

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1633

H.P. 1217

House of Representatives, April 28, 2021

An Act To Require Responsible Contracting Practices for Public Construction Projects

Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative COLLINGS of Portland.
Cosponsored by President JACKSON of Aroostook and
Representatives: DUNPHY of Old Town, Speaker FECTEAU of Biddeford, SYLVESTER of
Portland, TALBOT ROSS of Portland, Senator: DAUGHTRY of Cumberland.

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

2 **PART A**

3 **Sec. A-1. 5 MRSA c. 155, sub-c. 3** is enacted to read:

4 **SUBCHAPTER 3**

5 **RESPONSIBLE CONTRACTING**

6 **§1826-P. Definitions**

7 As used in this subchapter, unless the context otherwise indicates, the following terms
8 have the following meanings.

9 **1. Bureau.** "Bureau" means the Bureau of General Services within the Department of
10 Administrative and Financial Services.

11 **2. Class A apprenticeship program.** "Class A apprenticeship program" means an
12 apprenticeship program that is registered with and approved by the United States
13 Department of Labor or the state apprenticeship agency as defined in Title 26, section 3201,
14 subsection 22 and has graduated apprentices to journeyman status for at least 3 of the past
15 5 years.

16 **3. Construction project.** "Construction project" or "project" means a publicly funded
17 project to build, construct or complete a major alteration or repair of buildings or public
18 works that is funded with state funds.

19 **4. Contractor.** "Contractor" means a developer, construction manager, prime
20 contractor, subcontractor or any other entity that performs work on a construction project
21 or submits a bid to perform such work.

22 **5. Craft worker.** "Craft worker" means a person who possesses experience and
23 proficiency in a trade involved in building construction.

24 **6. Prime contractor.** "Prime contractor" means a contractor that has entered into a
25 contract with the State for a construction project and that is responsible for completion of
26 the project even if that prime contractor employs one or more subcontractors to carry out
27 portions of the project.

28 **§1826-Q. Contractor responsibility certification**

29 A contractor that submits a bid or is included as a contractor on a bid for a construction
30 project shall submit a contractor responsibility certification form at the time of the bid and
31 meet all requirements of this section. The bureau shall administer the contractor
32 responsibility certification process and provide necessary forms to potential bidders.

33 **1. Certification requirements.** A contractor submitting a contractor responsibility
34 certification form under this section shall make the certifications and meet the requirements
35 as set out in this subsection.

36 A. The contractor and its employees shall hold all valid and effective licenses,
37 registrations or certificates required by federal, state, county or local law, regulations,
38 rules or ordinances, including, but not limited to, licenses, registrations or certificates

1 required to conduct business in the designated location and to perform the construction,
2 trade or specialty work the contractor proposes to perform.

3 B. The contractor shall meet any bonding requirements and insurance requirements of
4 applicable law or the contract. Insurance requirements may include, but are not limited
5 to, general liability insurance, workers' compensation insurance and unemployment
6 insurance.

7 C. The contractor shall certify that it has not been suspended or debarred from
8 eligibility to receive government contracts, including subcontracts, by any federal,
9 state, county or local government entity or authority in the 3 years prior to the date of
10 the bid.

11 D. The contractor shall certify that it has not defaulted on any construction project in
12 the 3 years prior to the date of the bid.

13 E. The contractor shall certify that it has not been convicted of any crime relating to
14 its contracting business in the 10 years prior to the date of the bid.

15 F. The contractor shall certify that it has not been found in violation of any law, rules,
16 regulations or ordinances applicable to its contracting business and required, as a result
17 of the violation, to make payment of a fine, back pay, damages or any other type of
18 penalty in the amount of \$1,000 or more in the 3 years prior to the date of the bid.

19 G. A prime contractor under contract for a public works project for which the State
20 provides any portion of the funding shall commit to paying all craft workers employed
21 on the project the wage rates and fringe benefits required under Title 26, chapter 15
22 and shall commit to requiring all craft workers employed on the project to complete a
23 10-hour training course for safety established by the United States Department of
24 Labor, Occupational Safety and Health Administration prior to starting work on the
25 project.

26 H. The contractor must have participated in a Class A apprenticeship program for the
27 3 years prior to the date of the bid for each separate trade or occupational classification
28 in which it proposes to employ craft workers on the project and shall commit to
29 continuing such participation for the duration of the contract, except that if the
30 contractor participates in a recently formed apprenticeship program for craft workers
31 it employs, it may satisfy the apprenticeship requirement by providing documentation
32 that the program in which it participates:

33 (1) Has been established within the 5 years prior to the date of the bid;
34 (2) Is currently registered with and approved by the United States Department of
35 Labor or the state apprenticeship agency as defined in Title 26, section 3201,
36 subsection 22;
37 (3) Provides bona fide apprenticeship training to participants; and
38 (4) Is in compliance with the standards and requirements applicable to registered
39 apprenticeship programs under 29 Code of Federal Regulations, Part 29.

40 I. The contractor shall certify that it possesses the technical qualifications and
41 resources, including equipment, personnel and financial resources, to meet the
42 requirements of the contract.

43 J. The contractor shall commit to maintaining all qualifications, resources and
44 capabilities referenced in the certification form throughout the duration of the project.

1 K. The contractor shall certify that it will notify the bureau within 7 days of any
2 material changes to any matters attested to in the certification form.

3 L. A prime contractor shall certify that it will provide a list of all subcontractors and
4 all required subcontractor information under section 1826-R.

5 **2. Execution; additional requirements.** The contractor responsibility certification
6 form described in subsection 1 must be executed by a person who has sufficient knowledge
7 to address all matters in the certification form and must include an attestation stating, under
8 penalty of perjury, that the information submitted is true, complete and accurate. Execution
9 of the certification form does not establish a presumption of contractor responsibility. The
10 bureau may require any additional information it considers necessary to evaluate a
11 contractor's status as a responsible contractor, including technical qualifications, financial
12 capacity or evidence of other resources and performance capabilities. The bureau may
13 require that such information be included in a separate statement of qualifications and
14 experience or as an attachment to the certification form.

15 **3. Statement relating to control of or by separate entity.** If the contractor has
16 operated under another name or has controlled or been controlled by another company or
17 business entity in the 5 years prior to the date of the bid, the contractor shall attach a
18 separate statement to its bid that explains in detail the nature of any such change of
19 relationship. The bureau may require additional information if the change of relationship
20 in question could potentially affect contract performance.

21 **4. Disqualification.** Failure to provide a contractor responsibility certification form
22 in accordance with subsection 1 or to meet all requirements of this section disqualifies a
23 contractor from bidding on a contract.

24 **§1826-R. Contract award; public review; bureau review**

25 **1. Notice of intent to award.** After an evaluation of bids received, the bureau shall
26 issue a notice that it intends to award the contract to the best-value bidder in accordance
27 with section 1825-B. The notice must be issued as soon as practicable after bids are
28 submitted. The notice must stipulate that the contract award is conditioned on the issuance
29 of a written determination of contractor responsibility as required by subsection 5 and any
30 other conditions determined appropriate by the bureau.

31 **2. Subcontractor list and certifications.** Within 7 days from the date of notice of
32 intent to award the contract under subsection 1, a prospective awardee shall submit to the
33 bureau a subcontractor list containing the names of subcontractors that will be used for the
34 referenced project, the addresses of the subcontractors and a description of the work each
35 listed subcontractor will perform on the project, along with an executed contractor
36 responsibility certification form for each listed subcontractor in accordance with the
37 requirements of section 1826-Q.

38 **3. Public review period.** The bureau shall provide a public review period of 21 days
39 following the issuance of the notice of intent to award the contract under subsection 1.
40 Upon issuing the notice of intent to award the contract, the bureau shall make available to
41 the public the contractor responsibility certification forms submitted pursuant to section
42 1826-Q and the subcontractor list for the prospective awardee through a publicly accessible
43 website or by other comparable means. During the public review period, any person may
44 protest a contractor or subcontractor for failing to meet applicable requirements of this

1 subchapter or on any other relevant grounds by submitting a letter with supporting evidence
2 to the bureau.

3 **4. Bureau review of contractor and subcontractor.** After issuing a notice of intent
4 to award the contract, the bureau shall conduct a review over a period of 30 days to verify
5 whether the prospective awardee, including the prime contractor and any subcontractors,
6 meets the applicable requirements of this subchapter, meets the requirements of any other
7 applicable laws, rules, regulations and ordinances and possesses the resources,
8 qualifications and capabilities to successfully perform the contract. As part of this review,
9 the bureau shall verify that the contractor responsibility certification form under section
10 1826-Q has been submitted and properly executed for all contractors. The bureau may
11 conduct any additional inquiries necessary to verify that the prospective awardee and its
12 subcontractors have a sufficient record of compliance with the law and business integrity
13 to justify the award of the contract. In conducting the inquiries, the bureau may seek
14 relevant information from the contractor, its prior clients or customers, its subcontractors
15 or any other relevant source.

16 If, in the course of its review, the bureau determines that a subcontractor listed pursuant to
17 subsection 2 does not meet the requirements of this subchapter, the bureau may permit the
18 prospective awardee to substitute a qualified subcontractor that meets the requirements of
19 this subchapter; require the prospective awardee to perform the work in question if the
20 prospective awardee has the required experience, licenses and other qualifications to
21 perform such work; or disqualify the prospective awardee. If the bureau determines that a
22 subcontractor does not meet the requirements of this subchapter, the prospective awardee
23 may not make any contractual claim against the bureau on the basis of a subcontractor
24 disqualification.

25 **5. Written determination.** If, at the conclusion of the review required by subsection
26 4, the bureau determines that all contractor responsibility certification forms under section
27 1826-Q have been properly completed and executed and the qualifications, background and
28 responsibility of the prospective awardee and its subcontractors are satisfactory, the bureau
29 shall issue a written determination verifying that the prospective awardee is a qualified
30 responsible contractor. If the bureau determines that the prospective awardee does not meet
31 the requirements of this subchapter, the bureau shall advise the prospective awardee of its
32 determination in writing and proceed to consider the 2nd best-value bidder or, if necessary,
33 rebid the project. The determination of contractor responsibility must be issued no later
34 than 30 days after the date of the notice of intent to award the contract. The bureau may
35 revoke or revise the determination of contractor responsibility at any time if the bureau
36 obtains relevant information warranting any such revocation or revision.

37 **§1826-S. False or misleading information**

38 If at any time the bureau determines that a contractor responsibility certification form
39 submitted pursuant to section 1826-Q contains false or misleading material information
40 provided by a contractor knowingly or with reckless disregard for the truth or evidences an
41 omission of material information knowingly or with reckless disregard for the truth by the
42 contractor, the bureau shall prohibit the contractor for which the certification form was
43 submitted from being awarded any contract covered by this subchapter for a period of 3
44 years and apply any other penalties and sanctions, including contract termination, available
45 to the State. For a contract terminated under this section, the State may withhold payment
46 due the contractor as damages.

1 §1826-T. Contract execution

2 The bureau may not execute a contract with a contractor subject to this subchapter until
3 all requirements of this subchapter are met by the contractor.

4 §1826-U. Relationship to other requirements

5 The requirements of this subchapter are intended to supplement, but not replace,
6 contractor qualification and performance standards required by any other law, rule or
7 contract documents. If any of the provisions of this subchapter conflict with any other law,
8 rule or contract documents, the requirements of this subchapter prevail.

9 §1826-V. Application

10 The requirements of this subchapter apply to contracts executed only after the effective
11 date of this subchapter, except that the exercise of an option on a contract entered into prior
12 to the effective date of this subchapter is deemed to create a new contract for purposes of
13 this subchapter.

14 §1826-W. Rules

15 The bureau shall adopt rules to implement this subchapter. Rules adopted under this
16 section are routine technical rules as defined in chapter 375, subchapter 2-A.

17 **PART B**

18 **Sec. B-1. 26 MRSA §1317** is enacted to read:

19 **§1317. Project labor agreements**

20 **1. Policy.** It is declared to be the policy of the State that public authorities use project
21 labor agreements in connection with large-scale construction projects in order to promote
22 economy and efficiency in state procurement.

23 **2. Definitions.** As used in this section, unless the context otherwise indicates, the
24 following terms have the following meanings.

25 A. "Labor organization" means an organization of any kind, or an agency or employee
26 representation committee or plan, in which employees participate and that exists for
27 the purpose, in whole or in part, of dealing with employers concerning grievances,
28 labor disputes, wages, rates of pay, hours of employment or conditions of work.

29 B. "Large-scale construction project" means a construction project of which the total
30 cost to the State is \$10,000,000 or more.

31 C. "Project labor agreement" means a prehire collective bargaining agreement with
32 one or more labor organizations that establishes the terms and conditions of
33 employment for a specific construction project and is an agreement described in 29
34 United States Code, Section 158(f).

35 **3. Project labor agreement required.** A public authority shall require a project labor
36 agreement as follows.

37 A. When awarding a contract in connection with a large-scale construction project, or
38 obligating funds pursuant to such a contract, a public authority shall, on a project-by-
39 project basis, require the use of a project labor agreement by a contractor if use of such
40 an agreement will:

1 (1) Advance the State's interest in achieving economy and efficiency in state
2 procurement by producing labor-management stability and ensuring compliance
3 with laws governing safety and health, equal employment opportunity, labor and
4 employment standards and other matters; and

5 (2) Be consistent with law.

6 B. If a public authority determines under paragraph A that the use of a project labor
7 agreement will satisfy the criteria in paragraph A, subparagraphs (1) and (2), the public
8 authority shall require that every contractor or subcontractor on the project agree, for
9 that project, to negotiate or become a party to a project labor agreement with one or
10 more appropriate labor organizations.

11 **4. Terms.** A project labor agreement under this section must:

12 A. Bind all contractors and subcontractors on the large-scale construction project
13 through the inclusion of appropriate specifications in all relevant solicitation provisions
14 and contract documents;

15 B. Allow all contractors and subcontractors to compete for contracts and subcontracts
16 without regard to whether they are otherwise parties to collective bargaining
17 agreements;

18 C. Contain guarantees against strikes, lockouts and similar job disruptions;

19 D. Set forth effective, prompt and mutually binding procedures for resolving labor
20 disputes arising during the term of the project labor agreement;

21 E. Provide other mechanisms for labor-management cooperation on matters of mutual
22 interest and concern, including productivity, quality of work, safety and health; and

23 F. Fully conform to all relevant state and federal laws, rules and regulations.

24 **5. Limitations.** Nothing in this section may be construed to:

25 A. Require a public authority to use a project labor agreement on any construction
26 project under \$10,000,000;

27 B. Preclude the use of a project labor agreement in circumstances not covered by this
28 section;

29 C. Require contractors or subcontractors to enter into a project labor agreement with
30 any particular labor organization; or

31 D. Impair or otherwise affect authority granted by law to a public authority.

32 **6. Application; rights or benefits.** This section must be implemented consistent with
33 applicable law and subject to the availability of state funding. This section does not create
34 any right or benefit, substantive or procedural, enforceable at law or in equity by any party
35 against the State, its departments, agencies or entities, its officers, employees or agents or
36 any other person.

37 **Sec. B-2. Application.** This Part applies to all solicitations for contracts issued by
38 a public authority, as defined in the Maine Revised Statutes, Title 26, section 1304,
39 subsection 7, for large-scale construction projects, as defined in Title 26, section 1317,
40 subsection 2, paragraph B, on or after the effective date of this Part.

1 **SUMMARY**

2 Part A of this bill establishes responsible contractor requirements for construction
3 projects that receive state funds for the purpose of ensuring that the work on such contracts
4 is performed by responsible, qualified contractors that maintain the capacity, expertise,
5 personnel and other qualifications and resources necessary to successfully perform public
6 contracts in a timely, reliable and cost-effective manner. The Part outlines a responsible
7 contractor certification process to be administered by the Department of Administrative
8 and Financial Services, Bureau of General Services.

9 Part B requires the State to use project labor agreements for large-scale construction
10 projects that receive state funds of \$10,000,000 or more. A project labor agreement is a
11 prehire collective bargaining agreement with one or more labor unions that establishes the
12 terms and conditions of employment for a specific construction project.