

MAINE STATE LEGISLATURE

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STATE AND LOCAL GOVERNMENT

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STATE OF MAINE
SENATE
120TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 351, L.D. 1165, Bill, "An Act to Authorize the Bureau of General Services to Utilize Alternative Delivery Methods for Public Improvements and to Amend the Provisions Pertaining to Prebid Qualifications of Contractors"

Amend the bill by striking out all of sections 1 and 2 and inserting in their place the following:

'Sec. 1. 5 MRSA §1743, as amended by PL 1989, c. 596, Pt. N, §3, is repealed and the following enacted in its place:

§1743. Public improvement construction contracts

The Department of Administrative and Financial Services through the Bureau of General Services shall award a contract in accordance with this section for any public improvement that the State or any of its agencies hold in fee involving a total cost in excess of \$100,000, except contracts for professional, architectural and engineering services. The bureau may reject any public improvement bid, qualification package or proposal when it determines that to do so is in the best interests of the State. The contract must be awarded by competitive bid as provided in subsection 2 or by the bid method provided in subsections 3 to 7 for alternative methods of project delivery.

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

A. "Bureau" means the Bureau of General Services.

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2 B. "Construction-manager-advisor method" means a method of
4 project delivery in which the bureau engages a single firm
6 for a fee to advise and consult with the bureau as to design
8 and construction and may include consultation as to the
10 selection of one or more design professionals to furnish the
 design when trade contracts for performance are held
 directly by the bureau. The firm is contractually bound to
 manage the schedule and budget to ensure adherence to both
 by the trade contractors.

12 C. "Construction-manager-at-risk method" means a method of
14 project delivery in which the bureau engages a single firm
16 for a fee to advise and consult with the bureau as to design
18 and construction and separately engages one or more design
20 professionals to furnish the design, and in which the firm
 is responsible to the bureau for schedule and price. The
 firm engaged to act as construction manager at-risk may
 perform all or a portion of the work on the project at the
 bureau's discretion.

22 D. "Design-build method" means a method of project delivery
24 in which a single firm is contractually responsible to
 perform design, construction and related services.

26 E. "Design-build team" means representatives of an
28 individual, firm, corporation, limited liability company,
30 partnership, joint venture, sole proprietorship or other
32 entity that submits a prequalification package in response
 to a request for qualifications under subsection 5,
 paragraph A, subparagraph (2).

34 F. "Director" means the Director of the Bureau of General
 Services.

36 G. "Proposer" means an individual, firm, corporation,
38 limited liability company, partnership, joint venture, sole
 proprietorship or other entity that submits a proposal.

40 H. "Quality" means those features that the bureau
42 determines are most important to the project. "Quality"
44 includes design quality; feasibility of construction;
 long-term maintenance costs; life-cycle costs, particularly
 energy efficiency; service life; and other factors the
 bureau determines in the best interest of the State.

46 I. "Review panel" means the Alternative Delivery System
48 Review Panel established in subsection 4.

2 2. Competitive bids. A public improvement contract may be
awarded under a system of competitive bidding in accordance with
4 this Part and such other conditions as the Governor may prescribe.

6 3. Alternative methods of project delivery. As an
alternative to the competitive bid method provided in subsection
8 2, a public improvement contract may be undertaken using the
construction-manager-advisor, construction-manager-at-risk or
10 design-build method of construction.

12 A. To the extent the provisions of this section do not
address specific alternative delivery procurement, award or
14 administration issues, the provisions may be supplemented at
the discretion of the director with the concepts contained
16 in the Bureau's architect-engineer selection procedures that
are designed to achieve quality-based selection and with
18 policies and procedures adopted by rule of the bureau with
the advice of the review panel.

20 B. After award of a contract or contracts for a project
under an alternative method of delivery, the bureau shall
22 notify all unsuccessful proposers in writing within a
reasonable amount of time of the final selection and award,
24 and make available to them all scoring information used in
the selection process. Upon award of the contract or
26 contracts and after resolution of any procurement disputes,
28 the bureau shall return documents submitted by unsuccessful
proposers upon request.

30 C. Using the time frames and procedures established in
section 1749, this paragraph governs appeals from decisions
32 on alternative methods of project delivery.

34 (1) Resolution of disputes must be by appeal to the
36 director, whose decision is the final administrative
appeal.

38 (2) Nothing in this paragraph prevents an aggrieved
40 party from seeking judicial review, which may include a
request for stay of award pursuant to applicable laws,
42 judicial decisions, rules and any other applicable
procedures.

44 D. The director may adopt rules necessary to implement the
provisions for alternative project delivery methods set out
46 in this section in accordance with the Maine Administrative
Procedure Act. Prior to the procurement or award of any
48 contract under an alternative delivery method, the director

2 shall adopt by rule policies and procedures to implement
3 that method. Rules adopted under this subsection are
4 routine technical rules pursuant to chapter 375, subchapter
5 II-A.

6 **4. Alternative Delivery System Review Panel.** The director
7 shall establish the Alternative Delivery System Review Panel to
8 advise the director in developing alternative project delivery
9 policies, procedures and rules and in selecting public
10 improvement projects for construction under an alternative
11 delivery method.

12 A. The review panel is composed of 6 members as follows:

13 (1) Two representatives of the bureau designated by
14 the Commissioner of Administrative and Financial
15 Services;

16 (2) Two representatives of the construction trade, one
17 of whom is a building contractor designated by the
18 president of a state-based organization that represents
19 building contractors and one of whom is designated by
20 the president of a state-based organization that
21 represents specialty contractors;

22 (3) One representative designated by the president of a
23 state-based organization that represents architects; and

24 (4) One representative designated by the president of
25 a state-based organization that represents consulting
26 engineers.

27 The private sector members serve terms of 3 years each and
28 each appointing authority shall designate an alternate who
29 shall serve in the event of a conflict of interest.

30 B. In making a recommendation on selection of projects to
31 the bureau, the review panel shall consider the following
32 criteria:

33 (1) Technical complexity of the project;

34 (2) Substantial time or schedule savings that are
35 necessary to the success of the project;

36 (3) Project cost control;

37 (4) The bureau's capacity to plan and manage the
38 selected alternative project delivery method of

construction, either in house or through outside contract;

(5) Consistency and fairness in the procurement process;

(6) Assurance of competition; and

(7) Advancement of the public interest.

5. Design-build method. The design-build method must be consistent with guidelines approved by a national architect, general contractor or design-build organization or a combined or modified version of the guidelines approved by those entities, with the final design-build procedures and documents to be determined at the discretion of the bureau. The bureau may prequalify design-build teams using criteria that must include at a minimum those set forth in section 1747 and may also include additional criteria considered appropriate by the director.

A. Selection of the design-build teams is governed by this paragraph.

(1) Prior to publication of a request for qualifications, the bureau shall develop concept and schematic designs incorporating a detailed set of program requirements for the project using the services of a qualified architect, engineer or other professional who is selected using the bureau's architect-engineer selection rules. Individuals who are involved in developing the project's program requirements may not participate in the design-build teams.

(2) For each project, the bureau shall publish a request for qualifications in at least 2 newspapers distributed in the State, one of which must be the Kennebec Journal. The bureau shall issue a request-for-qualifications package to all firms requesting one in accordance with the notice. The bureau shall evaluate and rate all firms submitting a responsive statement of qualifications and select the most qualified firms to receive a request for proposals. Selection criteria at this stage include at a minimum the ability of the competitor to satisfactorily carry out the project design and construction requirements, past performance, relevant experience and financial capacity to perform. The bureau may select a short list of 3 to 5 firms. The bureau may pay a reasonable stipend to all responsive

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proposers who were not selected. The amount of the stipend must be published together with the evaluation criteria in the request for proposals.

(3) The request for proposals must set forth the scope of work, design parameters, construction requirements, time constraints and all other requirements that the bureau determines have a substantial impact on the cost or quality of the project and the project development process. The request for proposals must include the criteria for acceptable proposals and state clearly what weight will be assigned to each criterion. A description of the scoring process and quality criteria to be used to judge the proposals must also be contained in the request for proposals. As part of the selection process, proposers must make oral presentations to the selection panel established under subparagraph (4).

(4) The director shall appoint members of a selection panel for each project. The selection panel in both the request-for-qualifications and request-for-proposals phases must include design and construction professionals from within the bureau, design and construction professionals from outside the bureau and individuals who will use the facility.

(5) Each proposal must be submitted to the bureau in 2 separate components: a sealed technical proposal and a sealed price proposal. These 2 components must be submitted simultaneously. The selection panel shall first open and evaluate and score each responsive technical proposal based on the quality criteria contained in the request for proposals. Nonresponsive proposals must be rejected. During this evaluation process, the price proposals must remain sealed and all technical proposals are confidential. After completion of the evaluation of the technical proposals, the selection panel shall publicly open and read each price proposal. The bureau shall award the contract to the proposer with the lowest price per quality score point, as long as that proposal meets all request-for-proposals requirements. The bureau shall be permitted to modify the scoring of price and quality in accordance with rules adopted by the bureau.

6. Construction-manager-at-risk method. The construction-manager-at-risk method must be consistent with the concepts set forth in a standard form of agreement between an owner and a construction manager when the construction manager is

2 also the constructor as established by national architect or
4 general contractor organizations. The final procedures and
6 documents for this method of delivery are determined at the
8 discretion of the director.

10 A. The bureau shall publish in at least 2 newspapers
12 distributed in the State, one of which must be the Kennebec
14 Journal, a request for qualifications that must contain the
16 evaluation criteria upon which proposals are evaluated.
18 Evaluation criteria include project size and scope, and
20 relevant experience and financial and staff capability of
22 proposers. The bureau shall evaluate the proposals and
24 determine which proposers, if any, are qualified to perform
26 the project. The bureau may select a short list of 3 to 5
28 firms.

30 B. Proposers determined to be qualified must be invited to
32 submit a fee proposal. The bureau shall, in advance of
34 soliciting a fee proposal, publish the evaluation criteria
36 upon which the proposers are evaluated. Evaluation criteria
38 at a minimum must include the following:

40 (1) Fee;

42 (2) Technical capacity;

44 (3) Management plan and project schedule if available;

46 (4) Experience;

48 (5) Past performance;

50 (6) Technical approach; and

(7) Composition and qualifications of the proposers'
workforce.

As part of the selection process, proposers must make oral
presentations to the selection panel established under
paragraph C.

C. The director shall appoint members of a selection panel
for each project. The selection panel must include
representatives of the owner, designer, if selected, and
individuals who will use the facility. From among the
proposals submitted, the bureau shall select the most
advantageous proposal that meets the published evaluation
criteria.

D. Subcontractors must be selected in accordance with the

2 following provisions. The bureau shall create a
3 subcontractor prequalification panel, composed of a
4 representative from the designer, the construction manager
5 and the bureau. The construction manager shall develop
6 detailed bid packages based on the industry standard
7 practice. The bureau shall advertise in at least 2
8 newspapers distributed in the State, one of which must be
9 the Kennebec Journal, for requests for qualifications for
10 each trade. The subcontractor prequalification panel shall,
11 from the qualifications submitted, determine a short list of
12 trade contractors who must be permitted to submit bids in
13 accordance with the bid package requirements, pursuant to a
14 publicly advertised process and deadline. Bids must be
15 opened publicly and be awarded to the lowest responsive
16 eligible bidder.

17 7. Construction-manager-advisor method. The
18 construction-manager-advisor method must be consistent with the
19 standard scope of services employed by the bureau in public
20 improvement projects.

21 A. The bureau shall publish in at least 2 newspapers
22 distributed in the State, one of which must be the Kennebec
23 Journal, a request for proposals that identifies the
24 evaluation criteria upon which proposers are evaluated.
25 Evaluation criteria must include:

- 26 (1) Fee;
- 27 (2) Technical capacity;
- 28 (3) Management plan;
- 29 (4) Experience;
- 30 (5) Past performance; and
- 31 (6) Composition of the project team, with individual
32 resumes.

33 As part of the selection process, proposers must make oral
34 presentations to the selection panel established under
35 paragraph B.

36 B. The director shall appoint members of a selection panel
37 for each project. The selection panel must include
38 representatives of the owner, designer, if selected, and
39 individuals who will use the facility. From among the
40 proposals submitted, the bureau shall select the most

2 advantageous proposal according to the published evaluation
3 criteria.

4 C. The position of general contractor must be awarded to
5 the lowest responsive and eligible bidder. Additional trade
6 contracts, if any, must be awarded to the lowest responsive
7 and eligible bidder or bidders.

8
9 8. Owner's representative. The bureau may employ a
10 qualified individual to represent the owner on any public
11 improvement project awarded under the competitive bid process
12 provided in subsection 2 or an alternative method of project
13 delivery provided in subsection 3. Owner's representative
14 services must be consistent with the standard scope of services
15 employed by the bureau. The services of the owner's
16 representative must be procured in a manner consistent with the
17 bureau's rules governing selection of architects and engineers or
18 with policies and procedures adopted by rule of the bureau with
19 the advice of the review panel.

20
21 **Sec. 2. 5 MRSA §1747, sub-§3,** as amended by PL 1997, c. 295,
22 §1, is further amended to read:

23
24 **3. Insufficient resources.** If, in the opinion of the
25 director, there is evidence the contractor does not have
26 sufficient resources to successfully complete the work, ~~or~~. The
27 director may require additional information about the
28 contractor's resources, including identification of major claims
29 or litigation pending and whether the contractor has sought
30 protection under the bankruptcy laws in the past 5 years. That
31 information is confidential and not subject to disclosure under
32 Title 1, chapter 13, subchapter I;'

33
34 Further amend the bill in section 4 in subsection 5 in the
35 2nd line (page 2, line 41 in L.D.) by inserting after the
36 following: "evidence of" the following: 'a history of'

37
38 Further amend the bill by inserting at the end before the
39 summary the following:

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42 **FISCAL NOTE**

43
44 The Bureau of General Services within the Department of
45 Administrative and Financial Services will incur some minor
46 additional costs to adopt rules and administer new provisions
47 related to the State's competitive bid process. These costs can
48 be absorbed within the bureau's existing budgeted resources.'

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SUMMARY

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6 This amendment clarifies the methods alternative to the
8 competitive bid process for delivery for public construction
10 projects provided in the bill. The amendment establishes the
12 process for selection of public improvement projects owned by the
14 State that may be considered for alternative methods of delivery
16 and the requirements for requesting proposals, evaluating the
18 qualifications of bidders and bids under the various alternative
methods and conducting appeals from decisions of the Department
of Administrative and Financial Services, Bureau of General
Services. The amendment creates the Alternative Delivery System
Review Panel to advise the bureau on policy making and project
selection. The amendment also clarifies provisions of the bill
regarding prequalification of contractors to bid on public
improvement projects. It also adds a fiscal note to the bill.