

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1165

S.P. 351

In Senate, February 28, 2001

**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.**

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

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

A handwritten signature in black ink, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator PENDLETON of Cumberland.
Cosponsored by Representative McDONOUGH of Portland.

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

2 **Sec. 1. 5 MRSA §1743**, as amended by PL 1989, c. 596, Pt. N,
4 §3, is repealed and the following enacted in its place:

6 **§1743. Competitive bids**

8 **1. Competitive bids.** A contract for any public improvement
10 that the State or any of its agencies hold in fee involving a
12 total cost in excess of \$100,000, except contracts for
14 professional, architectural and engineering services, may be
16 awarded by the Department of Administrative and Financial
Services through the Bureau of General Services, under a system
of competitive bidding in accordance with chapters 141 to 155 and
other conditions and restrictions the Governor may prescribe.

18 **2. Methods of construction.** A public improvement under
20 subsection 1 may be undertaken using the design-build,
22 construction-manager-at-risk or construction-manager-advisor
method of construction or the services of an owner's
representative.

24 A. The design-build method must generally follow those
26 guidelines developed by a national architects, general
28 contractors or design-build organization or a combined or
30 modified version of those entities, with the final
32 design-build procedures and documents to be determined at
34 the sole discretion of the Bureau of General Services. The
36 Bureau of General Services is permitted to prequalify
design-build teams using criteria that must include at a
minimum those set forth in section 1747 but may also include
criteria considered appropriate by the Director of General
Services, in the director's sole discretion. The Director
of General Services shall adopt policies and procedures to
implement this paragraph. Such policies and procedures may
include payment of a stipend to any design-build team that
has been qualified to submit and does submit a proposal.

38 B. The construction-manager-at-risk method must generally
40 follow the concepts set forth in a standard form of
42 agreement between an owner and a construction manager when
44 the construction manager is also the constructor as
established by national architects or general contractor
organizations, with the final documents to be determined at
the sole discretion of the Director of General Services.

46 C. The construction-manager-advisor method, sometimes
48 referred to as the "agent-construction-manager method," must
50 generally follow the standard scope of services employed by
the Bureau of General Services.

2 D. Owner's representative services must generally follow
4 the standard scope of services employed by the Bureau of
 General Services.

6 The alternative delivery methods set out in paragraphs A to D
8 must employ quality-based selection criteria generally using the
10 Bureau of General Services' architect-engineer selection process,
 as modified in the discretion of the Director of General
12 Services. Design-builders must be selected based upon policies
 and procedures developed by the Bureau of General Services.

14 Rules adopted under this subsection are routine technical rules
 pursuant to chapter 375, subchapter I-A.

16 **Sec. 2. 5 MRSA §1747, sub-§3,** as amended by PL 1997, c. 295,
18 §1, is further amended to read:

20 **3. Insufficient resources.** If, in the opinion of the
22 director, there is evidence the contractor does not have
24 sufficient resources to successfully complete the work~~+~~~~er~~. If
26 the director requires additional information about the
28 contractor's resources, the contractor may be required to submit
 additional information, including financial statements and annual
 reports, information about material changes in financial
 condition, major claims or litigation pending, whether the
 contractor has sought protection under the bankruptcy laws in the
 past 5 years and other information that the director may require
 to assess resources;

30 **Sec. 3. 5 MRSA §1747, sub-§4,** as enacted by PL 1989, c. 483,
32 Pt. A, §20, is amended to read:

34 **4. Misconduct.** If the contractor has been convicted of
36 collusion or fraud or any other civil or criminal violation
 relating to construction projects~~+~~ ;

38 **Sec. 4. 5 MRSA §1747, sub-§§5, 6 and 7** are enacted to read:

40 **5. Safety record.** If, in the opinion of the director,
42 there is evidence of inadequate safety performance and lack of
 formal safety procedures;

44 **6. Material misrepresentation.** If, in the opinion of the
46 director, there is evidence of a material misrepresentation on
 the contractor's prebid qualification statement; or

48 **7. Termination, suspension, defaults.** If, in the opinion
50 of the director, there is evidence that the contractor through
 its own fault has been terminated, has been suspended for cause,

2 has been debarred from bidding, has agreed to refrain from
3 bidding as part of a settlement or has defaulted on a contract or
4 had a contract completed by another party.

5 **Sec. 5. 5 MRSA §1747, last ¶,** as enacted by PL 1997, c. 295,
6 §1, is amended to read:

7 If a contractor is disqualified for any of the reasons
8 stated in subsection 1, 2 ~~or~~ 4, 5, 6 or 7, the director may
9 disallow the contractor from bidding on any similar public
10 improvements for a period not to exceed one year.
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14 **SUMMARY**

15 **16** This bill amends the existing low-bid system of construction
17 procurement to allow alternative, quality-based selection. This
18 bill also expands the requirements for the prebid qualification
19 of contractors.
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