

MAINE STATE LEGISLATURE

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2MG
R. S.

L.D. 1298

Date: 3/18/16

Minority

(Filing No. H-575)

STATE AND LOCAL GOVERNMENT

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 884, L.D. 1298, Bill, "An Act Relating to the Creation of Public-private Facilities and Infrastructure"

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

'An Act To Update the Maine Procurement Laws'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 5 MRSA §1811, sub-§8, as amended by PL 2005, c. 12, Pt. T, §8, is further amended to read:

8. Cooperative purchasing. To permit any political subdivision or school administrative district in the State or nonprofit free health care clinic that provides free primary or preventative services to make purchases of goods and services, including but not limited to foodstuffs, materials, equipment and supplies, through the Bureau of General Services, subject to such procedures, rules and regulations as may be prescribed by the director. This subsection applies to a municipality notwithstanding any provision in its municipal charter to the contrary;

Sec. 2. 5 MRSA §1812, as amended by PL 1991, c. 780, Pt. Y, §67, is further amended to read:

§1812. Scope of purchasing authority

The terms "services," "goods," "commodities," "supplies," "materials" and "equipment" as used in this chapter mean any and all ~~services,~~ labor, time or effort furnished to the State or any department or agency of the State by a contractor or vendor and articles or things that are used by or furnished to the State or any department or agency thereof; and any and all printing, binding, publication of laws, journals and reports. Except as provided in chapters 141 to 155, any and all services, goods, commodities, supplies, materials and equipment needed by one or more departments or agencies of the State Government must be directly purchased or contracted for by the Director of the Bureau of General Services, as may be determined from time to time by

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1 rules adopted pursuant to chapters 141 to 155, which rules the Department of
 2 Administrative and Financial Services is authorized and empowered to make. It is the
 3 intent and purpose of this chapter that the Director of the Bureau of General Services
 4 purchase collectively all services, goods, commodities, supplies, materials and equipment
 5 for the State or any department or agency ~~thereof of the State~~ in a manner that will best
 6 secure the greatest possible economy consistent with the grade or quality of the services,
 7 goods, commodities, supplies, materials and equipment best adapted for the purposes for
 8 which they are needed. Whenever supplies and materials are available for purchase that
 9 are composed in whole or in part of recycled materials and are shown by the seller,
 10 supplier or manufacturer to be equal in quality and are competitively priced, except for
 11 paper and paper products, the Director of the Bureau of General Services shall purchase
 12 such recycled supplies and materials. The Director of the Bureau of General Services
 13 shall also review procurement procedures and bid specifications for the purchase of
 14 products and materials to ensure, to the maximum extent feasible, the purchase of
 15 products or materials that are made with recycled materials or may be recycled or reused
 16 once discarded. For the purposes of this section and section 1812-B, "recycled materials"
 17 means materials that are composed in whole or in part of elements that are reused or
 18 reclaimed.

19 The Trustees of the University of Maine System may authorize the Department of
 20 Administrative and Financial Services to act for them in any purchases.

21 ~~The word "services," when used in this chapter, means any and all window cleaning~~
 22 ~~services, elevator repair and maintenance services, laundry service, linen supply service,~~
 23 ~~dry cleaning service, janitor service, floor maintenance service, rubbish and garbage~~
 24 ~~disposal service, tree surgeon service, all types of office machine repair and maintenance~~
 25 ~~service, exterminator service, refrigerator repair and maintenance service and oil burner~~
 26 ~~repair and maintenance service when any such service is performed by an independent~~
 27 ~~contractor. The Director of the Bureau of General Services may, with the approval of the~~
 28 ~~Commissioner of Administrative and Financial Services add to or eliminate from the~~
 29 ~~various types of service set forth in this paragraph such services performed by~~
 30 ~~independent contractors as may be considered by the director to be in the best interests of~~
 31 ~~the State.~~

32 The Director of the Bureau of General Services may enter into or participate in
 33 multistate agreements and requests for proposals and bids for goods and services when it
 34 is determined to be in the best interests of the State. The Director of the Bureau of
 35 General Services may enter into or participate in competitively awarded agreements from
 36 the United States Government, other state or local governments or other public entities if
 37 the director determines that the competitive process used is substantially similar to that of
 38 the State.

39 **Sec. 3. 5 MRSA §1825-B, sub-§2, ¶C**, as amended by PL 1991, c. 780, Pt. Y,
 40 §70, is further amended to read:

41 C. After reasonable investigation by the Director of the Bureau of General Services,
 42 it appears that any required ~~unit or item of supply, or brand of that unit or item, is~~
 43 goods or services are procurable by the State from only one source;

44 **Sec. 4. 5 MRSA §1825-B, sub-§2, ¶D**, as enacted by PL 1989, c. 785, §2, is
 45 amended to read:

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1 D. It appears to be in the best interest of the State to negotiate for the procurement of
2 energy-related commodities, such as petroleum products, natural gas and electricity;

3 **Sec. 5. 5 MRSA §1825-B, sub-§2, ¶G**, as amended by PL 1999, c. 105, §3, is
4 further amended to read:

5 G. The procurement of goods or services involves expenditures of ~~\$10,000~~ \$25,000
6 or less, and procurement from a single source is the most economical, effective and
7 appropriate means of fulfilling a demonstrated need.

8 **Sec. 6. 5 MRSA §1825-B, sub-§§7 and 8**, as amended by PL 2015, c. 179, §2,
9 are further amended to read:

10 **7. Awards to best-value bidder.** Except as otherwise provided by law,
11 competitively awarded orders, grants or contracts made by the Director of the Bureau of
12 General Services or by any department or agency of the State must be awarded to the
13 best-value bidder, taking into consideration the qualities of the goods or services to be
14 supplied, their conformity with the specifications, the purposes for which they are
15 required, the date of delivery and the best interest of the State or any criteria identified
16 within the State's competitive bidding documents for any given purchase. If the bidder
17 that was initially awarded the order, grant or contract does not perform, the Director of
18 the Bureau of General Services may cancel the order, grant or contract and award a new
19 order, grant or contract to the 2nd best-value bidder. The order, grant or contract may not
20 be awarded to a bidder that the Director of the Bureau of General Services determined
21 was not in compliance at the time the initial bid was submitted.

22 **8. Tie bids.** The Director of the Bureau of General Services shall award contracts,
23 grants or purchases to in-state bidders or to bidders rendering services or offering
24 commodities produced or manufactured in the State if the price, quality, availability and
25 other factors are equivalent. If a tie cannot be resolved based on whether one bidder is an
26 in-state bidder or a bidder who renders services or offers commodities produced or
27 manufactured in the State, the director may contact the tied bidders and invite them to
28 submit new cost proposals. The bidder with the lowest cost proposal must be awarded the
29 contract, unless the director decides not to make an award to any bidder.

30 **Sec. 7. 5 MRSA §1825-D, sub-§2**, as enacted by PL 1989, c. 785, §2, is amended
31 to read:

32 **2. Review process.** To be used when reviewing competitive bids, including the
33 requirement that written records of the evaluation of bids be kept ~~by each person directly~~
34 ~~reviewing or ranking bids;~~

35 **SUMMARY**

36 This amendment is the minority report and strikes and replaces the bill. It changes the
37 title and amends Maine's procurement laws instead of, as in the bill, establishing a
38 framework for governmental entities to enter into agreements with private entities and
39 persons to develop or operate qualifying projects.

40 It expands the description of what can be purchased cooperatively by the State for
41 other public entities. It adds "goods" and "commodities" to the list of terms under the
42 scope of the purchasing authority of the Department of Administrative and Financial

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1 Services, Bureau of General Services. It replaces the term "services" with "labor, time or
2 effort" by a contractor or vendor and removes the definition of "services." It provides that
3 the Director of the Bureau of General Services may enter into or participate in multistate
4 agreements when it is in the best interests of the State. The director may also enter into or
5 participate in competitively awarded agreements from the United States Government,
6 other state and local governments or other public entities when the competitive process is
7 similar to the State's.

8 The amendment updates language in regard to specific reasons under which a waiver
9 of competition can be granted by the bureau. The language provides consistency and
10 updates current practices to better reflect current markets, including the addition of
11 natural gas and electricity. It also increases from \$10,000 or less to \$25,000 or less the
12 amount of expenditures under which the director may waive competitive bidding if
13 procurement from a single source is the most economical, effective and appropriate.

14 The amendment expands what the bureau must take into consideration when
15 determining the best-value bidder for any goods or services to be consistent with
16 competitive bidding documents. It clarifies how to remedy tie bids.

17 The amendment provides that rules of the State Purchasing Agent that govern the
18 procedure for reviewing competitive bids include the requirement that written records of
19 the evaluation of bids be kept.