

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1535

H.P. 1055

House of Representatives, April 25, 2017

An Act To Modernize the State's Procurement Laws

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 cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative PICKETT of Dixfield.
Cosponsored by Senator DAVIS of Piscataquis and
Representatives: HARRINGTON of Sanford, ORDWAY of Standish.

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

2 **Sec. 1. 1 MRSA §501-A, sub-§§2, 3 and 6,** as enacted by PL 1997, c. 299, §1,
3 are amended to read:

4 **2. Production and distribution.** The publications of all agencies, the University of
5 Maine System and the Maine Maritime Academy may be printed, bound and distributed,
6 subject to Title 5, sections 43 to 46. The ~~State Purchasing Agent~~ Chief Procurement
7 Officer may determine the style in which publications may be printed and bound, with the
8 approval of the Governor.

9 **3. Annual or biennial reports.** Immediately upon receipt of any annual or biennial
10 report that is not included in the Maine State Government Annual Report provided for in
11 Title 5, sections 43 to 46, the ~~State Purchasing Agent~~ Chief Procurement Officer shall
12 deliver at least 55 copies of that annual or biennial report to the State Librarian for
13 exchange and library use. The ~~State Purchasing Agent~~ Chief Procurement Officer shall
14 deliver the balance of the number of each such report to the agency that prepared the
15 report.

16 **6. Forwarding of requisitions.** The ~~State Purchasing Agent~~ Chief Procurement
17 Officer, Central Printing and all other printing operations within State Government shall
18 forward to the State Librarian upon receipt one copy of all requisitions for publications to
19 be printed.

20 **Sec. 2. 5 MRSA §43, last ¶,** as repealed and replaced by PL 1975, c. 436, §3, is
21 amended to read:

22 The ~~State Purchasing Agent~~ Chief Procurement Officer shall distribute a reasonable
23 number of copies of the report to each reporting agency, to legislative staff agencies and
24 to each member of the Legislature, or, in the even-numbered years, to each member-elect
25 taking office the following January. Eighty copies of the report ~~shall~~ must be delivered to
26 the State Librarian for exchange and library use. The ~~State Purchasing Agent~~ Chief
27 Procurement Officer shall prorate the cost of the report among the reporting agencies. ~~He~~
28 The Chief Procurement Officer shall provide for the sale of additional copies of the report
29 to state agencies and the public at a reasonable price sufficient to cover the cost of
30 printing and distribution. The income received under this section ~~shall~~ must be credited to
31 an Intragovernmental Service Account, which ~~shall~~ must be carried forward and
32 expended by the ~~State Purchasing Agent~~ Chief Procurement Officer for the purposes of
33 sections 43 through 46.

34 **Sec. 3. 5 MRSA §244, last ¶,** as enacted by PL 2003, c. 450, §4, is amended to
35 read:

36 By September 15th of each year, the State Auditor shall schedule a meeting with each
37 joint standing committee of the Legislature having jurisdiction over those departments or
38 agencies in the audit of which the State Auditor has identified findings and the joint
39 standing committees of the Legislature having jurisdiction over appropriations and
40 financial affairs and state and local government matters. The State Auditor shall present
41 an assessment of findings and recommendations of the most recently completed audit

1 performed pursuant to this section, including, but not restricted to, questioned costs and
2 material weaknesses of state programs. The State Auditor shall notify affected state
3 agencies and applicable state central service agency officials, such as, without limitation,
4 the State Controller, State Budget Officer, ~~State Purchasing Agent~~ Chief Procurement
5 Officer and Chief Information Officer, of the meeting time and place.

6 **Sec. 4. 5 MRSA §1811, sub-§1, ¶A**, as amended by PL 1991, c. 780, Pt. Y, §62,
7 is further amended to read:

8 A. The ~~Director of the Bureau of General Services~~ Chief Procurement Officer may
9 establish dates by which departments and agencies of State Government must order
10 standard forms that each department or agency requires, and to determine the quantity
11 of each standard form to be printed in order to obtain savings resulting from volume
12 purchasing;

13 **Sec. 5. 5 MRSA §1811, sub-§8**, as amended by PL 2005, c. 12, Pt. T, §8, is
14 further amended to read:

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

22 **Sec. 6. 5 MRSA §1811, sub-§11**, as enacted by PL 2005, c. 12, Pt. T, §10, is
23 amended to read:

24 **11. Motor vehicle replacement policy.** To require that requisitions for replacement
25 motor vehicles include the age and total mileage of the motor vehicles being replaced.
26 For the purposes of this subsection, "motor vehicles" means passenger cars and panel and
27 pickup trucks, excluding those vehicles authorized and assigned for pursuit purposes.
28 Under no circumstances are any state vehicles to be used for commuting purposes. It is
29 the intent of the Legislature that motor vehicles be in service for at least 5 years or 75,000
30 miles, whichever occurs first, before they are replaced. This policy must also be adopted
31 by the State Budget Officer when preparing a budget document. Exceptions to this
32 replacement policy require the prior approval of the Commissioner of Administrative and
33 Financial Services. The Commissioner of Administrative and Financial Services may
34 also set appropriate standards with regard to motor vehicle type, size and equipment and
35 direct that all motor vehicles be purchased in accordance with a commodity calendar
36 established by the ~~Director of the Bureau of General Services~~ Chief Procurement Officer.

37 **Sec. 7. 5 MRSA §1812**, as amended by PL 1991, c. 780, Pt. Y, §67, is further
38 amended to read:

1 **§1812. Scope of purchasing authority**

2 The terms "services," "goods," "commodities," "supplies," "materials" and
3 "equipment" as used in this chapter mean any and all ~~services~~ labor, time or effort by a
4 contractor or vendor, articles or things that are used by or furnished to the State or any
5 department or agency thereof, and any and all printing, binding, publication of laws,
6 journals and reports. Except as provided in chapters 141 to 155, any and all services,
7 goods, commodities, supplies, materials and equipment needed by one or more
8 departments or agencies of the State Government must be directly purchased or
9 contracted for by the ~~Director of the Bureau of General Services~~ Chief Procurement
10 Officer, as may be determined from time to time by rules adopted pursuant to chapters
11 141 to 155, which rules the Department of Administrative and Financial Services is
12 authorized and empowered to make. It is the intent and purpose of this chapter that the
13 ~~Director of the Bureau of General Services~~ Chief Procurement Officer purchase
14 collectively all services, goods, commodities, supplies, materials and equipment for the
15 State or any department or agency thereof in a manner that will best secure the greatest
16 possible economy consistent with the grade or quality of the services, goods,
17 commodities, supplies, materials and equipment best adapted for the purposes for which
18 they are needed. Whenever supplies and materials are available for purchase that are
19 composed in whole or in part of recycled materials and are shown by the seller, supplier
20 or manufacturer to be equal in quality and are competitively priced, except for paper and
21 paper products, the ~~Director of the Bureau of General Services~~ Chief Procurement Officer
22 shall purchase such recycled supplies and materials. The ~~Director of the Bureau of~~
23 ~~General Services~~ Chief Procurement Officer shall also review procurement procedures
24 and bid specifications for the purchase of products and materials to ensure, to the
25 maximum extent feasible, the purchase of products or materials that are made with
26 recycled materials or may be recycled or reused once discarded. For the purposes of this
27 section and section 1812-B, "recycled materials" means materials that are composed in
28 whole or in part of elements that are reused or reclaimed.

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

31 ~~The word "services," when used in this chapter, means any and all window cleaning~~
32 ~~services, elevator repair and maintenance services, laundry service, linen supply service,~~
33 ~~dry cleaning service, janitor service, floor maintenance service, rubbish and garbage~~
34 ~~disposal service, tree surgeon service, all types of office machine repair and maintenance~~
35 ~~service, exterminator service, refrigerator repair and maintenance service and oil burner~~
36 ~~repair and maintenance service when any such service is performed by an independent~~
37 ~~contractor. The Director of the Bureau of General Services may, with the approval of the~~
38 ~~Commissioner of Administrative and Financial Services add to or eliminate from the~~
39 ~~various types of service set forth in this paragraph such services performed by~~
40 ~~independent contractors as may be considered by the director to be in the best interests of~~
41 ~~the State.~~

42 The Chief Procurement Officer is authorized to enter into or participate under
43 multistate agreements and requests for proposals and bids for goods and services when it
44 is demonstrated to be in the best interests of the State. The Chief Procurement Officer

1 may also enter into or participate under competitively awarded agreements from the
2 United States Government, other state or local governments or other public entities when
3 the Chief Procurement Officer has determined that the competitive process used is
4 substantially similar to that of this State.

5 **Sec. 8. 5 MRSA §1812-A**, as amended by PL 1989, c. 585, Pt. C, §2, is further
6 amended to read:

7 **§1812-A. Report on purchase of recycled products**

8 The ~~State Purchasing Agent~~ Chief Procurement Officer shall report on or before
9 January 1st of the First Regular Session of each Legislature to the joint standing
10 committee of the Legislature having jurisdiction over natural resources on the State's
11 efforts to purchase supplies and materials composed in whole or in part of recycled
12 materials. The ~~State Purchasing Agent~~ Chief Procurement Officer shall also report on
13 any procurement policies, incentives, educational programs, promotional efforts or other
14 activities undertaken by the Bureau of ~~Purchases~~ General Services to encourage the
15 purchase of those supplies and materials. The ~~State Purchasing Agent~~ Chief Procurement
16 Officer shall include in the report any recommendations to increase or facilitate the
17 purchase of those supplies and materials.

18 **Sec. 9. 5 MRSA §1812-B**, as enacted by PL 1989, c. 585, Pt. C, §3, is amended to
19 read:

20 **§1812-B. Purchasing of paper and paper products**

21 **1. Purchase of paper and paper products with recycled material content.**
22 Subject to subsection 3, the ~~State Purchasing Agent~~ Chief Procurement Officer shall
23 provide that of the total dollar amount spent in each fiscal year on paper and paper
24 products purchased by the State:

25 A. On or after October 1, 1989, not less than 15% shall be spent on paper and paper
26 products with recycled material content;

27 B. On or after October 1, 1991, not less than 30% shall be spent on paper and paper
28 products with recycled material content; and

29 C. On or after October 1, 1993, not less than 50% shall be spent on paper and paper
30 products with recycled material content.

31 **2. Federal guidelines and cooperative purchases.** To qualify as having recycled
32 material content, paper or paper products must have recycled material content ~~which~~ that
33 meets or exceeds the standards established for that paper or paper product category in
34 Table 1 of the Guideline for Federal Procurement of Paper and Paper Products, 40 Code
35 of Federal Regulations, Part 250. The ~~State Purchasing Agent~~ Chief Procurement Officer
36 shall determine whether a paper or paper product qualifies. The ~~State Purchasing Agent~~
37 Chief Procurement Officer may join with other states in making cooperative requests for
38 bids to supply paper and paper products.

39 **3. Bids; price preference.** A person who submits a bid for a contract to supply
40 paper or paper products shall certify the percentage and nature of any recycled materials

1 content in the product subject to bid. Bids offering paper or paper products with recycled
2 material content that are within 10% of the lowest bid that meets all other specifications
3 may receive up to a 10% price preference. Any bids to supply paper or paper products
4 with recycled material content that exceed by more than 10% the low bid ~~which~~ that
5 meets all other specifications ~~shall~~ may not be considered. If no bids are received on a
6 request for bids ~~which~~ that offer paper or paper products with recycled material content,
7 the ~~State Purchasing Agent~~ Chief Procurement Officer may award the contract to a bidder
8 whose paper or paper product has substandard percentages of or no recycled materials
9 content.

10 **Sec. 10. 5 MRSA §1812-C, sub-§2**, as enacted by PL 1991, c. 374, §2 and
11 amended by PL 2011, c. 657, Pt. W, §5, is further amended to read:

12 **2. Standards.** The Department of Agriculture, Conservation and Forestry shall
13 develop standards for fertilizers and soil conditioners made from different mixes of
14 ~~compostible~~ compostable wastes that could be used by state agencies involved in land
15 preparation and improvement work. These standards must be adopted by rule by January
16 1, 1990.

17 **Sec. 11. 5 MRSA §1812-D**, as enacted by PL 1989, c. 585, Pt. C, §3 and amended
18 by PL 2011, c. 657, Pt. W, §5, is further amended to read:

19 **§1812-D. Coordination of procurement information and policies**

20 The Bureau of ~~Purchases~~ General Services shall coordinate with the Department of
21 Transportation, the Department of Agriculture, Conservation and Forestry, the
22 Department of Environmental Protection and the Office of Waste Reduction and
23 Recycling to develop a central data base of information including, but not limited to,
24 procurement policies, market information, technical data and demonstration project
25 results. This data ~~shall~~ must be compiled annually and provided to local public agencies
26 by the Office of Waste Reduction and Recycling.

27 **Sec. 12. 5 MRSA §1812-E, first ¶**, as enacted by PL 1991, c. 207, is amended to
28 read:

29 Except for cars and light duty trucks purchased for law enforcement and other special
30 use purposes as designated by the ~~State Purchasing Agent~~ Chief Procurement Officer, the
31 ~~State Purchasing Agent~~ Chief Procurement Officer may not purchase or lease any car or
32 light duty truck for use by the State or any department or agency of the State unless:

33 **Sec. 13. 5 MRSA §1813, first ¶**, as amended by PL 1991, c. 780, Pt. Y, §68, is
34 further amended to read:

35 The ~~Director of the Bureau of General Services~~ Chief Procurement Officer, with the
36 approval of the Commissioner of Administrative and Financial Services, may adopt,
37 modify or abrogate rules for the following purposes:

38 **Sec. 14. 5 MRSA §1813, sub-§8** is amended to read:

1 **8. Other matters.** Providing for such other matters as may be necessary to give
2 effect to the foregoing rules and to chapters 141 to 155; and

3 **Sec. 15. 5 MRSA §1813, sub-§9** is enacted to read:

4 **9. Compliance.** Providing a process whereby any department or agency that
5 purchases goods or services contrary to chapter 141 or this chapter or rules adopted
6 pursuant to chapter 141 or this chapter may have funding removed from that department's
7 or agency's existing General Fund appropriation or other funds as applicable. Such a
8 process must include reasonable investigation and review by the Chief Procurement
9 Officer, consultation with the Commissioner of Administrative and Financial Services
10 and the State Budget Officer and approval by the Governor or the Governor's designee.

11 **Sec. 16. 5 MRSA §1815** is amended to read:

12 **§1815. Requisitions required**

13 Except as otherwise provided in chapters 141 to 155 and the rules ~~and regulations~~
14 adopted hereunder, services, supplies, materials and equipment ~~shall~~ must be purchased
15 by or furnished to the State Government or any department or agency thereof only upon
16 requisition to the ~~State Purchasing Agent~~ Chief Procurement Officer. The ~~State~~
17 ~~Purchasing Agent~~ Chief Procurement Officer, or ~~his~~ the Chief Procurement Officer's
18 authorized representative, shall examine each requisition submitted to ~~him~~ the Chief
19 Procurement Officer by any department or agency of the State Government and may
20 revise it as to quantity, quality or estimated cost after consultation with the department or
21 agency concerned.

22 **Sec. 17. 5 MRSA §1816-A, sub-§2, ¶I**, as enacted by PL 2003, c. 501, §1 and
23 affected by §3, is amended to read:

24 I. An equivalent basis for cost comparison between state employee and private
25 contractor provision of services is calculated, as established by rules adopted by the
26 ~~State Purchasing Agent~~ Chief Procurement Officer pursuant to section 1825-B,
27 subsection 11, and it is determined that the private contractor provides the best value.

28 **Sec. 18. 5 MRSA §1817**, as amended by PL 2015, c. 102, §8, is further amended
29 to read:

30 **§1817. Printing of laws**

31 When the Revisor of Statutes has prepared material for a revision of the entire
32 statutes of the State, the ~~revisor~~ Revisor of Statutes shall deliver the revision prepared for
33 printing to the ~~State Purchasing Agent~~ Chief Procurement Officer, who shall contract for
34 the printing, binding and delivery to the State of a sufficient number of volumes to meet
35 the needs of the State and for sale as provided.

36 **Sec. 19. 5 MRSA §1818** is amended to read:

1 **§1818. Deliveries**

2 Supplies, materials and equipment, purchased or contracted for by the ~~State~~
3 ~~Purchasing Agent~~ Chief Procurement Officer, ~~shall must~~ be delivered by ~~him~~ the Chief
4 Procurement Officer or by the contractor to the department or agency by which or for
5 whom the same are to be used from time to time as required.

6 **Sec. 20. 5 MRSA §1819** is amended to read:

7 **§1819. Unlawful purchases**

8 Whenever any department or agency of the State Government, required by chapters
9 141 to 155 and rules ~~and regulations~~ adopted pursuant ~~thereto~~ to those chapters, applying
10 to the purchase of services, supplies, materials or equipment through the ~~State Purchasing~~
11 ~~Agent~~ Chief Procurement Officer, ~~shall~~ contract for the purchase of such services,
12 supplies, materials or equipment contrary to chapters 141 to 155 or the rules ~~and~~
13 ~~regulations made hereunder~~ adopted pursuant to those chapters, ~~such~~ the contract ~~shall be~~
14 is void and ~~have~~ has no effect. If any such department or agency purchases any services,
15 supplies, materials or equipment contrary to chapters 141 to 155 or rules ~~and regulations~~
16 ~~made hereunder~~ adopted pursuant to those chapters, the head of ~~such~~ the department or
17 agency ~~shall be~~ is personally liable for the costs thereof, and if ~~such~~ the services, supplies,
18 materials or equipment are ~~so~~ unlawfully purchased and paid for out of state moneys, the
19 amount thereof may be recovered in the name of the State in an appropriate action
20 instituted therefor.

21 **Sec. 21. 5 MRSA §1825-A, sub-§§2 and 3**, as enacted by PL 1989, c. 785, §2,
22 are amended to read:

23 **2. Approved equal.** "Approved equal" means any goods or service other than
24 specified in the bid proposal that in the opinion of the ~~State Purchasing Agent~~ Chief
25 Procurement Officer is equivalent in character, quality and performance to the goods or
26 service specified in the bid proposal.

27 **3. Competitive bidding.** "Competitive bidding" means the transmission of a written
28 proposal or invitation to bid to at least 3 responsible suppliers that is to be replied to at a
29 stated time. In obtaining competitive bids, if the ~~State Purchasing Agent~~ Chief
30 Procurement Officer finds that 3 responsible bidders are not available, the ~~State~~
31 ~~Purchasing Agent~~ Chief Procurement Officer may make such exceptions to this
32 subsection as are in the best interests of the State.

33 **Sec. 22. 5 MRSA §1825-B**, as amended by PL 2015, c. 179, §2, is further
34 amended to read:

35 **§1825-B. Bids, awards, contracts and grants**

36 **1. Purchases by competitive bidding.** The ~~Director of the Bureau of General~~
37 ~~Services~~ Chief Procurement Officer shall purchase collectively all goods and services for
38 the State or any department or agency of the State in a manner that best secures the
39 greatest possible economy consistent with the required grade or quality of the goods or

1 services. Except as otherwise provided by law, the ~~Director of the Bureau of General~~
2 ~~Services~~ Chief Procurement Officer shall make purchases of goods or services needed by
3 the State or any department or agency of the State through competitive bidding.

4 **2. Waiver.** The requirement of competitive bidding may be waived by the ~~Director~~
5 ~~of the Bureau of General Services~~ Chief Procurement Officer when:

6 A. The procurement of goods or services by the State for county commissioners
7 pursuant to Title 30-A, section 124, involves the expenditure of \$2,500 or less, and
8 the interests of the State would best be served;

9 B. The ~~Director of the Bureau of General Services~~ Chief Procurement Officer is
10 authorized by the Governor or the Governor's designee to make purchases without
11 competitive bidding because in the opinion of the Governor or the Governor's
12 designee an emergency exists that requires the immediate procurement of goods or
13 services;

14 C. After reasonable investigation by the ~~Director of the Bureau of General Services~~
15 ~~Chief Procurement Officer~~, it appears that any required ~~unit or item of supply, or~~
16 ~~brand of that unit or item,~~ is goods or services are procurable by the State from only
17 one source;

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

20 E. The purchase is part of a cooperative project between the State and the University
21 of Maine System, the Maine Community College System, the Maine Maritime
22 Academy or a private, nonprofit, regionally accredited institution of higher education
23 with a main campus in this State involving:

24 (1) An activity assisting a state agency and enhancing the ability of the
25 university system, community college system, Maine Maritime Academy or a
26 private, nonprofit, regionally accredited institution of higher education with a
27 main campus in this State to fulfill its mission of teaching, research and public
28 service; and

29 (2) A sharing of project responsibilities and, when appropriate, costs;

30 F. The procurement of goods or services involves expenditures of ~~\$10,000~~ \$25,000
31 or less, in which case the ~~Director of the Bureau of General Services~~ Chief
32 Procurement Officer may accept oral proposals or bids; ~~or~~

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

36 H. After reasonable investigation by the Chief Procurement Officer, it appears that
37 the procurement of goods or services involves contract awards to any source that is
38 willing and qualified to supply the goods or perform the services requested at a fair
39 and reasonable cost. A determination that the source is qualified and the cost is fair
40 and reasonable is at the discretion of the Chief Procurement Officer and subject to the
41 approval of the Commissioner of Administrative and Financial Services.

1 **3. Report.** By January 15th of each year the ~~Director of the Bureau of General~~
2 ~~Services~~ Chief Procurement Officer shall submit to the joint standing committee of the
3 Legislature having jurisdiction over state and local government matters a report
4 concerning any waivers from the competitive bidding provisions established in subsection
5 2, paragraph E.

6 **4. Registry of suppliers.** Suppliers desiring to have their names entered on a
7 registry of suppliers must submit a request to the ~~Director of the Bureau of General~~
8 ~~Services~~ Chief Procurement Officer in writing. The ~~Director of the Bureau of General~~
9 ~~Services~~ Chief Procurement Officer may prescribe the manner and form in which such a
10 request must be submitted and may limit the number of names of out-of-state bidders on
11 any registry. The name of any supplier entered in such a registry who fails to submit a
12 bid on 3 consecutive proposals or invitations to bid may be removed from the registry at
13 the discretion of the ~~Director of the Bureau of General Services~~ Chief Procurement
14 Officer, except that the Department of Corrections remains on any registry until the
15 Department of Corrections requests that the department be removed from that registry.

16 **5. Alternate bids.** When, in bid forms and specifications, an article or material is
17 identified by using a trade name and catalog number of a manufacturer or vendor, the
18 term "or approved equal," if not inserted with the identification, is implied. There is a
19 presumption that any reference to a particular manufacturer's product either by trade
20 name or by limited description has been made solely for the purpose of more clearly
21 indicating the minimum standard of quality desired. Consideration must be given to
22 proposals submitted on approved equal alternate commodities to the extent that such
23 action serves the best interest of the State. The bidder submitting a proposal on a
24 commodity other than as specified shall furnish complete identification, descriptive
25 literature or data with respect to the alternate commodity that the bidder proposes to
26 furnish. Lack of such information on the bid must be construed to mean that the bidder
27 proposes to furnish the exact commodity described. The State reserves the right to reject
28 any bids, in whole or in part, to waive any formality or technicality in any bid and to
29 accept any item in any bid.

30 **6. Record of bids.** Each bid, with the name of the bidder, must be entered on a
31 record. Each record, with the successful bid indicated, must be open to public inspection
32 after the letting of the contract or grant. A bond for the proper performance of each
33 contract or grant may be required of each successful bidder at the discretion of the
34 ~~Director of the Bureau of General Services~~ Chief Procurement Officer, with the approval
35 of the Commissioner of Administrative and Financial Services.

36 **7. Awards to best-value bidder.** Except as otherwise provided by law,
37 competitively awarded orders, grants or contracts made by the ~~Director of the Bureau of~~
38 ~~General Services~~ Chief Procurement Officer or by any department or agency of the State
39 must be awarded to the best-value bidder, taking into consideration the qualities of the
40 goods or services to be supplied, their conformity with the specifications, the purposes for
41 which they are required, the date of delivery ~~and~~, the best interest of the State and any
42 criteria identified within the State's competitive bidding documents for any given
43 purchase. If the bidder that was initially awarded the order, grant or contract does not
44 perform, the ~~Director of the Bureau of General Services~~ Chief Procurement Officer may

1 cancel the order, grant or contract and award a new order, grant or contract to the 2nd
2 best-value bidder. The order, grant or contract may not be awarded to a bidder that the
3 ~~Director of the Bureau of General Services~~ Chief Procurement Officer determined was
4 not in compliance at the time the initial bid was submitted.

5 **8. Tie bids.** The ~~Director of the Bureau of General Services~~ Chief Procurement
6 Officer shall award contracts, grants or purchases to in-state bidders or to bidders offering
7 services or offering commodities produced or manufactured in the State if the price,
8 quality, availability and other factors are equivalent. If there is a tie that cannot be
9 otherwise resolved based on the bidders' locations, the State has the option of contacting
10 the tied bidders and inviting them to submit new cost proposals. The bidder with the
11 lowest cost will receive the award, unless a decision is reached to not make an award to
12 any bidder.

13 **9. Reciprocity and the determination of best-value bidder.** In determining the
14 best-value bidder, the ~~Director of the Bureau of General Services~~ Chief Procurement
15 Officer or any department or agency of the State shall, for the purpose of competitively
16 awarding a contract or grant, add a percent increase on the bid of a nonresident bidder
17 equal to the percent, if any, of the preference given to that bidder in the state in which the
18 bidder resides.

19 **10. List of state preferences published.** The ~~Director of the Bureau of General~~
20 ~~Services~~ Chief Procurement Officer on or before January 1st of each year shall publish a
21 list of states that give preference to in-state bidders with the percent increase applied in
22 each such state. The ~~Director of the Bureau of General Services~~ Chief Procurement
23 Officer or any department or agency of the State may rely on the names of states and
24 percentages as published in determining the best-value bidder without incurring any
25 liability to any bidder.

26 **11. Rulemaking; unfair competition.** State departments and agencies may not
27 achieve cost savings due to cost differentials that derive from a bidder's failure to provide
28 health and retirement benefits to its employees. The ~~State Purchasing Agent~~ Chief
29 Procurement Officer shall adopt rules governing the purchase of services and the
30 awarding of grants or contracts for personal services to establish a basis for bid price and
31 cost comparison among businesses that provide health and retirement benefits to their
32 employees and those that do not provide these benefits. The rules must include a
33 methodology for calculating bid price and cost differentials for services provided by
34 businesses and state employees due to the provision of health and retirement benefits for
35 employees. The rules must adjust the bid prices to establish an equivalent basis for bid
36 price and cost comparison among businesses when awarding contracts or grants and
37 between businesses and state employees when determining whether or not a contract or
38 grant is permitted under section 1816-A. These rules must apply to all state departments
39 and agencies. Rules adopted pursuant to this subsection are routine technical rules as
40 defined in chapter 375, subchapter 2-A.

41 **12. Vendor's fee.** The ~~State Purchasing Agent~~ Chief Procurement Officer may
42 collect a fee in an amount equal to 1% of the bid from a supplier of apparel, footwear or
43 textiles with a winning bid under this section. The ~~State Purchasing Agent~~ Chief
44 Procurement Officer shall apply the fee under this subsection to the costs of

1 implementing and administering the state purchasing code of conduct under section
2 1825-L, including developing a consortium to monitor and investigate alleged violations
3 of the code of conduct. The ~~State Purchasing Agent~~ Chief Procurement Officer shall
4 adopt routine technical rules under chapter 375, subchapter 2-A to carry out the purposes
5 of this subsection.

6 **13. Vendor's fee report.** By January 15th of each year the ~~Director of the Bureau of~~
7 ~~General Services~~ Chief Procurement Officer shall submit a report to the joint standing
8 committee of the Legislature having jurisdiction over state and local government matters
9 concerning revenue generated by the vendor's fee established in subsection 12.

10 **14. Condition of doing business with the State.** Notwithstanding any provision of
11 law to the contrary, any purchase by the State of \$100,000 or more of tangible personal
12 property, except for public utility purchases, as defined in Title 36, section 1752,
13 subsection 17, or emergency purchases pursuant to subsection 2, paragraph B, may be
14 made only from a person who is registered as a seller pursuant to Title 36, section
15 1754-B. As a condition of doing business with the State, the seller must collect, report
16 and remit taxes in accordance with Title 36, Part 3. As provided in this subsection, the
17 State is prohibited from doing business with a person who is not registered as a seller
18 pursuant to Title 36, section 1754-B and is not in compliance with the requirement to
19 collect, report and remit taxes pursuant to Title 36, Part 3. After notification of the
20 award, the seller must provide the ~~State Purchasing Agent~~ Chief Procurement Officer
21 with a valid retailer certificate issued by the State Tax Assessor within 7 business days.
22 If the seller fails to provide the registration certificate within 7 business days, the ~~State~~
23 ~~Purchasing Agent~~ Chief Procurement Officer may cancel the award and make a new
24 award pursuant to subsection 7. The ~~State Purchasing Agent~~ Chief Procurement Officer
25 shall provide the State Tax Assessor with a copy of all contracts and grants awarded
26 pursuant to this section. The State Tax Assessor shall notify the ~~State Purchasing Agent~~
27 Chief Procurement Officer if at any time during the term of the contract or grant the
28 person is no longer registered or is not collecting, reporting and remitting taxes in
29 compliance with the requirements of Title 36, Part 3. Until the noncompliance is
30 corrected, the ~~State Purchasing Agent~~ Chief Procurement Officer may withhold any
31 payments to the person.

32 **Sec. 23. 5 MRSA §1825-C**, as amended by PL 2015, c. 179, §3, is further
33 amended to read:

34 **§1825-C. Rulemaking**

35 The ~~State Purchasing Agent~~ Chief Procurement Officer shall adopt rules under this
36 subchapter governing the purchase of services, the awarding of grants or contracts and the
37 procedure by which aggrieved persons may appeal award decisions made by a department
38 or agency of State Government. These rules must be adopted in accordance with the
39 Maine Administrative Procedure Act and apply to all departments and agencies of State
40 Government subject to the authority of the Department of Administrative and Financial
41 Services as set forth in this chapter.

42 **Sec. 24. 5 MRSA §1825-D, first ¶**, as amended by PL 2015, c. 179, §4, is further
43 amended to read:

1 The ~~State Purchasing Agent~~ Chief Procurement Officer shall make the public aware
2 of contracts and grants for which bids are being requested and the procedure to be used in
3 reviewing bids. Rules adopted under this subchapter must include a clear procedure:

4 **Sec. 25. 5 MRSA §1825-D, sub-§2**, as enacted by PL 1989, c. 785, §2, is
5 amended to read:

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

9 **Sec. 26. 5 MRSA §1825-D, last ¶**, as enacted by PL 1989, c. 785, §2, is amended
10 to read:

11 A department or agency of State Government may not change or substitute the
12 procedures adopted under this subchapter without the ~~State Purchasing Agent~~ Chief
13 Procurement Officer first adopting those changes or substitutions as rules under this
14 subchapter in accordance with the Maine Administrative Procedure Act, ~~chapter 375~~.

15 **Sec. 27. 5 MRSA §1825-E**, as amended by PL 2015, c. 179, §6, is further
16 amended to read:

17 **§1825-E. Appeal procedures**

18 The ~~Director of the Bureau of General Services~~ Chief Procurement Officer shall
19 ensure that every department or agency of State Government affords aggrieved persons
20 an opportunity to appeal a contract or grant award decision. As provided by this section,
21 rules adopted under this subchapter must establish clear procedures by which an
22 aggrieved person may appeal a contract or grant award decision.

23 **1. Stay.** Persons aggrieved by a contract or grant award decision may request a stay
24 of an award decision. Such a request must be made to the ~~Director of the Bureau of~~
25 General Services Chief Procurement Officer in writing within 10 days of notification of
26 the contract or grant award and must state the nature of the grievance.

27 The ~~Director of the Bureau of General Services~~ Chief Procurement Officer shall issue a
28 stay of a contract or grant award decision, pending appeal, upon a showing of irreparable
29 injury to the petitioner, a reasonable likelihood of success on the merits and no substantial
30 harm to adverse parties or to the general public.

31 The ~~Director of the Bureau of General Services~~ Chief Procurement Officer shall notify
32 the petitioner in writing of the ~~director's~~ decision regarding the issuance of a stay within 7
33 days of receipt of the request.

34 Failure of the petitioner to obtain a stay does not affect the petitioner's right to a hearing
35 of appeal under this subchapter.

36 **2. Request for hearing of appeal.** Persons aggrieved by an agency contract or grant
37 award decision under this subchapter may request a hearing of appeal. Such a request
38 must be made to the ~~Director of the Bureau of General Services~~ Chief Procurement

1 Officer in writing within 15 days of notification of the award. The ~~Director of the Bureau~~
2 ~~of General Services~~ Chief Procurement Officer shall grant a hearing of appeal unless:

3 A. The ~~Director of the Bureau of General Services~~ Chief Procurement Officer
4 determines that:

- 5 (1) The petitioner is not an aggrieved person;
6 (2) A prior request by the same petitioner relating to the same contract or grant
7 award has been granted;
8 (3) The request was made more than 15 days after notice of contract or grant
9 award; or
10 (4) The request is capricious, frivolous or without merit; or

11 B. No contract or grant was awarded.

12 The ~~Director of the Bureau of General Services~~ Chief Procurement Officer shall notify
13 the petitioner in writing of the ~~director's~~ decision regarding a request for a hearing of
14 appeal within 15 days of receipt of the request. If a request for a hearing is granted,
15 notification must be made at least 10 days before the hearing date and must include the
16 date and location of the hearing and the names of the appeal committee members.

17 **3. Appeal committee.** A committee of 3 members shall hear a petitioner's appeal
18 within 60 days of receipt of the request for an appeal. The Commissioner of
19 Administrative and Financial Services shall appoint 2 members of an appeal committee,
20 except that persons who have any direct or indirect personal, professional or financial
21 conflict of interest in the appeal or employees of any department affected by the contract
22 or grant may not serve on the appeal committee. The 3rd member is the ~~Director of the~~
23 ~~Bureau of General Services~~ Chief Procurement Officer or the ~~director's~~ designee.

24 Members of an appeal committee appointed under this section shall meet at the appointed
25 time and place in the presence of the petitioner and such individuals as the petitioner
26 determines necessary for a full and fair hearing. The petitioner may present to the appeal
27 committee any materials the petitioner considers relevant to the appeal.

28 The appeal committee shall keep a written record of each hearing and shall submit its
29 decision and the reasons for its decision to the ~~Director of the Bureau of General Services~~
30 Chief Procurement Officer in writing no later than 15 days following the hearing of
31 appeal.

32 Subject to the requirements of rules adopted under this section and evidence presented
33 during a hearing of appeal, the appeal committee may decide either to:

- 34 A. Validate the contract or grant award decision under appeal; or
35 B. Invalidate the contract or grant award decision under appeal.

36 Except as provided in paragraph B, an appeal committee may not modify the contract or
37 grant award under appeal, or make a new award. Contracts or grants found invalid by an
38 appeal committee under this subchapter become immediately void and of no legal effect.

39 **4. Appeal cost reimbursement.** Costs for an unsuccessful appeal request, or for a
40 hearing of appeal that results in the validation of the State's contract or grant award

1 decision, must be borne by the person requesting the appeal, and must include reasonable
2 staff costs and attorney's fees incurred by the State as a result of the appeal process, as
3 provided in rules adopted pursuant to this subchapter. Rules adopted pursuant to this
4 subsection are routine technical rules as defined in chapter 375, subchapter 2-A.

5 **Sec. 28. 5 MRSA §1825-F, first ¶**, as amended by PL 1993, c. 192, §2, is further
6 amended to read:

7 Decisions made by an appeal committee under section 1825-E, subsection 3
8 constitute final agency action on the petitioner's appeal for the purposes of judicial review
9 under chapter 375, subchapter ~~VH~~ 7. The ~~State Purchasing Agent~~ Chief Procurement
10 Officer shall notify a petitioner of a final agency action made under this subchapter in
11 writing within 7 days of the final agency action. Notification of final agency action must
12 include:

13 **Sec. 29. 5 MRSA §1825-G**, as amended by PL 2015, c. 179, §7, is further
14 amended to read:

15 **§1825-G. Failure to act**

16 Failure or refusal of the ~~State Purchasing Agent~~ Chief Procurement Officer to adopt
17 rules under this subchapter is sufficient grounds for an aggrieved person to request
18 judicial review of agency rulemaking pursuant to section 8058. In the event that a
19 judicial declaration of an invalid rule is made under this section and section 8058, the
20 contract or grant award under appeal becomes immediately void and of no legal effect.

21 **Sec. 30. 5 MRSA §1825-H**, as enacted by PL 1989, c. 785, §2, is amended to
22 read:

23 **§1825-H. Deadline for adoption of rules**

24 The ~~State Purchasing Agent~~ Chief Procurement Officer shall adopt rules
25 implementing this subchapter no later than January 1, 1991.

26 **Sec. 31. 5 MRSA §1825-K, sub-§§3 to 5**, as enacted by PL 2005, c. 554, Pt. A,
27 §1, are amended to read:

28 **3. Availability of copy of code of conduct.** The ~~State Purchasing Agent~~ Chief
29 Procurement Officer shall make a copy of the state purchasing code of conduct available
30 to all bidders subject to this subchapter.

31 **4. Affidavit requirement.** The ~~State Purchasing Agent~~ Chief Procurement Officer
32 may not accept a bid for the sale of goods covered by this subchapter unless:

33 A. Prior to the close of the bidding deadline, the bidder has filed with the agent a
34 signed affidavit, executed and filed by a person authorized to commit the bidder to
35 the code of conduct, stating:

- 36 (1) That the bidder will comply with the code of conduct;

1 (2) That the bidder has furnished a copy of the code of conduct to each supplier
2 at the point of assembly of the goods subject to the bid process and required that
3 each supplier inform the bidder of whether the supplier is in compliance with the
4 code of conduct; and

5 (3) That, to the best of the bidder's knowledge, each supplier at the point of
6 assembly of the goods subject to the bid process is in compliance with the code
7 of conduct; and

8 B. The bidder has submitted a list of the names and addresses of suppliers at the
9 point of assembly of goods subject to the bid process.

10 **5. Affidavit update requirement.** If, after complying with the filing requirements
11 of this section, a bidder is awarded a contract, that contractor must, during the term of the
12 contract, promptly inform the ~~State Purchasing Agent~~ Chief Procurement Officer of any
13 change in the information furnished in the affidavit submitted at the time of the original
14 bid and must submit a new, updated affidavit that conforms with the requirements of
15 subsection 4.

16 **Sec. 32. 5 MRSA §1825-L, sub-§1,** as enacted by PL 2001, c. 439, Pt. NNNN,
17 §1, is amended to read:

18 **1. Statement of belief; protection of local interests.** The affidavit provided by the
19 ~~State Purchasing Agent~~ Chief Procurement Officer to bidders for contracts to provide
20 goods covered by this subchapter must include a copy of the following statement:

21 "Maine is a state that believes employers should fairly compensate hard work, that
22 the health and safety of working people should be protected and that no form of
23 unlawful discrimination or abuse should be tolerated. Maine citizens are aware that
24 laws and regulations designed to safeguard basic tenets of ethical business practice
25 are disregarded in many workplaces, commonly referred to as "sweatshops." State
26 Government purchase of goods made under abusive conditions on behalf of its
27 citizens offends Maine citizens' sense of justice and decency. Moreover, when the
28 State of Maine contracts with vendors whose suppliers profit by providing
29 substandard wages and working conditions, Maine's businesses are put at a
30 competitive disadvantage. Therefore, the State of Maine believes in doing business
31 with vendors who make a good faith effort to ensure that they and their suppliers at
32 the point of assembly adhere to the principles of the State of Maine's purchasing code
33 of conduct.

34 "In its role as a market participant that procures goods covered by this code, the State
35 of Maine seeks to protect the interests of Maine citizens and businesses by exercising
36 its state sovereignty to spend Maine citizens' tax dollars in a manner consistent with
37 their expressed wishes that the State deal with responsible bidders who seek contracts
38 to supply goods to the State of Maine, and protect legally compliant Maine
39 businesses and workers from unfair competition created by downward pressure on
40 prices and conditions attributable to businesses that violate applicable workplace
41 laws.

42 "Seeking to protect these local interests through the least discriminatory means
43 available, the State of Maine requires that all bidders seeking contracts to supply the

1 State of Maine with goods covered by this code sign an affidavit stating that they and,
2 to the best of their knowledge, their suppliers at the point of assembly comply with
3 workplace laws of the vendor's or supplier's site of assembly and with treaty
4 obligations that are shared by the United States and the country in which the goods
5 are assembled."

6 **Sec. 33. 5 MRSA §1825-M**, as enacted by PL 2001, c. 439, Pt. NNNN, §1, is
7 amended to read:

8 **§1825-M. Exception**

9 The ~~State Purchasing Agent~~ Chief Procurement Officer may accept and award a bid
10 to a supplier who has not met the requirements provided in section 1825-K if, after
11 reasonable investigation by the ~~State Purchasing Agent~~ Chief Procurement Officer, it
12 appears that the required unit or item of supply or brand of that unit or item, is procurable
13 by the State from only that supplier.

14 **Sec. 34. 5 MRSA §1825-N**, as amended by PL 2005, c. 554, Pt. A, §3, is further
15 amended to read:

16 **§1825-N. Support to suppliers of goods and services**

17 The ~~State Purchasing Agent~~ Chief Procurement Officer shall provide to bidders and
18 contractors resources to assist with compliance with the state purchasing code of conduct
19 established in this subchapter. These resources must include a list, easily accessed by the
20 public, of bidders and vendors who have adopted the state purchasing code of conduct.

21 **Sec. 35. 5 MRSA §1825-O, first ¶**, as enacted by PL 2001, c. 439, Pt. NNNN,
22 §1, is amended to read:

23 The ~~State Purchasing Agent~~ Chief Procurement Officer shall adopt rules under this
24 subchapter governing the award of bids. Those rules must include specific guidelines for
25 vendors to follow in order to comply with the state purchasing code of conduct and
26 criteria for seeking disclosure of names and addresses of vendors' suppliers and suppliers'
27 working conditions.

28 **Sec. 36. 5 MRSA §1825-P**, as enacted by PL 2001, c. 439, Pt. NNNN, §1, is
29 amended to read:

30 **§1825-P. Report**

31 By January 15th of each year, the ~~State Purchasing Agent~~ Chief Procurement Officer
32 shall submit a report to the joint standing committee of the Legislature having jurisdiction
33 over state and local government matters concerning the administrative and fiscal impact
34 of the requirement that vendors comply with the state purchasing code of conduct; the
35 degree of voluntary compliance with the state purchasing code of conduct; the number of
36 vendors who agreed to and the number that declined to comply with the provisions of this
37 subchapter; and any other information relevant to the state purchasing code of conduct.

1 **Sec. 37. 5 MRSA §1825-Q**, as corrected by RR 2005, c. 2, §4, is amended to
2 read:

3 **§1825-Q. Complaints of noncompliance with code of conduct; investigations of**
4 **complaints**

5 **1. Complaints alleging noncompliance.** The ~~State Purchasing Agent~~ Chief
6 Procurement Officer shall initiate an investigation to determine whether a violation of the
7 code of conduct has occurred if:

8 A. The ~~State Purchasing Agent~~ Chief Procurement Officer has independent
9 knowledge that a contractor or a supplier at the point of assembly of goods subject to
10 a contract is not in compliance with the code of conduct;

11 B. The contractor informs the ~~State Purchasing Agent~~ Chief Procurement Officer
12 that the contractor or a supplier at the point of assembly of goods subject to a contract
13 is not in compliance with the code of conduct;

14 C. A worker for a contractor or for a supplier at the point of assembly of goods
15 subject to a contract files a written complaint directly with the ~~State Purchasing~~
16 ~~Agent~~ Chief Procurement Officer stating that the contractor or supplier, to the best of
17 the worker's knowledge, is not in compliance with the code of conduct;

18 D. A 3rd party established and based outside the United States, on behalf of or on the
19 basis of information from a worker or workers, files directly with the ~~State~~
20 ~~Purchasing Agent~~ Chief Procurement Officer a signed and dated written complaint
21 stating that, to the best of the 3rd party's knowledge, a contractor or a supplier at the
22 point of assembly of goods subject to a contract is not in compliance with the code of
23 conduct. If possible, the 3rd party's written complaint must be signed and dated
24 under oath before an official authorized to administer oaths; or

25 E. A 3rd party established and based in the United States, on behalf of or on the
26 basis of information from a worker or workers, files directly with the ~~State~~
27 ~~Purchasing Agent~~ Chief Procurement Officer a written complaint, signed and dated
28 under oath before an official authorized by applicable law to administer oaths, stating
29 that, to the best of the 3rd party's knowledge, a contractor or a supplier at the point of
30 assembly of goods subject to a contract is not in compliance with the code of
31 conduct.

32 **2. Specificity required.** Any complaint made to the ~~State Purchasing Agent~~ Chief
33 Procurement Officer must state with reasonable specificity each reason a party subject to
34 the complaint is allegedly not in compliance with the code of conduct.

35 **3. Notification to party subject to complaint.** After receiving a complaint alleging
36 noncompliance with the code of conduct, the ~~State Purchasing Agent~~ Chief Procurement
37 Officer shall contact in a timely manner, in writing and by certified letter, the contractor
38 that is the subject of the complaint or whose supplier is the subject of the complaint.

39 **Sec. 38. 5 MRSA §1825-R**, as enacted by PL 2005, c. 554, Pt. A, §5, is amended
40 to read:

1 **§1825-R. Determinations of noncompliance with code of conduct**

2 **1. Relevant information.** In making a determination of whether a violation of the
3 code of conduct has occurred, the ~~State Purchasing Agent~~ Chief Procurement Officer may
4 take into account any factors, information, sources of information and materials
5 determined reliable and relevant by the ~~State Purchasing Agent~~ Chief Procurement
6 Officer, as determined on a case-by-case basis. The ~~State Purchasing Agent~~ Chief
7 Procurement Officer has specific authority and discretion to employ an independent
8 monitor to investigate a complaint.

9 **2. Determination by the Chief Procurement Officer.** The determination of
10 whether a party subject to a complaint is in compliance with the code of conduct is solely
11 that of the ~~State Purchasing Agent~~ Chief Procurement Officer.

12 **3. Notice of determination.** After rendering a determination under this section, the
13 ~~State Purchasing Agent~~ Chief Procurement Officer promptly shall inform the complainant
14 and contractor in writing.

15 **Sec. 39. 5 MRSA §1825-S**, as amended by PL 2007, c. 193, §3, is further
16 amended to read:

17 **§1825-S. Consequences of noncompliance with code of conduct**

18 **1. Action by Chief Procurement Officer.** Upon determination of a violation of the
19 code of conduct by a contractor or contractor's supplier at the point of assembly of goods
20 covered by this subchapter, the State, through the ~~State Purchasing Agent~~ Chief
21 Procurement Officer, shall inform the contractor and engage in discussions with the
22 contractor about the violation. The purpose of the discussions is to work in partnership
23 with the contractor to influence the contractor to change its practices or to use its
24 bargaining position with the offending supplier to change the supplier's practices, rather
25 than to cease doing business with the contractor or supplier. The ~~State Purchasing Agent~~
26 Chief Procurement Officer shall prescribe appropriate measures to ensure compliance
27 with the code of conduct. These measures may include, but are not limited to:

28 A. Requesting that each party found not to be in compliance with the code of
29 conduct provide continued access to independent monitors, if available;

30 B. Requesting that each party found not to be in compliance with the code of conduct
31 offer their workers and managers the training and guidelines necessary to bring the
32 workplace into compliance with the code of conduct; and

33 C. Requesting that each party found not to be in compliance with the code of conduct
34 demonstrate to the ~~State Purchasing Agent~~ Chief Procurement Officer that prescribed
35 changes or improvements have been completed and implemented.

36 **2. Termination of contract.** If, in the opinion of the ~~State Purchasing Agent~~ Chief
37 Procurement Officer, a contractor that has been determined as not in compliance with the
38 code of conduct does not make good faith efforts to change its practices or use its
39 bargaining position with an offending supplier to change the supplier's practices, the ~~State~~
40 ~~Purchasing Agent~~ Chief Procurement Officer may take appropriate remedial action
41 including, but not limited to, barring the subject contractor from bidding on future state

1 contracts or terminating the State's contract with the contractor. Reference to the
2 authority given in this subsection must be specifically referenced in the State's contracts
3 with those contractors that are subject to the code of conduct.

4 **Sec. 40. 5 MRSA §1826-C, sub-§§4 to 7**, as amended by PL 2007, c. 395, §3,
5 are further amended to read:

6 **4. Work center purchases schedule.** The ~~director~~ Chief Procurement Officer shall
7 develop and use a work center purchases schedule. The director shall:

8 A. Identify and develop a list of all products and services purchased or scheduled to
9 be purchased by State Government;

10 B. Identify and develop a list of all work centers in the State, including a description
11 of the products and services work centers are currently providing or have recently
12 provided and including an assessment of the products and services that work centers
13 are capable of providing, but have not recently provided; and

14 C. Develop from the information obtained in paragraphs A and B a work center
15 purchases schedule that describes all products and services to be purchased by the
16 State that, in the view of the ~~director~~ Chief Procurement Officer, could be provided
17 by work centers. In developing this schedule, the ~~director~~ Chief Procurement Officer
18 shall give consideration to the abilities of work centers to meet contract requirements
19 and to meet generally accepted quality control standards and any potential technical
20 assistance that may be required to enable a work center to compete fairly for
21 contracts, pursuant to this subchapter.

22 **5. Competitive bidding.** The ~~director~~ Chief Procurement Officer shall develop
23 procedures for competitive bidding by eligible work centers only for products and
24 services identified on the work center purchase schedule. ~~If no bid is received from a~~
25 ~~work center for any product or service on the schedule, the director shall confer with the~~
26 ~~Department of Corrections to determine whether the Department of Corrections is able to~~
27 ~~provide the product or service at a fair price. If the director and the Department of~~
28 ~~Corrections do not come to agreement, the product or service must be put out to general~~
29 ~~bid by the director, in accordance with standard rules and procedures. If only one work~~
30 ~~center bid is received, the director shall review the bid and make a determination~~
31 ~~regarding the fairness of the price and terms of the proposed contract. If the director~~
32 ~~determines that the work center may not be awarded this bid, the director shall confer~~
33 ~~with the Department of Corrections to determine whether the Department of Corrections~~
34 ~~is able to provide the product or service at a fair price. If the director and the Department~~
35 ~~of Corrections do not come to agreement, the contract must be offered for standard~~
36 ~~competitive bid by the director in accordance with standard rules and procedures~~ Work
37 centers must compete for the State's bid opportunities in conjunction with all other
38 bidders providing a given service or product.

39 **6. Award of contracts; fair price.** The ~~director~~ Chief Procurement Officer has final
40 determination in awarding contracts to work centers through the competitive bidding
41 process. The ~~director's~~ Chief Procurement Officer's judgment prevails in the
42 determination that the price and contract terms are fair and reasonable both to the work
43 center and to the State. In determining a fair price, the ~~director~~ Chief Procurement Officer

1 shall ensure the ability of the work center to recover the costs of labor, material,
2 equipment, overhead and delivery. In determining the award of a contract to a work
3 center, the Chief Procurement Officer shall give work centers a 10% cost preference
4 when bidding against bidders that are not work centers.

5 **7. Assignment of contracts.** The ~~director~~ Chief Procurement Officer shall ensure
6 that contracts awarded to work centers may not be assigned to any other vendor, except as
7 may be necessary to complete the contracts, because of extraordinary events beyond the
8 control of the work centers. Any additional costs incurred because of these assignments
9 must be borne by the work center as a normal cost of doing business.

10 **Sec. 41. 5 MRSA §1831**, as amended by PL 1989, c. 785, §3, is further amended
11 to read:

12 **§1831. Rules**

13 **1. Adoption of rules.** Every department or agency of State Government, subject to
14 chapters 141 to 152, purchasing services or awarding grants or contracts ~~which~~ that are
15 not subject to the authority of the Department of ~~Administration~~ Administrative and
16 Financial Services, as defined in chapters 153 and 155, shall establish a procedure by
17 which these services are purchased or by which grants or contracts are awarded. This
18 procedure must be adopted in accordance with the Maine Administrative Procedure Act,
19 ~~chapter 375~~ no later than January 1, 1991 and must be approved by the ~~State Purchasing~~
20 ~~Agent~~ Chief Procurement Officer prior to ~~their~~ adoption. The ~~State Purchasing Agent~~
21 Chief Procurement Officer shall ensure that the rules adopted under this section meet the
22 standards of public notice, administrative review, and rights to appeal as set forth in
23 chapter 155, subchapter ~~I-A~~ 1-A. Any department or agency of State Government that
24 does not adopt rules under this section by January 1, 1991, is subject to rules adopted by
25 the ~~State Purchasing Agent~~ Chief Procurement Officer under chapter 155, subchapter ~~I-A~~
26 1-A.

27 **2. Limitation.** This section does not apply to purchase of supplies, services,
28 materials and equipment or to public improvements, as described under chapters 153 and
29 155. This section does not apply to construction, improvement or repair of any and all
30 ways, roads or bridges with appurtenances or other public improvements which by law
31 are under the supervision of the Department of Transportation in accordance with section
32 1741.

33 **3. Application.** The procedure adopted by a department or agency in this section
34 may be used by the department or agency for any qualifying purchase or award of a
35 contract or grant. Nothing in this section may be construed to require the adoption of
36 new procedures for every new purchase, contract or award. Nothing in this section may
37 be construed to require the ~~State Purchasing Agent~~ Chief Procurement Officer or the
38 Department of ~~Administration~~ Administrative and Financial Services to approve any
39 contract, grant or award that is not presently approved by the ~~State Purchasing Agent~~
40 Chief Procurement Officer or the Department of ~~Administration~~ Administrative and
41 Financial Services under chapters 153 and 155.

1 **Sec. 42. 7 MRSA §215, sub-§2**, as amended by PL 1989, c. 700, Pt. A, §31, is
2 further amended to read:

3 **2. Coordination of development of quality standards.** The Bureau of ~~Purchases~~
4 General Services will coordinate the development of quality standards with state
5 institutions and the Department of Education. The coordinator will collaborate with the
6 ~~State Purchasing Agent~~ Chief Procurement Officer in assisting state and school
7 purchasers in formulating consistent, although not necessarily uniform, quality standards.
8 In the event there are differences of opinion about the quality of foodstuffs supplied to
9 institutions or schools, final authority for resolution rests with the ~~State Purchasing Agent~~
10 Chief Procurement Officer.

11 **Sec. 43. 23 MRSA §52, 2nd ¶**, as repealed and replaced by PL 2005, c. 313, §2,
12 is amended to read:

13 The department has full power to purchase all supplies, materials and equipment that
14 are incidental to, or necessary for, project-specific construction, improvement or
15 maintenance of transportation infrastructure. The purchase of supplies, materials and
16 equipment for nonproject-specific purposes must be made through the ~~State Purchasing~~
17 ~~Agent~~ Chief Procurement Officer as provided by law. For the purposes of this section,
18 unless the context otherwise indicates, "project-specific" means relating to a specific
19 location for a limited duration, as opposed to perennial, nonlocation-specific activities.
20 The department may be consulted by and shall, without charge, advise municipal officers
21 and road commissioners on the subject of construction, improvement and maintenance of
22 public highways, bridges and other structures. The department shall whenever practicable
23 give preference in employment to the inhabitants of the town in which such highways are
24 located.

25 **Sec. 44. 28-A MRSA §83-C, sub-§3**, as enacted by PL 2013, c. 476, Pt. A, §9, is
26 amended to read:

27 **3. Purchase.** Oversee the wholesale purchase and storage of spirits for sale in the
28 State. If the bureau awards a contract under section 90, spirits delivered to and stored at a
29 warehouse approved by the bureau are the property of the supplier. Spirits become the
30 property of the bureau upon removal from the warehouse for shipment to an agency
31 liquor store. Spirits delivered to an agency liquor store become the property of the
32 licensee upon receipt of delivery. A person awarded a contract under section 90 at no
33 time takes legal title to any spirits delivered to the warehouse. The bureau may buy and
34 have in its possession spirits for sale to the public. The bureau shall buy spirits directly
35 and not through the ~~State Purchasing Agent~~ Chief Procurement Officer. All spirits must
36 be free from adulteration and misbranding;

37 **Sec. 45. 34-A MRSA §1403, sub-§11**, as enacted by PL 1999, c. 583, §4, is
38 amended to read:

39 **11. Contracting agent.** The chief administrative officer is the contracting agent for
40 all sales of articles from a correctional facility and for all other contracts made on behalf
41 of the correctional facility except those made by the ~~State Purchasing Agent~~ Chief
42 Procurement Officer.

- 1 A. All contracts must be made in the manner prescribed by the commissioner.
- 2 B. A contract may not be accepted by the chief administrative officer, unless the
- 3 contractor gives satisfactory security for its performance.
- 4 C. An employee of the correctional facility may not be directly or indirectly
- 5 interested in any contract.

6 **Sec. 46. 34-A MRSA §3004, sub-§1**, as amended by PL 1991, c. 314, §28, is
7 further amended to read:

8 **1. Contract actions.** Actions founded on any contract made with the ~~State~~
9 ~~Purchasing Agent~~ Chief Procurement Officer, or with any official of the department
10 under the authority granted by the ~~State Purchasing Agent~~ Chief Procurement Officer, on
11 behalf of a correctional or detention facility may be brought by the official making the
12 contract or the official's successor in office.

13 **Sec. 47. 34-B MRSA §1404, sub-§1**, as enacted by PL 1983, c. 459, §7, is
14 amended to read:

15 **1. Contract actions.** Actions founded on any contract made with the ~~State~~
16 ~~Purchasing Agent~~ Chief Procurement Officer, or with any official of the department
17 under the authority granted by the ~~State Purchasing Agent~~ Chief Procurement Officer, on
18 behalf of any of the state institutions, may be brought by the official making the contract
19 or ~~his~~ the official's successor in office.

20 **Sec. 48. 35-A MRSA §1908**, as enacted by PL 2013, c. 369, Pt. B, §1, is amended
21 to read:

22 **§1908. Exemption from Chief Procurement Officer rules**

23 Notwithstanding any other provision of law, agreements and contracts entered into
24 pursuant to this chapter are not subject to the competitive bid requirements of the ~~State~~
25 ~~Purchasing Agent~~ Chief Procurement Officer.

26 **Sec. 49. 35-A MRSA §3210-C, sub-§3**, as amended by PL 2013, c. 424, Pt. A,
27 §20, is further amended to read:

28 **3. Commission authority.** The commission may direct investor-owned
29 transmission and distribution utilities to enter into long-term contracts for:

- 30 A. Capacity resources;
- 31 B. Any available energy associated with capacity resources contracted under
- 32 paragraph A:
 - 33 (1) To the extent necessary to fulfill the policy of subsection 2, paragraph A; or
 - 34 (2) If the commission determines appropriate for purposes of supplying or
 - 35 lowering the cost of standard-offer service or otherwise lowering the cost of
 - 36 electricity for the ratepayers in the State. Available energy contracted pursuant to

1 this subparagraph may be sold into the wholesale electricity market in
2 conjunction with solicitations for standard-offer supply bids; and

3 C. Any available renewable energy credits associated with capacity resources
4 contracted under paragraph A. The price paid by the investor-owned transmission
5 and distribution utility for the renewable energy credits must be lower than the price
6 received for those renewable energy credits at the time they are sold by the
7 investor-owned transmission and distribution utility.

8 The commission may permit, but may not require, investor-owned transmission and
9 distribution utilities to enter into contracts for differences that are designed and intended
10 to buffer ratepayers in the State from potential negative impacts from transmission
11 development. To the greatest extent possible, the commission shall develop procedures
12 for long-term contracts for investor-owned transmission and distribution utilities under
13 this subsection having the same legal and financial effect as the procedures used for
14 standard-offer service pursuant to section 3212 for investor-owned transmission and
15 distribution utilities.

16 The commission may enter into contracts for interruptible, demand response or energy
17 efficiency capacity resources. These contracts are not subject to the rules of the ~~State~~
18 ~~Purchasing Agent~~ **Chief Procurement Officer**. In a competitive solicitation conducted
19 pursuant to subsection 6, the commission shall allow transmission and distribution
20 utilities to submit bids for interruptible or demand response capacity resources.

21 Capacity resources contracted under this subsection may not exceed the amount
22 necessary to ensure the reliability of the electric grid of this State, to meet the energy
23 efficiency program budget allocations articulated in the triennial plan as approved by the
24 commission pursuant to section 10104, subsection 4 or any annual update plan approved
25 by the commission pursuant to section 10104, subsection 6 or to lower customer costs as
26 determined by the commission pursuant to rules adopted under subsection 10.

27 Unless the commission determines the public interest requires otherwise, a capacity
28 resource may not be contracted under this subsection unless the commission determines
29 that the capacity resource is recognized as a capacity resource for purposes of any
30 regional or federal capacity requirements.

31 The commission shall ensure that any long-term contract authorized under this subsection
32 is consistent with the State's goals for greenhouse gas reduction under Title 38, section
33 576 and the regional greenhouse gas initiative as described in the state climate action plan
34 required in Title 38, section 577.

35 **Sec. 50. 35-A MRSA §3212, sub-§2**, as amended by PL 1999, c. 577, §4 and c.
36 578, §1, is further amended to read:

37 **2. Selection of standard-offer service providers.** After terms and conditions for
38 standard-offer service have been established under subsection 1, the commission shall
39 administer a bid process to select a standard-offer service provider for that transmission
40 and distribution utility's service territory. By December 1, 1999, the commission shall
41 review the bid submissions for each transmission and distribution utility and select the
42 standard-offer service provider or providers for that utility's service territory.

1 A. The commission shall determine the general credit data and specific information
2 from general load and usage data that transmission and distribution utilities must
3 provide to potential standard-offer service bidders, including, but not limited to,
4 monthly demand and energy consumption and the number of customers in each
5 customer class. The commission shall ensure that individual customer confidentiality
6 is preserved in this process and that a transmission and distribution utility releases
7 customer-specific data only with the customer's permission. If the transmission and
8 distribution utility incurs additional costs to develop and produce the required data,
9 the commission shall permit that utility to recover those costs through transmission
10 and distribution rates.

11 B. The commission shall establish the maximum duration of a standard-offer service
12 contract after considering all relevant factors, including, but not limited to, market
13 risks and the need for price stability and contract flexibility.

14 C. A competitive electricity provider that is an affiliate of a large investor-owned
15 transmission and distribution utility may submit bids to provide standard-offer
16 service for up to 20% of the electric load within the service territory of the large
17 investor-owned transmission and distribution utility with which it is affiliated. To
18 prevent the unfair use of information possessed by a large investor-owned
19 transmission and distribution utility, the commission shall ensure that a utility
20 seeking to bid on standard-offer service has no greater access to relevant information
21 than is provided to other potential bidders.

22 D. A consumer-owned transmission and distribution utility and a small investor-
23 owned transmission and distribution utility may submit bids to provide standard-offer
24 service for that utility's service territory. To prevent the unfair use of information
25 possessed by a consumer-owned transmission and distribution utility or a small
26 investor-owned transmission and distribution utility, the commission shall ensure that
27 a utility seeking to bid on standard-offer service has no greater access to relevant
28 information than is provided to other potential bidders.

29 The commission shall adopt rules establishing a methodology for structuring the bidding
30 process for standard-offer service in order to implement the provisions of this subsection.
31 In adopting rules, the commission shall consider methods to ensure, to the extent
32 possible, at least 3 providers of standard-offer service in each transmission and
33 distribution utility service territory, as long as the method does not result in any
34 significant adverse impacts on rates paid by consumers. Rules adopted under this
35 subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter ~~H-A~~
36 2-A.

37 Notwithstanding any other provision of this Title, the commission may, in the event of a
38 default by a standard-offer service provider, require the transmission and distribution
39 utility in whose service territory the provider was providing standard-offer service to
40 arrange and to provide for default service. Notwithstanding any other provision of this
41 Title, the commission may, in the event that the commission receives no bids to provide
42 standard-offer service in a transmission and distribution utility's territory or the
43 commission determines that the bids it receives are inadequate or unacceptable, require
44 the transmission and distribution utility to arrange and to provide for default service.
45 Notwithstanding any other provision of this Title, the commission may require a

1 transmission and distribution utility to provide default service to its customers that are not
2 located within either the New England independent system operator control area or the
3 Maritimes control area; and default service pursuant to this sentence must be provided to
4 customers at the same price and on the same terms and conditions as standard-offer
5 service is provided to the customers of the transmission and distribution utility in the
6 standard-offer class in which the customer is eligible to receive service. The arrangement
7 and provision of such default service by a transmission and distribution utility does not
8 constitute selling electric energy or capacity at retail for purposes of section 3205,
9 subsection 2.

10 Notwithstanding Title 5, section 1831, the commission is not subject to rules adopted by
11 the ~~State Purchasing Agent~~ Chief Procurement Officer in conducting the competitive
12 bidding process required under this section.

13 **Sec. 51. 35-A MRSA §10105, sub-§4**, as enacted by PL 2009, c. 372, Pt. B, §3,
14 is amended to read:

15 **4. Purchasing agent rules.** Notwithstanding Title 5, section 1831, the trust is not
16 subject to rules adopted by the ~~State Purchasing Agent~~ Chief Procurement Officer in
17 selecting service providers pursuant to this chapter. The trust shall consider delivery of
18 programs by means of contracts with service providers that participate in competitive bid
19 processes for providing services within individual market segments or for particular end
20 uses.

21 **Sec. 52. 35-A MRSA §10110, sub-§3**, as enacted by PL 2009, c. 372, Pt. B, §3,
22 is amended to read:

23 **3. Implementation.** The trust shall seek to implement the delivery of conservation
24 programs in all regions of the State on an equitable basis and to citizens at all income
25 levels. The trust may arrange the delivery of conservation programs by contracting with
26 service providers. The trust shall select service providers in accordance with this
27 subsection.

28 A. The trust shall select service providers through a competitive bidding process.

29 B. To the extent practicable, the trust shall encourage the development of resources,
30 infrastructure and skills within the State by giving preference to in-state service
31 providers.

32 C. Notwithstanding paragraph A:

33 (1) The trust may select a service provider for one or more conservation
34 programs without employing a competitive bidding process if the trust finds that
35 the selection of the service provider will promote the efficient and effective
36 delivery of conservation programs and is consistent with the objectives and
37 overall strategy of the conservation programs; and

38 (2) For the delivery of conservation programs to low-income residential
39 consumers, the commission, without employing a competitive bidding process,
40 may use the delivery system for the Weatherization Assistance for Low-income
41 Persons Program administered through the United States Department of Energy

1 and the network of for-profit and not-for-profit entities who have held contracts
2 with transmission and distribution utilities to deliver conservation services to
3 low-income and residential customers.

4 In accordance with section 10105, the trust is not subject to rules adopted by the ~~State~~
5 ~~Purchasing Agent~~ Chief Procurement Officer in selecting service providers pursuant to
6 this subsection. The board shall adopt rules establishing procedures governing the
7 selection of service providers under this subsection. The board shall consult with the
8 ~~State Purchasing Agent~~ Chief Procurement Officer in developing the rules.

9 A trade association aggregator is eligible to participate in competitive bid processes under
10 this subsection.

11 **Sec. 53. 36 MRSA §191, sub-§2, ¶JJ**, as amended by PL 2009, c. 361, §12, is
12 further amended to read:

13 JJ. The disclosure to the ~~State Purchasing Agent~~ Chief Procurement Officer of a
14 person's sales tax standing as necessary to enforce Title 5, section 1825-B, subsection
15 14;

16 **Sec. 54. 36 MRSA §4372-A, sub-§7**, as amended by PL 1999, c. 616, §6, is
17 further amended to read:

18 **7. Hearings; disposition; deposit of funds.** At a hearing, other than a default
19 proceeding, the court shall hear evidence, make findings of fact, enter conclusions of law
20 and file a final order from which the parties have the right of appeal. When cigarettes are
21 ordered forfeited, the final order must provide for the disposition of the cigarettes by the
22 State Tax Assessor by public auction or by the ~~State Purchasing Agent~~ Chief
23 Procurement Officer. Proceeds must be deposited in the General Fund. Cigarettes
24 described in section 4366-C, subsection 1 must be destroyed by the State Tax Assessor in
25 a manner that prevents their reintroduction into the marketplace.

26 **Sec. 55. 36 MRSA §4404-C, sub-§7**, as enacted by PL 2005, c. 627, §11, is
27 amended to read:

28 **7. Hearings; disposition; deposit of funds.** At a hearing other than a default
29 proceeding, the court shall hear evidence, make findings of fact, enter conclusions of law
30 and file a final order to which the parties have the right of appeal. When tobacco products
31 are ordered forfeited, the final order must provide for the disposition of the tobacco
32 products by the assessor by public auction or by the ~~State Purchasing Agent~~ Chief
33 Procurement Officer. Proceeds must be deposited in the General Fund. Tobacco products
34 described in section 4404-B, subsection 1 must be destroyed by the assessor in a manner
35 that prevents their reintroduction into the marketplace.

36 **SUMMARY**

37 This bill changes, from State Purchasing Agent to Chief Procurement Officer, the
38 title of the position responsible for administering the procurement process for the State.
39 The bill also makes several changes to the laws governing the procurement process,
40 including the following.

1 1. It authorizes the Chief Procurement Officer to enter into multistate agreements
2 and requests for proposals and bids for goods and services.

3 2. It authorizes the Chief Procurement Officer, with the approval of the
4 Commissioner of Administrative and Financial Services, to adopt rules to provide a
5 process under which a department or agency that purchases goods or services contrary to
6 the State's procurement laws may have funding removed from that department or
7 agency's budget.

8 3. It provides that costs for an unsuccessful appeal of a contract or grant award
9 decision must be borne by the person requesting the appeal.