

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## SECOND REGULAR SESSION-2004

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Legislative Document

No. 1783

H.P. 1305

House of Representatives, December 22, 2003

### **An Act To Clarify Prequalification Criteria for Public Improvements**

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

Received by the Clerk of the House on December 17, 2003. Referred to the Committee on State and Local Government pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative McLAUGHLIN of Cape Elizabeth.

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

**Sec. 1. 5 MRSA §1747, sub-§3,** as amended by PL 2001, c. 271, §2, is further amended to read:

**3. Insufficient resources.** If, in the opinion of the director, there is evidence the contractor does not have sufficient resources to successfully complete the work. The director may require additional information about the contractor's resources, including identification of major claims or litigation pending and whether the contractor has sought protection under the bankruptcy laws in the past 5 years. That information is confidential and not subject to disclosure under Title 1, chapter 13, subchapter I; 1. For the purposes of this subsection, "resources" means financial capacity, legal capacity, bonding capacity and relevant experience of the contractor at the time of qualification with a project of the size, type and schedule for which prebid qualification is sought. A project's "size" refers to both its square footage and the cost of construction. A project's "type" includes unique functions or characteristics integrated into the project, such as building systems or the ultimate use to which the public improvement will be put, such as school, hospital, correctional institution or similar improvements, or involving a specialized type of work, such as demolition, earthwork or blasting;

**Sec. 2. 5 MRSA §1749, first ¶,** as amended by PL 1991, c. 780, Pt. Y, §60, is further amended to read:

Any contractor dissatisfied with the Director of the Bureau of General Services' decision under section 1747 may appeal the decision to the Commissioner of Administrative and Financial Services within 5 calendar days of the receipt of notice from the director that the contractor has been excluded from receiving plans and specifications or the director has refused to accept the contractor's bid. The appeal process must be conducted at the discretion of the commissioner, but must be completed and a final decision rendered within 5 calendar days after the contractor's written notice of appeal unless extended by the commissioner. The decision of the commissioner is final and binding, notwithstanding the provisions of chapter 375, subchapter 7. Any contractor who requests a hearing under this section must be allowed to receive plans and specifications for a particular duly advertised public improvement and bid on that improvement. The bid of any contractor submitted under this section may be disallowed upon final decision of the commissioner.

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## SUMMARY

4           This bill clarifies the definition of a contractor's  
6 "resources" by incorporating financial capacity, legal capacity,  
8 bonding capacity and relevant prior experience at the time of  
10 prebid qualification with projects of similar size, type and  
schedule. The bill further clarifies that the decision of the  
Commissioner of Administrative and Financial Services on appeal  
is final, notwithstanding subchapter 7 of the Maine  
Administrative Procedure Act.