposals must be
29 limited to an amount certain. During this evaluation process,
30 the price proposals will remain sealed and all technical
31 proposals are confidential.

32 After completion of the evaluation of the technical proposals,
33 the department shall publicly open and read each price proposal.
34 The department shall calculate the overall value rating for each
35 proposal, which is the total price divided by the quality score.
36 The department shall award the contract to the proposer with the
37 lowest price per quality score point, provided that the proposal
38 meets all request-for-proposals requirements.

42 SUMMARY

44 This bill authorizes the Department of Transportation to use
45 the design-build method of project delivery for public
46 infrastructure projects. Unlike the traditional design-bid-build
47 method of project delivery, design-builders design and build
48 projects under a single contract. In addition to low-bid awards,
49 this bill authorizes the Department of Transportation to award
50 projects on a best-value basis after considering the quality of

2 the design. In addition, this bill includes a procedural step that minimizes the risk that bidders will submit nonresponsive proposals.