

MAINE STATE LEGISLATURE

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AMS

L.D. 1864

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EDUCATION AND CULTURAL AFFAIRS

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1426, L.D. 1864, Bill, "An Act to Increase the Number of "Construction-manager-at-risk" Alternative Delivery Pilot Projects for School Construction and to Increase the Maximum Project Cost of Projects Eligible for Alternative Delivery"

Amend the bill by striking out the title and substituting the following:

'An Act to Increase the Number of Alternative Delivery Pilot Projects for School Construction and to Increase the Maximum Project Cost of Projects Eligible for Alternative Delivery'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. P&SL 1999, c. 79, §§4 and 5 are amended to read:

Sec. 4. Design-build method. The design-build method must generally follow those guidelines developed by the Design-Build Institute of America or by the American Institute of Architects / Association of General Contractors or a combined or modified version of one or both of those entities with the final design-build procedures and documents to be determined at the sole discretion of the Department of Administrative and Financial Services, Bureau of General Services, referred to in this Act as the "bureau." For the purposes of this section, "owner" means the school board or the school building committee, as applicable. The owner may prequalify design-build teams using criteria that include at a minimum those set forth in the Maine Revised Statutes, Title 5, section 1747 and may include additional criteria considered appropriate by the director of the

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2 bureau. Selection of the design-build teams is governed by this
3 section and the approval process established pursuant to section
4 11 of this Act and the policies and procedures established
5 pursuant to section 12 of this Act.

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

14 2. For each project, the owner shall publish a request for
15 qualifications in at least 2 newspapers distributed in the State,
16 one of which must be the Kennebec Journal. The owner shall issue
17 a request-for-qualifications package to all firms requesting one
18 in accordance with the notice. The owner shall evaluate and rate
19 all firms submitting a responsive statement of qualifications and
20 select the most qualified firms to receive a request for
21 proposals. Selection criteria at this stage include at a minimum
22 the ability of the competitor to satisfactorily carry out the
23 project design and construction requirements, past performance,
24 relevant experience and financial capacity to perform. The owner
25 may select a short list of 3 to 5 firms. The owner may pay a
26 reasonable stipend to all responsive proposers who were not
27 selected. The amount of the stipend must be published together
28 with the evaluation criteria in the request for proposals.

29 3. The request for proposals must set forth the scope of
30 work, design parameters, construction requirements, time
31 constraints and all other requirements that the owner determines
32 have a substantial impact on the cost or quality of the project
33 and the project development process. The request for proposals
34 must include the criteria for acceptable proposals and state
35 clearly what weight will be assigned to each criterion. A
36 description of the scoring process and quality criteria to be
37 used to judge the proposals must also be contained in the request
38 for proposals. As part of the selection process, proposers must
39 make oral presentations to the selection panel established under
40 subsection 4.

41 4. The owner shall appoint members of a selection panel for
42 each project. The selection panel in both the
43 request-for-qualifications and request-for-proposals phases must
44 include design and construction professionals from within the
45 bureau, design and construction professionals from outside the
46 bureau and community representatives from the locality of the
47 project.

2 5. Each proposal must be submitted to the owner in 2
3 separate components: a sealed technical proposal and a sealed
4 price proposal. These 2 components must be submitted
5 simultaneously. The selection panel shall first open and
6 evaluate and score each responsive technical proposal based on
7 the quality criteria contained in the request for proposals.
8 Nonresponsive proposals must be rejected. During this evaluation
9 process, the price proposals must remain sealed and all technical
10 proposals are confidential. After completion of the evaluation
11 of the technical proposals, the selection panel shall publicly
12 open and read each price proposal. The owner shall award the
13 contract to the proposer with the lowest price per quality score
14 point, as long as that proposal meets all request-for-proposals
15 requirements. The owner may modify the scoring of price and
16 quality in accordance with rules adopted by the bureau pursuant
17 to the Maine Revised Statutes, Title 5, section 1743, subsection
18 3.

19 **Sec. 5. Construction-manager-at-risk method.** The
20 construction-manager-at-risk method must generally follow the
21 format of "Standard Form of Agreement Between Owner and
22 Construction Manager where the Construction Manager is also the
23 Constructor," American Institute of Architects Document A121/CMc
24 and Association of General Contractors Document 565(1991
25 Edition). The final procedures and documents for this method of
26 delivery are determined at the discretion of the director of the
27 bureau and are governed by this section and the approval process
28 established pursuant to section 11 of this Act and the policies
29 and procedures established pursuant to section 12 of this Act.
30 For the purposes of this section, "owner" means the school board
31 or the school building committee, as applicable.

32 1. A project must be approved by the review panel
33 established pursuant to section 11 of this Act before the owner
34 advertises for construction-manager-at-risk services and prior to
35 the owner's approval of the schematic design.

36 2. The owner shall publish in at least 2 newspapers
37 distributed in the State, one of which must be the Kennebec
38 Journal and one of which must be a newspaper in the locality of
39 the project, a request for qualifications that must contain the
40 evaluation criteria upon which proposals are evaluated.
41 Evaluation criteria include: project size and scope, relevant
42 experience, bondable capacity and project team experience of the
43 proposers. The owner shall evaluate the proposals and determine
44 which proposers, if any, are qualified to perform the project.
45 The owner may select a short list of 3 to 5 firms.

3. A proposer determined to be qualified must be invited to submit a proposal based on evaluation criteria that at a minimum must include the following:

A. The fee;

B. The firm's management system's technical capacity;

C. The project approach and schedule;

D. The firm's construction experience with projects of similar size and complexity;

E. The technical approach;

F. The composition and qualifications of the proposer's workforce, including resumes of management personnel; and

G. The safety record.

The owner shall, in advance of soliciting a construction-manager proposal, publish the evaluation weight of each individual proposal component. As part of the selection process, prequalified proposers must make oral presentations to the selection panel established under subsection 4.

4. The owner shall appoint members of a selection panel for each project. The selection panel must include representatives of the owner, designer, if selected, and other community representatives from the locality of the project. From among the proposals submitted, the owner shall select the most advantageous proposal that meets the published evaluation criteria.

5. Subcontractors for the major subtrades must be selected in accordance with the provisions in this subsection. The bureau shall determine the major subtrades that are subject to the provisions of this subsection. The owner shall create and may participate in a subcontractor prequalification panel, composed of a representative from the designer, the construction manager and the bureau. The construction manager shall develop detailed bid packages based on the industry standard practice. The bureau shall advertise in at least 2 newspapers distributed in the State, one of which must be the Kennebec Journal, for requests for qualifications for each trade. The subcontractor prequalification panel shall, from the qualifications submitted, determine a short list of trade contractors who must be permitted to submit bids in accordance with the bid package requirements, pursuant to a publicly advertised process and deadline. Bids must be opened publicly and be awarded to the lowest responsive eligible bidder.

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6. In the event the owner hires an owner's representative, the owner's representative is disqualified from construction management consideration for the same project.

Sec. 2. P&SL 1999, c. 79, §9 is repealed and the following enacted in its place:

Sec. 9. Eligible projects. A school administrative unit seeking to use an alternative delivery method for a school construction project subject to approval under section 11 of this Act may employ one of the following methods in undertaking a school construction project as part of this 5-year pilot or study program.

1. Three design-build projects and 3 construction-manager-advisor projects or construction-manager-at-risk projects for school construction may be employed provided that the total project cost does not exceed \$2,500,000.

2. Four projects that exceed \$2,500,000 in total project cost but do not exceed \$20,000,000 in total project cost may utilize the design-build method.

3. Two projects that exceed \$2,500,000 in total project cost but do not exceed \$10,000,000 in total project cost may utilize the construction-manager-advisor method or the construction-manager-at-risk method.

4. Five projects that exceed \$2,500,000 in total project cost but do not exceed \$10,000,000 may utilize the construction-manager-at-risk method.

5. Five projects that exceed \$10,000,000 in total project cost may employ the construction-manager-at-risk method.

The 22 projects described in this section must be scheduled for completion by 2005, the intent of this law being the creation of a 5-year pilot or study program.

Sec. 3. P&SL 1999, c. 79, §12 is amended to read:

Sec. 12. Policies and procedures; pilot project assessment. The Commissioner of Education and the Commissioner of Administrative and Financial Services shall adopt policies and procedures to implement the application form and review the evaluation criteria, composition of the review panel, performance measures, contract documents, administrative appeals process and all other matters necessary to implement this Act. The policies adopted

2 must provide that decisions pertaining to prequalification and
3 selection may be appealed only to the Department of
4 Administrative and Financial Services, Bureau of General
5 Services, and that the decision of the Director of the Bureau of
6 General Services or the director's designee is final and may not
7 be appealed. The director or the director's designee shall
8 consult with 2 nonvoting, outside advisors from the design and
9 construction industry. The policies adopted may also include
10 procedures that allow for reimbursement to a school
11 administrative unit for a stipend paid to any design-build team
12 that has been qualified to submit, and that does submit, a
13 proposal. Any such reimbursement must come from funds in the
14 state-supported line of the project budget and in amounts to be
15 established jointly by the Commissioner of Education and the
16 Commissioner of Administrative and Financial Services.

17 The Commissioner of Education and the Commissioner of
18 Administrative and Financial Services shall establish an
19 assessment team to assess the 5-year pilot program established
20 under this Act. The assessment team evaluation must be conducted
21 as follows.

22 1. The assessment team is composed of at least 7 members as
23 follows:

24 A. One representative of the Bureau of General Services
25 designated by the Commissioner of Administrative and
26 Financial Services;

27 B. One representative of the Department of Education
28 designated by the Commissioner of Education;

29 C. One representative of the State Board of Education
30 designated by the Chair of the State Board of Education;

31 D. One representative of school administrative units in the
32 State designated by the Executive Director of the Maine
33 School Management Association;

34 E. One representative of the construction trade designated
35 by the president of a state-based organization that
36 represents building contractors or specialty contractors;

37 F. One representative designated by the president of a
38 state-based organization that represents architects; and

39 G. One representative designated by the president of a
40 state-based organization that represents consulting
41 engineers.

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2 2. The purpose of the assessment is to evaluate the
3 relative advantages and disadvantages of the alternative delivery
4 methods employed under the terms and conditions of this Act,
5 including, but not limited to, an analysis of the comparative
6 costs and benefits of these methods for school construction
7 projects to those found using the traditional competitive
8 design-bid-build method set forth in the Maine Revised Statutes,
9 Title 5, section 1743-A and Title 20-A, chapter 609.

10 3. In analyzing the relative merits of the traditional
11 method and the alternative methods employed for school
12 construction under this 5-year pilot program, the assessment team
13 shall consider the following factors:

14 A. The technical complexities of the projects;

15 B. The time or schedule savings or delays;

16 C. The project cost control;

17 D. The implications for the health and safety of educators,
18 students and community members;

19 E. The capacity of state and local officials to plan and
20 manage the selected alternative project delivery method of
21 construction;

22 F. The consistency and fairness in the procurement process;

23 G. The appropriateness of the major subtrades designated by
24 the Department of Administrative and Financial Services,
25 Bureau of General Services that were subject to the
26 provisions of the subcontractor prequalification panel
27 process established for the construction-manager-at-risk
28 projects;

29 H. The assurance of competition; and

30 I. The advancement of the public interest.

31 4. The assessment team must be convened no later than
32 September 1, 2004 and must report the findings and
33 recommendations from its assessment, including any recommended
34 legislation, to the joint standing committee of the Legislature
35 having jurisdiction over education and cultural affairs no later
36 than December 7, 2005. The joint standing committee of the
37 Legislature having jurisdiction over education and cultural
38 affairs may report out a bill to the Second Regular Session of
39 the 122nd Legislature to implement the recommendations of the
40 assessment team.'

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

FISCAL NOTE

The additional costs associated with membership on a certain team, advertising and selecting subcontractors can be absorbed by the Department of Administrative and Financial Services, Bureau of General Services utilizing existing budgeted resources.

The State Board of Education and the Department of Education will incur some minor additional costs to serve on the assessment team to assess the 5-year pilot program. These costs can be absorbed within the board's and the department's existing budgeted resources.'

SUMMARY

This amendment changes the title of the bill and replaces the bill. The amendment amends certain provisions of Private and Special Law 1999, chapter 79, which authorized school administrative units to use alternative delivery methods for school construction projects. The amendment accomplishes the following.

1. It authorizes 10 additional "construction-manager-at-risk" alternative delivery projects for school construction, including 5 projects that exceed \$2,500,000 in total project cost but do not exceed \$10,000,000 and 5 projects that exceed \$10,000,000 in total project cost.

2. It authorizes 2 additional "design-build" alternative delivery projects for school construction and increases the cap on total project cost for the 4 projects from \$10,000,000 to \$20,000,000.

3. It amends the authorization regarding the "design-build" and the "construction-manager-at-risk" alternative delivery methods for school construction projects to be consistent with the prequalification procedures devised for the alternative delivery methods established in the Maine Revised Statutes, Title 5, section 1743 for public improvement projects.

4. It establishes an assessment team to evaluate the relative advantages and disadvantages of the alternative delivery methods employed during the 5-year pilot program, including but not limited to an analysis of the comparative costs and benefits

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of these methods for school construction projects to those found
using the traditional competitive design-bid-build method.

5. It clarifies the eligible project authorization
provisions to more accurately reflect the legislative intent of
the authorizing legislation.

6. It adds a fiscal note to the bill.