

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1295

S.P. 447

In Senate, April 4, 2017

An Act To Create the Procurement Review Board

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

A handwritten signature in cursive script, reading 'Heather J.R. Priest'.

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator LIBBY of Androscoggin.

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

2 **Sec. 1. 5 MRSA §1811, first ¶**, as amended by PL 1991, c. 780, Pt. Y, §61, is
3 further amended to read:

4 The Subject to review by the Procurement Review Board under subchapter 3, the
5 Department of Administrative and Financial Services, through the Bureau of General
6 Services, has authority:

7 **Sec. 2. 5 MRSA §1812**, as amended by PL 1991, c. 780, Pt. Y, §67, is further
8 amended by adding at the end a new paragraph to read:

9 Purchases pursuant to this section are subject to review by the Procurement Review
10 Board under subchapter 3.

11 **Sec. 3. 5 MRSA §1813, first ¶**, as amended by PL 1991, c. 780, Pt. Y, §68, is
12 further amended to read:

13 The Director of the Bureau of General Services, with the approval of the
14 Commissioner of Administrative and Financial Services; and in accordance with the
15 authority of the Procurement Review Board to review, comment upon and approve or
16 disapprove all requests for proposals; bids; and contract renewals, amendments,
17 extensions or other changes to existing contracts pursuant to subchapter 3, may adopt,
18 modify or abrogate rules for the following purposes:

19 **Sec. 4. 5 MRSA §1815** is amended to read:

20 **§1815. Requisitions required**

21 Except as otherwise provided in subchapter 3 and chapters 141 to 155 and the rules
22 ~~and regulations adopted hereunder~~ under those provisions, services, supplies, materials
23 and equipment ~~shall~~ may be purchased by or furnished to the State Government or any
24 department or agency thereof only upon requisition to the State Purchasing Agent. The
25 State Purchasing Agent; or ~~his~~ authorized representative; shall examine each requisition
26 submitted ~~to him~~ by any department or agency of the State Government and may revise it
27 as to quantity, quality or estimated cost after consultation with the department or agency
28 concerned.

29 **Sec. 5. 5 MRSA §1816-A, first ¶** is enacted to read:

30 A contract governed by this section is subject to review by the Procurement Review
31 Board under subchapter 3.

32 **Sec. 6. 5 MRSA §1819** is amended to read:

33 **§1819. Unlawful purchases**

34 Whenever any department or agency of the State Government, required by
35 subchapter 3 and chapters 141 to 155 and rules ~~and regulations~~ adopted pursuant ~~thereto~~
36 to those provisions, applying to the purchase of services, supplies, materials or equipment

1 through the State Purchasing Agent, ~~shall contract~~ contracts for the purchase of such
2 services, supplies, materials or equipment contrary to subchapter 3 or chapters 141 to 155
3 or the rules and regulations made hereunder under those provisions, such contract ~~shall be~~
4 is void and ~~have~~ has no effect. If any such department or agency purchases any services,
5 supplies, materials or equipment contrary to subchapter 3 or chapters 141 to 155 or rules
6 and regulations made hereunder under those provisions, the head of such department or
7 agency ~~shall be~~ is personally liable for the costs thereof, and if such services, supplies,
8 materials or equipment are so unlawfully purchased and paid for out of state ~~moneys~~
9 money, the amount thereof may be recovered in the name of the State in an appropriate
10 action instituted therefor.

11 **Sec. 7. 5 MRSA §1825**, as amended by PL 1991, c. 780, Pt. Y, §69, is further
12 amended to read:

13 **§1825. Prohibitions**

14 All state agencies, except the Department of Transportation, are prohibited from
15 purchasing what is normally classified as heavy equipment not previously authorized by
16 the Legislature through the budget process, without prior written authorization from the
17 Commissioner of Administrative and Financial Services; authorized purchases are subject
18 to review by the Procurement Review Board under subchapter 3. All purchase
19 requisitions for heavy equipment must indicate the budget year and account that
20 authorized each item of equipment and, if required, contain the written ~~authorization~~
21 authorizations of the Commissioner of Administrative and Financial Services and the
22 Procurement Review Board.

23 **Sec. 8. 5 MRSA §1825-B, sub-§1-A** is enacted to read:

24 **1-A. Procurement Review Board.** All awards of orders, grants and contracts
25 pursuant to this section are subject to review by the Procurement Review Board under
26 subchapter 3.

27 **Sec. 9. 5 MRSA §1825-C**, as amended by PL 2015, c. 179, §3, is further amended
28 to read:

29 **§1825-C. Rulemaking**

30 The State Purchasing Agent shall adopt rules under this subchapter governing the
31 purchase of services, the awarding of grants or contracts and the procedure by which
32 aggrieved persons may appeal award decisions made by a department or agency of State
33 Government. Rules adopted pursuant to this section must be in accordance with the
34 authority of the Procurement Review Board to review, comment upon and approve or
35 disapprove all requests for proposals; bids; and contract renewals, amendments,
36 extensions or other changes to existing contracts pursuant to subchapter 3. These rules
37 must be adopted in accordance with the Maine Administrative Procedure Act and apply
38 to all departments and agencies of State Government subject to the authority of the
39 Department of Administrative and Financial Services as set forth in this chapter.

- 1 A. The board consists of 7 members:
2 (1) The Attorney General or the Attorney General's designee;
3 (2) The Treasurer of State or the Treasurer of State's designee; and
4 (3) Five members nominated by the Governor and confirmed by a majority vote
5 of the joint standing committee of the Legislature having jurisdiction over state
6 and local government matters and by a majority vote of the Senate. Each
7 member must have demonstrated sufficient business or professional experience in
8 the area of procurement to perform the functions of the board.

9 The Attorney General and the Treasurer of State or their designees serve as nonvoting
10 members of the board. A member of the board may not be a member of the
11 Legislature. In the event that the Governor has not nominated an individual to fill a
12 vacancy on the board within 30 days of the vacancy, the President of the Senate shall
13 nominate an individual to fill the vacancy.

14 B. At the first meeting, the voting members of the board shall select a chair from
15 among its members. The chair serves for a one-year term.

16 C. A voting member of the board serves for a 4-year term. The Governor may
17 nominate a voting member for a 2nd term.

18 D. A member of the board employed by or holding an interest in an entity doing
19 business with or attempting to do business with the State does not by the member's
20 service on the board preclude that entity from doing business with or attempting to do
21 business with the State.

22 E. The board shall meet at least twice per month. Meetings of the board must be
23 conducted in person and must be open to the public. Written minutes of such
24 meetings must be created and made available for public inspection and copying.

25 F. A majority of the voting members of the board constitutes a quorum.

26 G. A member of the board receives no compensation but must be reimbursed for
27 expenses reasonably incurred in the performance of the member's duties.

28 **2. Authority and duties.** The board shall review, comment upon and approve or
29 disapprove all requests for proposals; bids; and contract renewals, amendments,
30 extensions or other changes to an existing contract for the procurement of supplies,
31 professional or artistic services, construction and real property and capital improvement
32 leases procured by the State valued at \$1,000,000 or more. Upon a majority vote of its
33 voting members, the board may review requests for proposals; bids; and contract
34 renewals, amendments, extensions or other changes to an existing contract valued at less
35 than \$1,000,000. If the board takes no action to initiate the review of a request for
36 proposal; bid; or contract renewal, amendment, extension or other change to an existing
37 contract within 30 days of receiving it, a department or agency may proceed without the
38 review, comment or approval of the board. The board may review, study and hold public
39 hearings concerning the implementation of its duties. Each chief procurement officer,
40 state purchasing officer, procurement compliance monitor and state department or agency
41 shall cooperate with the board, provide information to the board and be responsive to the
42 board in the board's conduct of its reviews, studies and hearings.

1 **3. Contracts of \$1,000,000 or more.** State departments and agencies shall submit to
2 the board for approval all requests for proposals; bids; and contract renewals,
3 amendments, extensions or other changes to an existing contract valued at \$1,000,000 or
4 more.

5 **4. Contracts of \$3,000,000 or more.** State departments or agencies that intend to
6 enter into a contract that is subject to the board's approval, before issuing a public request
7 for proposals or bids or, in the case of an existing contract, before seeking approval to
8 renew, extend, amend or otherwise alter the contract, shall timely request and obtain legal
9 advice from the Attorney General regarding the terms of the proposal whenever more
10 than \$3,000,000 could reasonably be expected to be expended as a result of the request
11 for proposals or bids or as a result of the contract, renewal, extension, amendment or
12 other change that is being proposed for approval by the board.

13 **5. Advice of Attorney General.** The board shall timely seek legal advice from the
14 Attorney General regarding any proposed contract when the board determines the
15 contract:

16 A. May expose the State to substantial risk in the event of nonperformance; or

17 B. Could reasonably be expected to incur costs to the State in excess of \$3,000,000
18 over the full term of the proposed contract, exclusive of extensions or amendments.
19 Upon a majority vote of the voting members of the board, the board also may seek
20 legal review by and consult with the Attorney General on any contractual matter
21 subject to the board's approval.

22 **6. Approval criteria.** The board shall approve the award of a contract if the board is
23 satisfied that:

24 A. The service to be performed under the contract cannot be economically provided
25 by State Government;

26 B. The award of the contract is the most economical, effective and appropriate
27 means of fulfilling a demonstrated need;

28 C. The contract will not impair the ability of the department or agency to meet its
29 statutory duties and responsibilities under other state laws; and

30 D. The contract does not diminish the impact of statewide or other budgetary cost-
31 savings initiatives.

32 Upon a majority vote of its voting members that the conditions under paragraphs A to D
33 have not been satisfied, the board may reject a proposal; bid; or contract renewal,
34 amendment, extension or change to an existing contract.

35 **7. Sole-source contracts.** Notwithstanding subsection 6, a sole-source contract
36 subject to the board's review may be approved only when the department has exercised
37 due diligence in determining that the costs, fees or rates negotiated are fair and
38 responsible and the sole-source contract is accompanied by written justification that
39 demonstrates:

