

CHAPTER 155

PURCHASES

SUBCHAPTER 1

GENERAL PROVISIONS

§1811. Powers and duties

The Department of Administrative and Financial Services, through the Bureau of General Services, has authority: [PL 1991, c. 780, Pt. Y, §61 (AMD).]

1. Purchases. To purchase all services, supplies, materials and equipment required by the State Government or by any department or agency thereof, subject to chapters 141 to 155;

A. The Director of the Bureau of General Services may establish dates by which departments and agencies of State Government must order standard forms that each department or agency requires, and to determine the quantity of each standard form to be printed in order to obtain savings resulting from volume purchasing; [PL 1991, c. 780, Pt. Y, §62 (AMD).]
[PL 1991, c. 780, Pt. Y, §62 (AMD).]

2. Specifications. To adopt and enforce, subject to chapters 141 to 155, specifications which shall apply to services, supplies, materials and equipment purchased for the use of the State Government or any department or agency thereof;

3. Postal service.

[PL 2005, c. 386, Pt. H, §2 (RP).]

4. Central duplicating service.

[PL 2005, c. 386, Pt. H, §3 (RP).]

5. Storerooms.

[PL 2005, c. 386, Pt. H, §4 (RP).]

6. Surplus property.

[PL 2005, c. 386, Pt. H, §5 (RP).]

7. Central mailing room.

[PL 2005, c. 386, Pt. H, §6 (RP).]

8. Cooperative purchasing. To permit any political subdivision or school administrative district in the State or nonprofit free health care clinic that provides free primary or preventative services to make purchases of foodstuffs, materials, equipment and supplies through the Bureau of General Services, subject to such procedures, rules and regulations as may be prescribed by the director. This subsection applies to a municipality notwithstanding any provision in its municipal charter to the contrary;

[PL 2005, c. 12, Pt. T, §8 (AMD).]

9. Central Motor Pool.

[PL 2005, c. 386, Pt. H, §7 (RP).]

10. Equipment to be reviewed. To choose a designee to conduct a thorough review of all types of equipment, including automobiles, pickups and vans, owned, leased or otherwise available to the

departments and agencies of the State, regardless of the source of supporting funds, and to make recommendations via the budgetary process for combining the uses of the equipment, providing centralized facilities or eliminating existing equipment and facilities, as believed to be most economical and efficient for the State. The department may also develop and institute review and control mechanisms considered necessary to ensure that capital equipment purchases authorized by the Legislature are consistent with the intent for which funds were recommended and made available; and [PL 2005, c. 12, Pt. T, §10 (NEW).]

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

[PL 2005, c. 12, Pt. T, §10 (NEW).]

SECTION HISTORY

PL 1967, c. 492 (AMD). PL 1983, c. 25 (AMD). PL 1983, c. 608, §1 (AMD). PL 1985, c. 158, §1 (AMD). PL 1985, c. 785, §§A70,71 (AMD). PL 1991, c. 129 (AMD). PL 1991, c. 528, §§III12-14 (AMD). PL 1991, c. 528, §RRR (AFF). PL 1991, c. 591, §§III12-14 (AMD). PL 1991, c. 780, §§Y61-66 (AMD). PL 1993, c. 707, §G6 (AMD). PL 1995, c. 562, §§2,3 (AMD). RR 2003, c. 1, §3 (COR). PL 2003, c. 79, §1 (AMD). PL 2003, c. 600, §4 (REV). PL 2005, c. 12, §§T8-10 (AMD). PL 2005, c. 386, §§H2-7 (AMD).

§1811-A. Standards

(REPEALED)

SECTION HISTORY

PL 1991, c. 622, §OO (NEW). PL 1991, c. 780, §PP1 (RP). PL 1991, c. 780, §PP2 (AFF).

§1812. Scope of purchasing authority

The terms "services," "supplies," "materials" and "equipment" as used in this chapter mean any and all services, articles or things that are used by or furnished to the State or any department or agency thereof, and any and all printing, binding, publication of laws, journals and reports. Except as provided in chapters 141 to 155, any and all services, supplies, materials and equipment needed by one or more departments or agencies of the State Government must be directly purchased or contracted for by the Director of the Bureau of General Services, as may be determined from time to time by rules adopted pursuant to chapters 141 to 155, which rules the Department of Administrative and Financial Services is authorized and empowered to make. It is the intent and purpose of this chapter that the Director of the Bureau of General Services purchase collectively all services, supplies, materials and equipment for the State or any department or agency thereof in a manner that will best secure the greatest possible economy consistent with the grade or quality of the services, supplies, materials and equipment best adapted for the purposes for which they are needed. Whenever supplies and materials are available for purchase that are composed in whole or in part of recycled materials and are shown by the seller, supplier or manufacturer to be equal in quality and are competitively priced, except for paper and paper products, the Director of the Bureau of General Services shall purchase such recycled supplies and

materials. The Director of the Bureau of General Services shall also review procurement procedures and bid specifications for the purchase of products and materials to ensure, to the maximum extent feasible, the purchase of products or materials that are made with recycled materials or may be recycled or reused once discarded. For the purposes of this section and section 1812-B, "recycled materials" means materials that are composed in whole or in part of elements that are reused or reclaimed. [PL 1991, c. 780, Pt. Y, §67 (AMD).]

The Trustees of the University of Maine System may authorize the Department of Administrative and Financial Services to act for them in any purchases. [PL 1991, c. 780, Pt. Y, §67 (AMD).]

The word "services," when used in this chapter, means any and all window cleaning services, elevator repair and maintenance services, laundry service, linen supply service, dry cleaning service, janitor service, floor maintenance service, rubbish and garbage disposal service, tree surgeon service, all types of office machine repair and maintenance service, exterminator service, refrigerator repair and maintenance service and oil burner repair and maintenance service when any such service is performed by an independent contractor. The Director of the Bureau of General Services may, with the approval of the Commissioner of Administrative and Financial Services add to or eliminate from the various types of service set forth in this paragraph such services performed by independent contractors as may be considered by the director to be in the best interests of the State. [PL 1991, c. 780, Pt. Y, §67 (AMD).]

SECTION HISTORY

PL 1969, c. 300, §1 (AMD). PL 1975, c. 739, §1 (AMD). PL 1985, c. 779, §17 (AMD). PL 1985, c. 785, §A72 (AMD). PL 1987, c. 402, §A43 (AMD). PL 1989, c. 585, §C1 (AMD). PL 1991, c. 374, §1 (AMD). PL 1991, c. 780, §Y67 (AMD).

§1812-A. Report on purchase of recycled products

The State Purchasing Agent shall report on or before January 1st of the First Regular Session of each Legislature to the joint standing committee of the Legislature having jurisdiction over natural resources on the State's efforts to purchase supplies and materials composed in whole or in part of recycled materials. The State Purchasing Agent shall also report on any procurement policies, incentives, educational programs, promotional efforts or other activities undertaken by the Bureau of Purchases to encourage the purchase of those supplies and materials. The State Purchasing Agent shall include in the report any recommendations to increase or facilitate the purchase of those supplies and materials. [PL 1989, c. 585, Pt. C, §2 (AMD).]

SECTION HISTORY

PL 1987, c. 517, §1 (NEW). PL 1989, c. 585, §C2 (AMD).

§1812-B. Purchasing of paper and paper products

1. Purchase of paper and paper products with recycled material content. Subject to subsection 3, the State Purchasing Agent shall provide that of the total dollar amount spent in each fiscal year on paper and paper products purchased by the State:

A. On or after October 1, 1989, not less than 15% shall be spent on paper and paper products with recycled material content; [PL 1989, c. 585, Pt. C, §3 (NEW).]

B. On or after October 1, 1991, not less than 30% shall be spent on paper and paper products with recycled material content; and [PL 1989, c. 585, Pt. C, §3 (NEW).]

C. On or after October 1, 1993, not less than 50% shall be spent on paper and paper products with recycled material content. [PL 1989, c. 585, Pt. C, §3 (NEW).]
[PL 1989, c. 585, Pt. C, §3 (NEW).]

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

[PL 1989, c. 585, Pt. C, §3 (NEW).]

3. Bids; price preference. A person who submits a bid for a contract to supply paper or paper products shall certify the percentage and nature of any recycled materials content in the product subject to bid. Bids offering paper or paper products with recycled material content that are within 10% of the lowest bid that meets all other specifications may receive up to a 10% price preference. Any bids to supply paper or paper products with recycled material content that exceed by more than 10% the low bid which meets all other specifications shall not be considered. If no bids are received on a request for bids which offer paper or paper products with recycled material content, the State Purchasing Agent may award the contract to a bidder whose paper or paper product has substandard percentages of or no recycled materials content.

[PL 1989, c. 585, Pt. C, §3 (NEW).]

SECTION HISTORY

PL 1989, c. 585, §C3 (NEW).

§1812-C. Use of composted and recycled organic materials and reclaimed soil and residuals

1. Activities. All state agencies shall, to the maximum extent practical and consistent with sound environmental practices, use composted and recycled organic materials and reclaimed soil and residuals in the following activities:

A. All land maintenance activities that are paid for by public funds; [PL 1991, c. 374, §2 (NEW).]

B. All construction activities that are paid for by public funds; and [PL 1991, c. 374, §2 (NEW).]

C. All land maintenance and construction activities that are awarded through grant-in-aid-programs to municipalities. [PL 1991, c. 374, §2 (NEW).]

[PL 1991, c. 374, §2 (NEW).]

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

[PL 1991, c. 374, §2 (NEW); PL 2011, c. 657, Pt. W, §5 (REV).]

SECTION HISTORY

PL 1989, c. 585, §C3 (NEW). PL 1991, c. 374, §2 (RPR). PL 2011, c. 657, Pt. W, §5 (REV).

§1812-D. Coordination of procurement information and policies

The Bureau of Purchases shall coordinate with the Department of Transportation, the Department of Agriculture, Conservation and Forestry and the Department of Environmental Protection to develop a central database of information including, but not limited to, procurement policies, market information, technical data and demonstration project results. This data must be compiled annually and provided to local public agencies by the Department of Environmental Protection. [PL 2017, c. 475, Pt. A, §4 (AMD).]

SECTION HISTORY

PL 1989, c. 585, §C3 (NEW). PL 2011, c. 657, Pt. W, §5 (REV). PL 2017, c. 475, Pt. A, §4 (AMD).

§1812-E. Purchasing of vehicles; fuel efficiency

Except for cars and light duty trucks purchased for law enforcement and other special use purposes as designated by the State Purchasing Agent, the State Purchasing Agent may not purchase or lease any car or light duty truck for use by the State or any department or agency of the State unless: [PL 1991, c. 207 (NEW).]

1. 1993 standards. Beginning January 1, 1993, the car has a manufacturer's estimated highway mileage rating of at least 30 miles per gallon and the light duty truck has a manufacturer's estimated highway mileage rating of at least 24 miles per gallon; [PL 1991, c. 207 (NEW).]

2. 1997 standards. Beginning January 1, 1997, the car has a manufacturer's estimated highway mileage rating of at least 38 miles per gallon and the light duty truck has a manufacturer's estimated highway mileage rating of at least 30 miles per gallon; and [PL 1991, c. 207 (NEW).]

3. 2000 standards. Beginning January 1, 2000, the car has a manufacturer's estimated highway mileage rating of at least 45 miles per gallon and the light duty truck has a manufacturer's estimated highway mileage rating of at least 35 miles per gallon. [PL 1991, c. 207 (NEW).]

For the purposes of this section, the terms "car" and "light duty truck" have the same meaning as in the federal Department of Energy Publication DOE/CE-0019/10, or any successor publication. [PL 1991, c. 207 (NEW).]

SECTION HISTORY

RR 1991, c. 1, §8 (COR). PL 1991, c. 207 (NEW). PL 1991, c. 246, §3 (NEW).

§1812-F. Water conservation devices; purchase and installation

The purchase and installation of faucets, shower heads, toilets and urinals is subject to section 1762-A. [PL 1991, c. 246, §3 (NEW).]

SECTION HISTORY

RR 1991, c. 1, §8 (RNU). PL 1991, c. 246, §3 (NEW).

§1812-G. Payment for hotel rooms

A hotel, motel or other establishment that provides lodging may directly bill a state agency in connection with a state employee who travels on state business. A state agency may use a purchase order to procure lodging. [PL 2001, c. 120, §1 (NEW).]

SECTION HISTORY

PL 2001, c. 120, §1 (NEW).

§1813. Rules and regulations

The Director of the Bureau of General Services, with the approval of the Commissioner of Administrative and Financial Services, may adopt, modify or abrogate rules for the following purposes: [PL 1991, c. 780, Pt. Y, §68 (AMD).]

1. Direct purchases. Authorizing any state department or agency to purchase directly certain specified services, supplies, materials and equipment, limiting their powers in relation thereto, and describing the manner in which purchases shall be made;

2. Purchase and distribution of supplies. Prescribing the manner in which the supplies, materials and equipment shall be purchased, delivered, stored and distributed;

3. Monthly reports. Requiring monthly reports by state departments or agencies of stocks of supplies, materials and equipment on hand and prescribing the form of such reports;

4. Requisitions and estimates. Prescribing the dates for making requisitions and estimates, the periods for which they are to be made, the form thereof and the manner of authentication;

5. Inspection and tests. Prescribing the manner of inspecting all deliveries of supplies, materials and equipment, and making chemical and physical tests of samples submitted with bids and samples from deliveries;

6. Surplus property. Providing for transfer of supplies, materials and equipment that are surplus from one state department or agency to another that may need them, and for the disposal by private and public sale of supplies, materials and equipment that are obsolete and unusable. Political subdivisions, educational institutions, fire departments or qualifying nonprofit organizations as defined in section 1828, subsection 1, must be given an opportunity to purchase the surplus items through private sale. If 2 or more political subdivisions, educational institutions, fire departments or qualifying nonprofit organizations are interested in any item, the sale must be the result of competitive bid. Any equipment so purchased must be retained for a period of at least one year in a current ongoing program. Any item purchased by a political subdivision, educational institution, fire department or qualifying nonprofit organization under this section may not be sold or transferred by that political subdivision, educational institution, fire department or qualifying nonprofit organization for a period of 6 months from the date of the private sale, except that a qualifying nonprofit organization that contracts with the Department of Health and Human Services to provide vehicles to low-income families may resell a passenger vehicle or light truck purchased in the private sale to a low-income family to assist it in participating in work, education or training pursuant to the qualifying nonprofit organization's contract with the Department of Health and Human Services. The State reserves the right to refuse to sell additional equipment to a political subdivision, educational institution, fire department or qualifying nonprofit organization if it is determined that the political subdivision, educational institution, fire department or qualifying nonprofit organization has not retained the equipment for the required period of 6 months; [PL 2005, c. 386, Pt. H, §8 (AMD).]

7. Deposit or bond with bids. Prescribing the amount of deposit or bond to be submitted with a bid on a contract and the amount of bond to be given for the faithful performance of a contract;

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

SECTION HISTORY

PL 1975, c. 161 (AMD). PL 1985, c. 158, §2 (AMD). PL 1985, c. 785, §A73 (AMD). PL 1987, c. 395, §A21 (AMD). PL 1989, c. 596, §O1 (AMD). PL 1991, c. 418, §1 (AMD). PL 1991, c. 780, §Y68 (AMD). PL 2001, c. 529, §1 (AMD). PL 2003, c. 37, §1 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 386, §H8 (AMD).

§1813-A. Sale of surplus property

(REPEALED)

SECTION HISTORY

PL 1985, c. 158, §3 (NEW). PL 1985, c. 785, §A74 (AMD). PL 1989, c. 596, §O2 (RPR). PL 1991, c. 418, §§2,3 (AMD). PL 1991, c. 716, §6 (AMD). RR 2001, c. 2, §A7 (COR). PL 2001, c. 529, §2 (AMD). PL 2003, c. 37, §§2,3 (AMD). PL 2003, c. 545, §5 (REV). PL 2003, c. 689, §B6 (REV). PL 2005, c. 386, §H9 (RP).

§1813-B. Cost-savings information available through the Internet

The Director of the Bureau of General Services shall make cost-savings information for the award winners of all competitively bid contracts for services for the State available through the department's publicly accessible site on the Internet. For a contract with a new contractor, the cost-savings information must, where applicable, include projected savings of the contract over the State's costs of providing the same service and include the amount of savings over the previous contractor's contract. For a contract with a contractor renewing or extending a contract for the first time, the cost-savings information must, where applicable, include details of cost-savings for the expiring contract over the previous contractor's costs and details of continued cost-savings at or below costs in the current contract adjusted for inflation. For a contract with a contractor renewing or extending a contract beyond a first renewal or extension, the cost-savings information must include details on continued cost-savings at or below costs in the current contract adjusted for inflation. The Director of the Bureau of General Services shall coordinate with all departments and agencies in the State to ensure the collection of the cost-savings information described in this section. The Director of the Bureau of General Services, with the approval of the Commissioner of Administrative and Financial Services, shall establish by rule practices and procedures to make the cost-savings information available on the department's publicly accessible site on the Internet. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2015, c. 345, §1 (NEW).]

SECTION HISTORY

PL 2015, c. 345, §1 (NEW).

§1814. Standardization Committee

(REPEALED)

SECTION HISTORY

PL 1969, c. 300, §§2,3 (AMD). PL 1977, c. 332 (RPR). PL 1983, c. 812, §§25,26 (AMD). PL 1985, c. 785, §A75 (AMD). PL 1989, c. 503, §B18 (AMD). PL 1991, c. 622, §S4 (RP).

§1815. Requisitions required

Except as otherwise provided in chapters 141 to 155 and the rules and regulations adopted hereunder, services, supplies, materials and equipment shall be purchased by or furnished to the State Government or any department or agency thereof only upon requisition to the State Purchasing Agent. The State Purchasing Agent, or his authorized representative, shall examine each requisition submitted to him by any department or agency of the State Government and may revise it as to quantity, quality or estimated cost after consultation with the department or agency concerned.

§1816. Bids, awards and contracts

(REPEALED)

SECTION HISTORY

PL 1969, c. 300, §§4,5 (AMD). PL 1973, c. 731 (AMD). PL 1977, c. 399 (AMD). PL 1979, c. 3, §1 (AMD). PL 1979, c. 586, §§1,2 (AMD). PL 1981, c. 495 (AMD). PL 1981, c. 592 (AMD). PL 1983, c. 194, §§1,2 (AMD). PL 1985, c. 222, §1 (AMD). PL 1985, c. 359, §2 (AMD). PL 1987, c. 737, §§C7,C106 (AMD). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,C10 (AMD). PL 1989, c. 501, §§J1-5 (AMD). PL 1989, c. 785, §1 (RP).

§1816-A. Personal services contracting

1. Conditions; general. Except for contracts requiring specific legislative approval, personal services contracting is permissible when any one of the following conditions is met.

A. The services contracted are not currently available within a state agency, can not be performed satisfactorily by civil service employees or are of such a highly specialized or technical nature that

the necessary expert knowledge, experience or ability is not available through the civil service system. [PL 1997, c. 285, §1 (NEW).]

B. The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as service agreements, include, but are not limited to, agreements to service or maintain office equipment or computers that are leased or rented. [PL 1997, c. 285, §1 (NEW).]

C. The legislative, administrative or legal goals and purposes can not be accomplished by using persons selected pursuant to the civil service system. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings when there is a clear need for a different outside perspective. [PL 1997, c. 285, §1 (NEW).]

D. A state agency needs private counsel because a conflict of interest on the part of the Department of the Attorney General prevents it from representing the agency without compromising the agency's position. A contract entered into under this condition requires the written consent of the Attorney General. [PL 1997, c. 285, §1 (NEW).]

E. The contractor provides equipment, materials, facilities or support services that the State can not feasibly provide in the location where the services are to be performed. [PL 1997, c. 285, §1 (NEW).]

F. The contractor conducts training courses for which appropriately qualified civil service instructors are not and can not be made available. [PL 1997, c. 285, §1 (NEW).]

G. The services are of such an urgent, temporary or occasional nature that the delay incumbent in implementation under civil service would frustrate the purpose. [PL 1997, c. 285, §1 (NEW).]

H. The contracting agency demonstrates a quantifiable improvement in services that can not be reasonably duplicated within existing resources. [PL 1997, c. 285, §1 (NEW).]

[PL 1997, c. 285, §1 (NEW).]

2. Conditions; cost savings. Personal services contracting is permissible to achieve actual cost savings when all the following conditions are met.

A. The contracting agency clearly demonstrates that the proposed contract would result in actual overall cost savings to the State as long as, in comparing costs:

(1) The State's costs of providing the same service as proposed by a contractor are included. These costs must include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment and materials needed to perform the service; and

(2) Any continuing state costs directly associated with a contractor providing a contracted function are included. These continuing state costs include, but are not limited to, those costs for inspection, supervision, monitoring and any pro rata share of existing costs or expenses, including administrative salaries and benefits, rent, equipment costs, utilities and materials. [PL 1997, c. 285, §1 (NEW).]

B. The contract does not adversely affect the State's affirmative action efforts. [PL 1997, c. 285, §1 (NEW).]

C. The contract is awarded in accordance with section 1825-B. [PL 1997, c. 285, §1 (NEW).]

D. The contract includes specific provisions pertaining to the qualifications of the staff that is to perform the work under the contract, as well as a statement that the contractor's hiring practices meet applicable affirmative action and antidiscrimination standards. [PL 1997, c. 285, §1 (NEW).]

E. The potential for future economic risk to the State from potential rate increases or work interruptions by the contractor is minimal. [PL 1997, c. 285, §1 (NEW).]

F. The contract is with a firm or a licensed, registered or otherwise professionally qualified individual. For the purposes of this section, "firm" means a corporation, partnership, nonprofit organization or sole proprietorship. [PL 1997, c. 285, §1 (NEW).]

G. The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by State Government. [PL 1997, c. 285, §1 (NEW).]

H. The contract does not contain standards of performance or employee qualifications lower than existing state standards or minimum qualifications. [PL 1997, c. 285, §1 (NEW).]

I. An equivalent basis for cost comparison between state employee and private contractor provision of services is calculated, as established by rules adopted by the State Purchasing Agent pursuant to section 1825-B, subsection 11, and it is determined that the private contractor provides the best value. [PL 2003, c. 501, §1 (NEW); PL 2003, c. 501, §3 (AFF).]

[PL 2003, c. 501, §1 (AMD); PL 2003, c. 501, §3 (AFF).]

3. Contract information retained. Departments or agencies submitting proposed contracts shall retain all data, including written findings, relevant to the contracts and necessary for a specific application of the standards set forth in subsections 1 and 2.

[PL 1997, c. 285, §1 (NEW).]

4. Access to public records. As a condition of accepting a contract for services under this section, a contractor must agree to treat all records, other than proprietary information, relating to personal services work performed under the contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the contractor and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the contract and information concerning employee and contract oversight and accountability procedures and systems are not proprietary information. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

[PL 2009, c. 221, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 285, §1 (NEW). PL 2003, c. 501, §1 (AMD). PL 2003, c. 501, §3 (AFF). PL 2009, c. 221, §1 (AMD).

§1816-B. Privatization of agency services

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Agency" means a state agency as defined in section 1552, subsection 6, but does not include the quasi-independent state entities listed in section 12021, subsection 6. [PL 2021, c. 332, §3 (NEW).]

B. "Agency cost estimate" means the cost to the agency seeking to privatize services to provide the services in the most cost-efficient manner. "Agency cost estimate" is the total of all direct and indirect costs to provide the services, including but not limited to wages and pension, insurance and other employee benefit costs of agency employees. [PL 2021, c. 332, §3 (NEW).]

C. "Agency employee" means an employee of the agency seeking to privatize services. [PL 2021, c. 332, §3 (NEW).]

D. "Business day" means any calendar day, excluding Saturdays, Sundays and legal holidays listed in Title 4, section 1051. [PL 2021, c. 332, §3 (NEW).]

E. "Commissioner" means the Commissioner of Administrative and Financial Services. [PL 2021, c. 332, §3 (NEW).]

F. "Contract cost" means the total cost to the agency to privatize services. The total cost is the sum of the cost of the proposed bid designated pursuant to subsection 7, the costs of transition from public to private operation, the costs of any additional unemployment and retirement benefits and the costs of monitoring and otherwise administering contract performance. [PL 2021, c. 332, §3 (NEW).]

G. "Contractor" means a nongovernmental person that has entered into a privatization contract with the State. [PL 2021, c. 332, §3 (NEW).]

H. "Dependent" means the spouse or child of an employee if the spouse or child would qualify for dependent status under the United States Internal Revenue Code of 1986 or for whom a support order has been or could be granted under Title 19-A, section 1652, subsection 2. [PL 2021, c. 332, §3 (NEW).]

I. "Employee organization" means an organization that has as its primary purpose the representation of employees in their employment relations with an employer under Title 26, chapter 9-B. [PL 2021, c. 332, §3 (NEW).]

J. "Privatization contract" means an agreement or a combination or series of agreements by which a nongovernmental person agrees with an agency to provide services that are substantially similar to and in lieu of services provided, in whole or in part, by agency employees and that has an agency cost estimate of at least \$500,000 as of October 1, 2021 and annually increased by the amount of increase in the Consumer Price Index compiled by the United States Department of Labor, Bureau of Labor Statistics for the most recent 12-month period for which data are available. "Privatization contract" does not include:

- (1) Any subsequent agreement to a privatization contract, including an agreement resulting from a rebidding of previously privatized service, or an agreement renewing or extending a privatization contract;
- (2) A contract for information technology services provided to an agency if an employee organization representing the agency employees agrees to the terms of the contract in writing; or
- (3) An agreement solely to provide legal, management consulting, planning, engineering or design services. [PL 2021, c. 332, §3 (NEW).]

[PL 2021, c. 332, §3 (NEW).]

2. Privatization of services. Notwithstanding any provision of this chapter or chapter 156 to the contrary, an agency seeking to enter into a privatization contract shall, in consultation with the commissioner, comply with the requirements of this section.

A. Prior to issuing a request for proposals under subsection 5 for the privatization of services, an agency seeking to enter into a privatization contract shall prepare a written statement that includes:

- (1) A summary of the services proposed to be the subject of the privatization contract, including the specific quantity and standard of quality of the services;
- (2) The minimum wage rate for each position for which a contractor may employ a person pursuant to the privatization contract and for which the duties are substantially similar to the duties performed by an agency employee. The minimum wage rate must be the lowest classification under chapter 372 under which the comparable agency employee is paid or the average private sector wage rate for the position as determined by the commissioner from data collected by the Department of Administrative and Financial Services, Bureau of Human Resources and Bureau of General Services, whichever is lower; and

(3) The percentage paid by the State for the costs of health insurance plan coverage for the agency employees who are employed for not less than 20 hours per week and the percentage paid by the State for such costs for any dependent of such an employee. [PL 2021, c. 332, §3 (NEW).]

B. A written statement created by an agency under paragraph A is a public record and must be filed, prior to issuance of a request for proposals, with the commissioner, the Attorney General and employee organizations that represent agency employees. [PL 2021, c. 332, §3 (NEW).]

C. Prior to issuing a request for proposals under subsection 5 for the privatization of services, an agency seeking to enter into a privatization contract shall determine the agency cost estimate. The agency cost estimate is confidential and not a public record until the day after the final day for the agency to receive sealed bids for the privatization contract pursuant to subsection 5, at which time the agency cost estimate becomes a public record and must be filed with the commissioner and the Attorney General. [PL 2021, c. 332, §3 (NEW).]

[PL 2021, c. 332, §3 (NEW).]

3. Employee organization request for review; final agency action. An employee organization representing agency employees may file a written request for review with the commissioner regarding the contents of the written statement required in subsection 2, paragraph A within 10 business days of the date the statement was filed. The commissioner shall issue a written decision on the request for review within 15 business days of receiving the request for review. The commissioner's decision under this subsection constitutes final agency action for the purposes of judicial review under chapter 375, subchapter 7.

[PL 2021, c. 332, §3 (NEW).]

4. Collective bargaining agreement amendment. An employee organization representing agency employees may at any time before the final day for the agency to receive sealed bids pursuant to subsection 5 propose an amendment to any relevant collective bargaining agreement to which the employee organization is a party, but such a proposed amendment may take effect only if the effect of the proposed amendment is to reduce the agency cost estimate below the contract cost. A proposed amendment under this subsection is confidential and not a public record until the day after the final day for the agency to receive sealed bids for the privatization contract pursuant to subsection 5, at which time the proposed amendment becomes a public record and must be filed with the agency, the commissioner and the Attorney General.

[PL 2021, c. 332, §3 (NEW).]

5. Request for proposals. An agency seeking to enter into a privatization contract shall solicit competitive sealed bids for the privatization contract through the request for proposals process. The day designated by the agency upon which it will accept sealed bids must be the same for all parties.

A. The request for proposals for a privatization contract and the privatization contract must require the contractor to:

- (1) Pay a rate no less than the minimum wage rate established pursuant to subsection 2, paragraph A, subparagraph (2) for each position subject to a minimum wage rate;
- (2) Provide, to an employee employed for not less than 20 hours per week and to any dependent of the employee, health insurance plan coverage that is comparable to the health insurance plan coverage provided to agency employees;
- (3) Pay not less than the percentage established pursuant to subsection 2, paragraph A, subparagraph (3) toward the cost of health insurance plan coverage for an employee employed for not less than 20 hours per week and for any dependent of such an employee;

(4) Submit quarterly payroll records to the agency, listing the name, address, social security number, hours worked and hourly wage rate paid for each employee in the previous quarter. Employee names, addresses and social security numbers are confidential;

(5) Offer available employee positions under the privatization contract to qualified agency employees who are displaced or terminated because of the privatization contract and who satisfy the nondiscriminatory hiring criteria of the contractor under subparagraph (6); and

(6) Comply with a policy of nondiscrimination and take affirmative steps to provide equal opportunity for any person protected by the Maine Human Rights Act. [PL 2021, c. 332, §3 (NEW).]

B. The Attorney General may bring a civil action for equitable relief in Superior Court to enforce paragraph A or to prevent or remedy the dismissal, demotion or other action prejudicing any employee as a result of a report of a violation of paragraph A. [PL 2021, c. 332, §3 (NEW).]

C. The term of a privatization contract, including renewals provided for in a privatization contract, may not exceed 5 years unless a longer term is approved by the commissioner. [PL 2021, c. 332, §3 (NEW).]

D. A privatization contract may not be amended for the purpose or effect of avoiding a requirement of this section. [PL 2021, c. 332, §3 (NEW).]

[PL 2021, c. 332, §3 (NEW).]

6. Employee organization bids. Agency employees who are represented by an employee organization may organize and request that the employee organization submit a bid on their behalf to provide the services to be privatized.

A. An employee organization, after consulting with any agency employees seeking to bid on a privatization contract, shall provide adequate resources for the purpose of encouraging and assisting agency employees to organize and submit a bid to provide the services to be privatized. For purposes of this paragraph, "adequate resources" means no less than the minimum level of assistance provided for in:

(1) The terms of the existing collective bargaining agreement covering the agency employees seeking to submit a bid;

(2) The terms of the expired collective bargaining agreement covering the agency employees seeking to submit a bid during the period of collective bargaining negotiations for a new agreement; or

(3) The terms of a comparable collective bargaining agreement covering individuals who provide similar services if the existing or expired collective bargaining agreement does not provide for a minimum level of assistance. [PL 2021, c. 332, §3 (NEW).]

B. An employee organization bid under this subsection may be made as a joint venture with other persons. [PL 2021, c. 332, §3 (NEW).]

C. An employee organization bid under this subsection is confidential and not a public record until the day after the agency designates the proposed winning bidder under subsection 7. [PL 2021, c. 332, §3 (NEW).]

[PL 2021, c. 332, §3 (NEW).]

7. Review of bids; designation of winning bidder. After soliciting and receiving the submitted bids, an agency shall:

A. Publicly designate the bidder to which the agency proposes to award a privatization contract; [PL 2021, c. 332, §3 (NEW).]

B. Determine the contract cost of the designated bid and file a cost analysis with the commissioner and the Attorney General. If the proposed bidder under paragraph A proposes to perform any or all of the contract outside the boundaries of the State, the contract cost must be increased by the amount of any lost income tax revenue to the State caused by the corresponding elimination of agency employees, as determined by the State Tax Assessor; and [PL 2021, c. 332, §3 (NEW).]

C. Determine whether the contract cost under paragraph B is less than the agency cost estimate prepared pursuant to subsection 2, paragraph C. If the contract cost is equal to or more than the agency cost estimate, the agency may not enter into a privatization contract. [PL 2021, c. 332, §3 (NEW).]

If a bid is received from an employee organization, the commissioner, or the commissioner's designee, may include staff from the Department of Administrative and Financial Services, Bureau of Human Resources in the bid review process authorized by section 1825-D.

[PL 2021, c. 332, §3 (NEW).]

8. Negotiation of privatization contract. If the contract cost calculated pursuant to subsection 7, paragraph B is less than the agency cost estimate, the agency may begin negotiating the terms of the privatization contract except that, if an employee organization bid is awarded the privatization contract pursuant to subsection 7, the Department of Administrative and Financial Services, Bureau of Human Resources shall negotiate the terms of the privatization contract with the employee organization. If the contract cost is equal to or more than the agency cost estimate, the agency may not enter into a privatization contract. The privatization contract must be filed with the commissioner and the Attorney General prior to execution.

[PL 2021, c. 332, §3 (NEW).]

9. Attorney General authority. The authority of the Attorney General over the privatization of services is governed by this subsection.

A. At any time during the process of privatizing any services pursuant to this section, the Attorney General may:

(1) Intervene in the process;

(2) Require by summons the attendance and testimony under oath of state employees and the production of documents for the purpose of investigating whether the provisions set forth in this chapter and chapter 156 are met. All documents produced and testimony given to the Attorney General pursuant to this subparagraph are confidential. The Attorney General may seek an order from the Superior Court compelling compliance with a summons issued under this subparagraph; and

(3) Bring an action in Superior Court in the name of the State against an agency when the Attorney General has reason to believe that a requirement of this section has not been met, the agency has acted unlawfully or beyond the scope of its authority, the actions or inactions of the agency are not supported by the record required by this section or the privatization of services is not in the public interest. [PL 2021, c. 332, §3 (NEW).]

B. After the filing of a court action under this subsection, further action by an agency under this section must be stayed unless the court orders otherwise. During the period of the stay, any time period specified for agency action under this chapter or chapter 156 is tolled until the court action is dismissed by the Attorney General or the Superior Court orders an agency to take further action. Relief from the stay may be granted only upon a showing of compelling justification. [PL 2021, c. 332, §3 (NEW).]

C. Except as provided in this paragraph, at least 10 business days prior to commencement of an action under this subsection, the Attorney General shall notify the agency and the commissioner of the proposed action and shall provide the commissioner and the agency an opportunity to confer

with the Attorney General in person or by counsel or other representative as to the proposed action. The Attorney General may proceed without notice upon a showing by affidavit of immediate irreparable harm to the citizens of the State. [PL 2021, c. 332, §3 (NEW).]

D. An action by the Attorney General under this subsection may seek to, among other things, restrain by temporary or permanent injunction the privatization of services under this section, and the court may make such other orders or judgments as may be necessary to prevent the privatization of services. [PL 2021, c. 332, §3 (NEW).]

[PL 2021, c. 332, §3 (NEW).]

10. Rules; forms. The Department of Administrative and Financial Services may prescribe forms and adopt rules to carry out the provisions of this section and to ensure that the competitive bidding process under this section is consistent with the provisions of competitive bids under subchapter 1-A. Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter 2-A.

[PL 2021, c. 332, §3 (NEW).]

SECTION HISTORY

PL 2021, c. 332, §3 (NEW).

§1817. Printing of laws

When the Revisor of Statutes has prepared material for a revision of the entire statutes of the State, the revisor shall deliver the revision prepared for printing to the State Purchasing Agent, who shall contract for the printing, binding and delivery to the State of a sufficient number of volumes to meet the needs of the State and for sale as provided. [PL 2015, c. 102, §8 (AMD).]

SECTION HISTORY

PL 1985, c. 737, §B11 (AMD). PL 2015, c. 102, §8 (AMD).

§1818. Deliveries

Supplies, materials and equipment, purchased or contracted for by the State Purchasing Agent, shall be delivered by him or by the contractor to the department or agency by which or for whom the same are to be used from time to time as required.

§1819. Unlawful purchases

Whenever any department or agency of the State Government, required by chapters 141 to 155 and rules and regulations adopted pursuant thereto, applying to the purchase of services, supplies, materials or equipment through the State Purchasing Agent, shall contract for the purchase of such services, supplies, materials or equipment contrary to chapters 141 to 155 or the rules and regulations made hereunder, such contract shall be void and have no effect. If any such department or agency purchases any services, supplies, materials or equipment contrary to chapters 141 to 155 or rules and regulations made hereunder, the head of such department or agency shall be personally liable for the costs thereof, and if such services, supplies, materials or equipment are so unlawfully purchased and paid for out of state moneys, the amount thereof may be recovered in the name of the State in an appropriate action instituted therefor.

§1820. Motor vehicles sold by State

Any motor vehicle sold by the State shall be sold to the highest bidder. Specific terms of delivery and terms of interim usage prior to delivery shall be stated to the prospective purchaser prior to the time that the State accepts any bid, and such terms shall be complied with by agents or employees of the State having control of the disposition of such motor vehicle or vehicles after any such bids have been accepted. This section shall not apply to the exchange of motor vehicles for new models between the State and authorized dealers.

§1821. Purpose**(REPEALED)**

SECTION HISTORY

PL 1973, c. 198 (NEW). PL 2015, c. 141, §1 (RP).

§1822. Blind-made products**(REPEALED)**

SECTION HISTORY

PL 1973, c. 198 (NEW). PL 1989, c. 14, §1 (AMD). PL 1993, c. 708, §J3 (AMD). PL 1995, c. 560, §F4 (AMD). PL 2015, c. 141, §2 (RP).

§1823. Price determination**(REPEALED)**

SECTION HISTORY

PL 1973, c. 198 (NEW). PL 2015, c. 141, §3 (RP).

§1824. Procurement by State or any political subdivisions of the State**(REPEALED)**

SECTION HISTORY

PL 1973, c. 198 (NEW). PL 1993, c. 708, §J4 (AMD). PL 2015, c. 141, §4 (RP).

§1824-A. Statewide Capital Equipment Fund

1. Fund. The Statewide Capital Equipment Fund, referred to in this section as "the fund," is established as a program account in the General Fund within the Department of Administrative and Financial Services to provide a source of funding for the purchase of items of capital equipment that are emergency in nature and that were not funded or could not have been anticipated and included in the biennial or supplemental budget enacted pursuant to section 1666-A.

[PL 2011, c. 380, Pt. EE, §1 (NEW).]

2. Use of fund. The fund may be used for the purchase of capital equipment, but may not be used to purchase motor vehicles, real property, information technology equipment or any single piece of equipment with a value of more than \$35,000.

[PL 2011, c. 380, Pt. EE, §1 (NEW).]

3. Nonlapsing account. Any unexpended amounts remaining in the fund may not lapse but must be carried forward.

[PL 2011, c. 380, Pt. EE, §1 (NEW).]

4. Application for funds. Departments and agencies seeking funding must submit a request to the Commissioner of Administrative and Financial Services upon forms provided by the Department of Administrative and Financial Services.

[PL 2011, c. 380, Pt. EE, §1 (NEW).]

5. Transfer authority. Funds approved for equipment purchases may be transferred by financial order upon recommendation of the State Budget Officer and approval of the Governor.

[PL 2011, c. 380, Pt. EE, §1 (NEW).]

SECTION HISTORY

PL 2011, c. 380, Pt. EE, §1 (NEW).

§1824-B. State Procurement Review Committee

The State Procurement Review Committee, referred to in this section as "the committee," is established to oversee, subject to the provisions of section 1825-B, subsection 2, the purchase of services subject to this chapter that cost \$1,000,000 or more. The purchase of services that cost less than \$1,000,000 may be subject to this section at the discretion of the chair of the committee. [PL 2021, c. 332, §4 (NEW).]

1. Membership. The membership of the committee includes:

- A. A member of the Governor's staff, appointed by the Governor; [PL 2021, c. 332, §4 (NEW).]
- B. The director of the division of procurement services within the Department of Administrative and Financial Services or the director's designee; [PL 2021, c. 332, §4 (NEW).]
- C. The State Budget Officer or the State Budget Officer's designee; [PL 2021, c. 332, §4 (NEW).]
- D. The State Controller or the State Controller's designee; and [PL 2021, c. 332, §4 (NEW).]
- E. The Attorney General or the Attorney General's designee, serving as a nonvoting member. [PL 2021, c. 332, §4 (NEW).]

The Chief Information Officer or the Chief Information Officer's designee is a committee member when the services to be purchased by a department or agency are within the Chief Information Officer's responsibilities and duties under chapter 163.

[PL 2021, c. 332, §4 (NEW).]

2. Chair. The director of the division of procurement services within the Department of Administrative and Financial Services or the director's designee shall serve as chair of the committee. [PL 2021, c. 332, §4 (NEW).]

3. Unanimous consent. A decision by the committee requires unanimous consent. [PL 2021, c. 332, §4 (NEW).]

4. Requests for review. Prior to issuing a request for proposals, executing a contract or grant or renewing, extending, amending or otherwise altering an existing contract or grant to purchase services that cost \$1,000,000 or more, a department or agency shall submit a request for review to the chair of the committee. The department or agency shall submit to the chair the request for proposals, proposed contract, contract amendment and related contract bid documents, as appropriate. The committee may request additional information and documentation from the department or agency. [PL 2021, c. 332, §4 (NEW).]

5. Attorney General review. If the cost of the request for proposals, contract or grant or renewal, extension, amendment or other alteration to an existing contract or grant is likely to equal or exceed \$3,000,000, the department or agency shall give the Attorney General the opportunity to review the proposal, contract or grant or the renewal, extension, amendment or other alteration to an existing contract or grant prior to submitting a request for review pursuant to subsection 4. The Attorney General, or the Attorney General's designee, may review the terms of the proposal, contract or grant or the renewal, extension, amendment or other alteration to an existing contract or grant and notify the department or agency of any concerns with the terms. [PL 2021, c. 332, §4 (NEW).]

6. Duties. The committee may approve a request to issue a request for proposals, execute a contract or grant or renew, extend, amend or otherwise alter an existing contract or grant subject to this section if the committee finds that:

- A. The service to be provided under the contract or grant cannot be economically provided by a department or agency; [PL 2021, c. 332, §4 (NEW).]

B. The contract or grant is the most economical, effective and appropriate means of providing the service; [PL 2021, c. 332, §4 (NEW).]

C. The contract or grant will not impair the ability of a department or agency to meet its statutory duties and responsibilities under state or federal laws, rules or regulations; and [PL 2021, c. 332, §4 (NEW).]

D. The contract or grant will not diminish the impact of statewide or other budgetary cost-saving initiatives. [PL 2021, c. 332, §4 (NEW).]

[PL 2021, c. 332, §4 (NEW).]

7. Rules; forms. The Department of Administrative and Financial Services may prescribe forms and adopt rules to carry out the provisions of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter 2-A.

[PL 2021, c. 332, §4 (NEW).]

SECTION HISTORY

PL 2021, c. 332, §4 (NEW).

§1825. Prohibitions

All state agencies, except the Department of Transportation, are prohibited from purchasing what is normally classified as heavy equipment not previously authorized by the Legislature through the budget process, without prior written authorization from the Commissioner of Administrative and Financial Services. All purchase requisitions for heavy equipment must indicate the budget year and account that authorized each item of equipment and, if required, contain the written authorization of the Commissioner of Administrative and Financial Services. [PL 1991, c. 780, Pt. Y, §69 (AMD).]

SECTION HISTORY

PL 1985, c. 481, §A13 (NEW). PL 1991, c. 780, §Y69 (AMD).

SUBCHAPTER 1-A

RULES GOVERNING THE COMPETITIVE BID PROCESS

§1825-A. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1989, c. 785, §2 (NEW).]

1. Aggrieved person. "Aggrieved person" means any person who bids on a contract or grant and who is adversely affected, financially, professionally or personally, by that contract or grant award decision.

[PL 2015, c. 179, §1 (AMD).]

2. Approved equal. "Approved equal" means any goods or service other than specified in the bid proposal that in the opinion of the State Purchasing Agent is equivalent in character, quality and performance to the goods or service specified in the bid proposal.

[PL 1989, c. 785, §2 (NEW).]

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

[PL 1989, c. 785, §2 (NEW).]

4. In-state bidder. "In-state bidder" means a person or group of persons whose principal place of business, or a branch of whose business, is located in the State.

[PL 1989, c. 785, §2 (NEW).]

5. Person. "Person" means any individual, business, corporation, association, firm, partnership or other organization, whether profit or nonprofit.

[PL 1989, c. 785, §2 (NEW).]

6. Petitioner. "Petitioner" means any person who has requested a stay of a contract or grant award decision or a hearing of appeal.

[PL 2015, c. 179, §1 (AMD).]

7. Significantly vary. "Significantly vary" means to change, modify, add to, subtract from, substitute or otherwise change a proposal or invitation to bid to an extent that may affect the price of goods or services requested.

[PL 1989, c. 785, §2 (NEW).]

8. Stay. "Stay" means the temporary suspension of a contract or grant award pending an appeal under this subchapter.

[PL 2015, c. 179, §1 (AMD).]

SECTION HISTORY

PL 1989, c. 785, §2 (NEW). PL 2015, c. 179, §1 (AMD).

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

1. Purchases by competitive bidding. The Director of the Bureau of General Services shall purchase collectively all goods and services for the State or any department or agency of the State in a manner that best secures the greatest possible economy consistent with the required grade or quality of the goods or services. Except as otherwise provided by law, the Director of the Bureau of General Services shall make purchases of goods or services needed by the State or any department or agency of the State through competitive bidding.

[PL 1991, c. 780, Pt. Y, §70 (AMD).]

2. Waiver. The requirement of competitive bidding may be waived by the Director of the Bureau of General Services when:

A. The procurement of goods or services by the State for county commissioners pursuant to Title 30-A, section 124, involves the expenditure of \$2,500 or less, and the interests of the State would best be served; [PL 1999, c. 105, §1 (AMD).]

B. The Director of the Bureau of General Services is authorized by the Governor or the Governor's designee to make purchases without competitive bidding because in the opinion of the Governor or the Governor's designee an emergency exists that requires the immediate procurement of goods or services; [PL 1995, c. 119, §1 (AMD).]

C. After reasonable investigation by the Director of the Bureau of General Services, it appears that any required unit or item of supply, or brand of that unit or item, is procurable by the State from only one source; [PL 1991, c. 780, Pt. Y, §70 (AMD).]

D. It appears to be in the best interest of the State to negotiate for the procurement of petroleum products; [PL 1989, c. 785, §2 (NEW).]

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

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

(2) A sharing of project responsibilities and, when appropriate, costs; [PL 2011, c. 555, §1 (AMD).]

F. The procurement of goods or services involves expenditures of \$10,000 or less, in which case the Director of the Bureau of General Services may accept oral proposals or bids; or [PL 1999, c. 105, §2 (AMD).]

G. The procurement of goods or services involves expenditures of \$10,000 or less, and procurement from a single source is the most economical, effective and appropriate means of fulfilling a demonstrated need. [PL 1999, c. 105, §3 (AMD).]

[PL 2011, c. 555, §1 (AMD).]

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

[PL 1991, c. 780, Pt. Y, §70 (AMD).]

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

[PL 1991, c. 780, Pt. Y, §70 (AMD).]

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

[PL 1989, c. 785, §2 (NEW).]

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

[PL 2015, c. 179, §2 (AMD).]

7. Awards to best-value bidder. Except as otherwise provided by law, competitively awarded orders, grants or contracts made by the Director of the Bureau of General Services or by any department

or agency of the State must be awarded to the best-value bidder, taking into consideration the qualities of the goods or services to be supplied, their conformity with the specifications, the purposes for which they are required, the date of delivery and the best interest of the State. If the bidder that was initially awarded the order, grant or contract does not perform, the Director of the Bureau of General Services may cancel the order, grant or contract and award a new order, grant or contract to the 2nd best-value bidder. The order, grant or contract may not be awarded to a bidder that the Director of the Bureau of General Services determined was not in compliance at the time the initial bid was submitted.

[PL 2015, c. 179, §2 (AMD).]

8. Tie bids. The Director of the Bureau of General Services shall award contracts, grants or purchases to in-state bidders or to bidders offering commodities produced or manufactured in the State if the price, quality, availability and other factors are equivalent.

[PL 2015, c. 179, §2 (AMD).]

9. Determination of best-value bidder. In determining the best-value bidder, the Director of the Bureau of General Services or any department or agency of the State shall, for the purpose of competitively awarding a contract or grant, add a percent increase on the bid of a nonresident bidder equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides.

[PL 2015, c. 179, §2 (AMD).]

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

[PL 1997, c. 263, §2 (AMD).]

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

[PL 2015, c. 179, §2 (AMD).]

12. Vendor's fee. The State Purchasing Agent may collect a fee in an amount equal to 1% of the bid from a supplier of apparel, footwear or textiles with a winning bid under this section. The State Purchasing Agent shall apply the fee under this subsection to the costs of implementing and administering the state purchasing code of conduct under section 1825-L, including developing a consortium to monitor and investigate alleged violations of the code of conduct. The State Purchasing Agent shall adopt routine technical rules under chapter 375, subchapter 2-A to carry out the purposes of this subsection.

[PL 2007, c. 193, §1 (NEW).]

13. Vendor's fee report. By January 15th of each year the Director of the Bureau of General Services shall submit a report to the joint standing committee of the Legislature having jurisdiction

over state and local government matters concerning revenue generated by the vendor's fee established in subsection 12.

[PL 2007, c. 193, §2 (NEW).]

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

[PL 2015, c. 179, §2 (AMD).]

SECTION HISTORY

PL 1989, c. 785, §2 (NEW). PL 1991, c. 515, §1 (AMD). PL 1991, c. 780, §Y70 (AMD). PL 1993, c. 640, §1 (AMD). PL 1995, c. 42, §1 (AMD). PL 1995, c. 119, §§1-4 (AMD). PL 1995, c. 387, §1 (AMD). PL 1995, c. 625, §A5 (AMD). PL 1997, c. 263, §§1,2 (AMD). PL 1999, c. 105, §§1-3 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF). PL 2003, c. 501, §2 (AMD). PL 2007, c. 193, §§1, 2 (AMD). PL 2007, c. 328, §1 (AMD). PL 2011, c. 555, §1 (AMD). PL 2015, c. 179, §2 (AMD).

§1825-C. Rulemaking

The State Purchasing Agent shall adopt rules under this subchapter governing the purchase of services, the awarding of grants or contracts and the procedure by which aggrieved persons may appeal award decisions made by a department or agency of State Government. These rules must be adopted in accordance with the Maine Administrative Procedure Act and apply to all departments and agencies of State Government subject to the authority of the Department of Administrative and Financial Services as set forth in this chapter. [PL 2015, c. 179, §3 (AMD).]

SECTION HISTORY

PL 1989, c. 785, §2 (NEW). PL 2007, c. 466, Pt. A, §12 (AMD). PL 2015, c. 179, §3 (AMD).

§1825-D. Public notice and review of bids

The State Purchasing Agent shall make the public aware of contracts and grants for which bids are being requested and the procedure to be used in reviewing bids. Rules adopted under this subchapter must include a clear procedure: [PL 2015, c. 179, §4 (AMD).]

1. Notice. For informing the public about contracts and grants for which proposals are being requested;

[PL 2015, c. 179, §5 (AMD).]

1-A. Request for information. For requesting information from bidders that includes, but is not limited to, the degree to which the bidder meets or exceeds various state and federal regulatory requirements and any other state fiscal impact; [PL 1997, c. 263, §3 (NEW).]

2. Review process. To be used when reviewing competitive bids, including the requirement that written records be kept by each person directly reviewing or ranking bids; [PL 1989, c. 785, §2 (NEW).]

3. Contract or grant award. For determining successful bidders and awarding contracts and grants, including written notification to all bidders upon an award decision made pursuant to a request for proposals and criteria to be used to resolve tie bids; and [PL 2015, c. 179, §5 (AMD).]

4. Criteria for appeals. For the review of any contract or grant award decision appealed under this subchapter. [PL 2015, c. 179, §5 (AMD).]

A department or agency of State Government may not significantly vary the content, nature or requirements of a proposal or invitation to bid issued under this subchapter without immediately notifying all bidders of those changes in writing and allowing sufficient time for bidders to reflect those changes in their bid packages. [PL 1989, c. 785, §2 (NEW).]

A department or agency of State Government may not change or substitute the procedures adopted under this subchapter without the State Purchasing Agent first adopting those changes or substitutions as rules under this subchapter in accordance with the Maine Administrative Procedure Act, chapter 375. [PL 1989, c. 785, §2 (NEW).]

SECTION HISTORY

PL 1989, c. 785, §2 (NEW). PL 1997, c. 263, §3 (AMD). PL 2015, c. 179, §§4, 5 (AMD).

§1825-E. Appeal procedures

The Director of the Bureau of General Services shall ensure that every department or agency of State Government affords aggrieved persons an opportunity to appeal a contract or grant award decision. As provided by this section, rules adopted under this subchapter must establish clear procedures by which an aggrieved person may appeal a contract or grant award decision. [PL 2015, c. 179, §6 (AMD).]

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

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

The Director of the Bureau of General Services shall notify the petitioner in writing of the director's decision regarding the issuance of a stay within 7 days of receipt of the request.

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

[PL 2015, c. 179, §6 (AMD).]

2. Request for hearing of appeal. Persons aggrieved by an agency contract or grant award decision under this subchapter may request a hearing of appeal. Such a request must be made to the Director of the Bureau of General Services in writing within 15 days of notification of the award. The Director of the Bureau of General Services shall grant a hearing of appeal unless:

- A. The Director of the Bureau of General Services determines that:
- (1) The petitioner is not an aggrieved person;
 - (2) A prior request by the same petitioner relating to the same contract or grant award has been granted;
 - (3) The request was made more than 15 days after notice of contract or grant award; or
 - (4) The request is capricious, frivolous or without merit; or [PL 2015, c. 179, §6 (AMD).]
- B. No contract or grant was awarded. [PL 2015, c. 179, §6 (AMD).]

The Director of the Bureau of General Services shall notify the petitioner in writing of the director's decision regarding a request for a hearing of appeal within 15 days of receipt of the request. If a request for a hearing is granted, notification must be made at least 10 days before the hearing date and must include the date and location of the hearing and the names of the appeal committee members. [PL 2015, c. 179, §6 (AMD).]

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

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

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

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

- A. Validate the contract or grant award decision under appeal; or [PL 2015, c. 179, §6 (AMD).]
- B. Invalidate the contract or grant award decision under appeal. [PL 2015, c. 179, §6 (AMD).]

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

[PL 2015, c. 179, §6 (AMD).]

SECTION HISTORY

PL 1989, c. 785, §2 (NEW). PL 1991, c. 780, §Y71 (AMD). PL 1993, c. 192, §1 (AMD). PL 2015, c. 179, §6 (AMD).

§1825-F. Final agency action

Decisions made by an appeal committee under section 1825-E, subsection 3 constitute final agency action on the petitioner's appeal for the purposes of judicial review under chapter 375, subchapter VII. The State Purchasing Agent shall notify a petitioner of a final agency action made under this subchapter in writing within 7 days of the final agency action. Notification of final agency action must include: [PL 1993, c. 192, §2 (AMD).]

- 1. Complaint.** A brief summary of the nature of the petitioner's appeal; [PL 1989, c. 785, §2 (NEW).]

2. Decision. Notification of the decision of the appeal committee; [PL 1989, c. 785, §2 (NEW).]

3. Reasons. An explanation of the reasons for the decision; and [PL 1989, c. 785, §2 (NEW).]

4. Right to judicial review. An explanation of the petitioner's right to judicial review of final agency action. [PL 1989, c. 785, §2 (NEW).]

SECTION HISTORY

PL 1989, c. 785, §2 (NEW). PL 1993, c. 192, §2 (AMD).

§1825-G. Failure to act

Failure or refusal of the State Purchasing Agent to adopt rules under this subchapter is sufficient grounds for an aggrieved person to request judicial review of agency rulemaking pursuant to section 8058. In the event that a judicial declaration of an invalid rule is made under this section and section 8058, the contract or grant award under appeal becomes immediately void and of no legal effect. [PL 2015, c. 179, §7 (AMD).]

SECTION HISTORY

PL 1989, c. 785, §2 (NEW). PL 2015, c. 179, §7 (AMD).

§1825-H. Deadline for adoption of rules

The State Purchasing Agent shall adopt rules implementing this subchapter no later than January 1, 1991. [PL 1989, c. 785, §2 (NEW).]

SECTION HISTORY

PL 1989, c. 785, §2 (NEW).

§1825-I. Consultants

While under contract or working pursuant to a grant with the State, a consultant may use state facilities and state property only for the project or projects to which a contract or grant applies. [PL 2015, c. 179, §8 (AMD).]

SECTION HISTORY

PL 1993, c. 71, §1 (NEW). PL 2015, c. 179, §8 (AMD).

§1825-J. Reports

When a state agency enters into a contract or grant with a nongovernmental entity, and the contract or grant includes a report to the agency, the contract or grant must require that the report be in writing or in another reproducible nontransitory medium and be submitted to the agency. The report must express all of the substantive conclusions disclosed to the agency and either summarize the information and data or identify the source of the information and data on which those conclusions are based. Once the report is submitted, the agency shall retain at least one copy of the report in its custody. This section applies to contracts and grants with a total cost of \$10,000 or more. [PL 2015, c. 179, §9 (AMD).]

SECTION HISTORY

PL 1999, c. 623, §1 (NEW). PL 2015, c. 179, §9 (AMD).

SUBCHAPTER 1-B

**STATE PURCHASING CODE OF CONDUCT FOR SUPPLIERS OF APPAREL,
FOOTWEAR OR TEXTILES**

§1825-K. Application of state purchasing code of conduct to certain bidders seeking contracts as part of competitive bid process; affidavit required

1. Application. This subchapter applies to competitive bids for sale of apparel, footwear or textiles pursuant to subchapter 1-A.

[PL 2005, c. 554, Pt. A, §1 (NEW).]

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

A. "Code of conduct" means the state purchasing code of conduct that follows the principles set out in section 1825-L. [PL 2005, c. 554, Pt. A, §1 (NEW).]

B. "Independent monitor" means a not-for-profit organization that is neither funded nor controlled, in whole or in part, by businesses that sell or manufacture apparel, footwear or textiles. [PL 2005, c. 554, Pt. A, §1 (NEW).]

[PL 2005, c. 554, Pt. A, §1 (NEW).]

3. Availability of copy of code of conduct. The State Purchasing Agent shall make a copy of the state purchasing code of conduct available to all bidders subject to this subchapter.

[PL 2005, c. 554, Pt. A, §1 (NEW).]

4. Affidavit requirement. The State Purchasing Agent may not accept a bid for the sale of goods covered by this subchapter unless:

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

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

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

(3) That, to the best of the bidder's knowledge, each supplier at the point of assembly of the goods subject to the bid process is in compliance with the code of conduct; and [PL 2005, c. 554, Pt. A, §1 (NEW).]

B. The bidder has submitted a list of the names and addresses of suppliers at the point of assembly of goods subject to the bid process. [PL 2005, c. 554, Pt. A, §1 (NEW).]

[PL 2005, c. 554, Pt. A, §1 (NEW).]

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

[PL 2005, c. 554, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 2001, c. 439, §NNNN1 (NEW). PL 2005, c. 554, §A1 (RPR).

§1825-L. State purchasing code of conduct

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

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

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

"Seeking to protect these local interests through the least discriminatory means available, the State of Maine requires that all bidders seeking contracts to supply the State of Maine with goods covered by this code sign an affidavit stating that they and, to the best of their knowledge, their suppliers at the point of assembly comply with workplace laws of the vendor's or supplier's site of assembly and with treaty obligations that are shared by the United States and the country in which the goods are assembled."

[PL 2001, c. 439, Pt. NNNN, §1 (NEW).]

2. Employment and business conduct; requirements. With respect to goods covered by this subchapter, a company contracting with the State to supply those goods shall adopt and adhere to employment and business practices in accordance with this subsection. A company shall:

A. Comply with all applicable wage, health, labor, environmental and safety laws, legal guarantees of freedom of association, building and fire codes and laws relating to discrimination in hiring, promotion or compensation on the basis of race, disability, national origin, gender, sexual orientation or affiliation with any political, nongovernmental or civic group except when federal law precludes the State from attaching the procurement conditions provided in this subchapter. [PL 2001, c. 439, Pt. NNNN, §1 (NEW).]

B. Comply with all human and labor rights treaty obligations that are shared by the United States and the country in which the goods are assembled. These may include obligations with regard to forced labor, indentured labor, slave labor, child labor, involuntary prison labor, physical and sexual abuse and freedom of association. [PL 2001, c. 439, Pt. NNNN, §1 (NEW).]

[PL 2001, c. 439, Pt. NNNN, §1 (NEW).]

3. Consequences of noncompliance with purchasing code of conduct.

[PL 2005, c. 554, Pt. A, §2 (RP).]

SECTION HISTORY

PL 2001, c. 439, §NNNN1 (NEW). PL 2005, c. 554, §A2 (AMD).

§1825-M. Exception

The State Purchasing Agent may accept and award a bid to a supplier who has not met the requirements provided in section 1825-K if, after reasonable investigation by the State Purchasing Agent, it appears that the required unit or item of supply or brand of that unit or item, is procurable by the State from only that supplier. [PL 2001, c. 439, Pt. NNNN, §1 (NEW).]

SECTION HISTORY

PL 2001, c. 439, §NNNN1 (NEW).

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

The State Purchasing Agent shall provide to bidders and contractors resources to assist with compliance with the state purchasing code of conduct established in this subchapter. These resources must include a list, easily accessed by the public, of bidders and vendors who have adopted the state purchasing code of conduct. [PL 2005, c. 554, Pt. A, §3 (AMD).]

SECTION HISTORY

PL 2001, c. 439, §NNNN1 (NEW). PL 2005, c. 554, §A3 (AMD).

§1825-O. Rulemaking

The State Purchasing Agent shall adopt rules under this subchapter governing the award of bids. Those rules must include specific guidelines for vendors to follow in order to comply with the state purchasing code of conduct and criteria for seeking disclosure of names and addresses of vendors' suppliers and suppliers' working conditions. [PL 2001, c. 439, Pt. NNNN, §1 (NEW).]

Rules adopted under this section are major substantive rules as defined in chapter 375, subchapter II-A. [PL 2001, c. 439, Pt. NNNN, §1 (NEW).]

SECTION HISTORY

PL 2001, c. 439, §NNNN1 (NEW).

§1825-P. Report

By January 15th of each year, the State Purchasing Agent shall submit a report to the joint standing committee of the Legislature having jurisdiction over state and local government matters concerning the administrative and fiscal impact of the requirement that vendors comply with the state purchasing code of conduct; the degree of voluntary compliance with the state purchasing code of conduct; the number of vendors who agreed to and the number that declined to comply with the provisions of this subchapter; and any other information relevant to the state purchasing code of conduct. [PL 2001, c. 439, Pt. NNNN, §1 (NEW).]

SECTION HISTORY

PL 2001, c. 439, §NNNN1 (NEW).

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

1. Complaints alleging noncompliance. The State Purchasing Agent shall initiate an investigation to determine whether a violation of the code of conduct has occurred if:

A. The State Purchasing Agent has independent knowledge that a contractor or a supplier at the point of assembly of goods subject to a contract is not in compliance with the code of conduct; [PL 2005, c. 554, Pt. A, §4 (NEW).]

B. The contractor informs the State Purchasing Agent that the contractor or a supplier at the point of assembly of goods subject to a contract is not in compliance with the code of conduct; [PL 2005, c. 554, Pt. A, §4 (NEW).]

C. A worker for a contractor or for a supplier at the point of assembly of goods subject to a contract files a written complaint directly with the State Purchasing Agent stating that the contractor or

supplier, to the best of the worker's knowledge, is not in compliance with the code of conduct; [PL 2005, c. 554, Pt. A, §4 (NEW).]

D. A 3rd party established and based outside the United States, on behalf of or on the basis of information from a worker or workers, files directly with the State Purchasing Agent a signed and dated written complaint stating that, to the best of the 3rd party's knowledge, a contractor or a supplier at the point of assembly of goods subject to a contract is not in compliance with the code of conduct. If possible, the 3rd party's written complaint must be signed and dated under oath before an official authorized to administer oaths; or [RR 2005, c. 2, §4 (COR).]

E. A 3rd party established and based in the United States, on behalf of or on the basis of information from a worker or workers, files directly with the State Purchasing Agent a written complaint, signed and dated under oath before an official authorized by applicable law to administer oaths, stating that, to the best of the 3rd party's knowledge, a contractor or a supplier at the point of assembly of goods subject to a contract is not in compliance with the code of conduct. [PL 2005, c. 554, Pt. A, §4 (NEW).]

[RR 2005, c. 2, §4 (COR).]

2. Specificity required. Any complaint made to the State Purchasing Agent must state with reasonable specificity each reason a party subject to the complaint is allegedly not in compliance with the code of conduct.

[PL 2005, c. 554, Pt. A, §4 (NEW).]

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

[PL 2005, c. 554, Pt. A, §4 (NEW).]

SECTION HISTORY

RR 2005, c. 2, §4 (COR). PL 2005, c. 554, §A4 (NEW).

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

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

[PL 2005, c. 554, Pt. A, §5 (NEW).]

2. Determination by State Purchasing Agent. The determination of whether a party subject to a complaint is in compliance with the code of conduct is solely that of the State Purchasing Agent.

[PL 2005, c. 554, Pt. A, §5 (NEW).]

3. Notice of determination. After rendering a determination under this section, the State Purchasing Agent promptly shall inform the complainant and contractor in writing.

[PL 2005, c. 554, Pt. A, §5 (NEW).]

SECTION HISTORY

PL 2005, c. 554, §A5 (NEW).

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

1. Action by State Purchasing Agent. Upon determination of a violation of the code of conduct by a contractor or contractor's supplier at the point of assembly of goods covered by this subchapter, the State, through the State Purchasing Agent, shall inform the contractor and engage in discussions

with the contractor about the violation. The purpose of the discussions is to work in partnership with the contractor to influence the contractor to change its practices or to use its bargaining position with the offending supplier to change the supplier's practices, rather than to cease doing business with the contractor or supplier. The State Purchasing Agent shall prescribe appropriate measures to ensure compliance with the code of conduct. These measures may include, but are not limited to:

A. Requesting that each party found not to be in compliance with the code of conduct provide continued access to independent monitors, if available; [PL 2007, c. 193, §3 (AMD).]

B. Requesting that each party found not to be in compliance with the code of conduct offer their workers and managers the training and guidelines necessary to bring the workplace into compliance with the code of conduct; and [PL 2005, c. 554, Pt. A, §6 (NEW).]

C. Requesting that each party found not to be in compliance with the code of conduct demonstrate to the State Purchasing Agent that prescribed changes or improvements have been completed and implemented. [PL 2005, c. 554, Pt. A, §6 (NEW).]

[PL 2007, c. 193, §3 (AMD).]

2. Termination of contract. If, in the opinion of the State Purchasing Agent, a contractor that has been determined as not in compliance with the code of conduct does not make good faith efforts to change its practices or use its bargaining position with an offending supplier to change the supplier's practices, the State Purchasing Agent may take appropriate remedial action including, but not limited to, barring the subject contractor from bidding on future state contracts or terminating the State's contract with the contractor. Reference to the authority given in this subsection must be specifically referenced in the State's contracts with those contractors that are subject to the code of conduct.

[PL 2005, c. 554, Pt. A, §6 (NEW).]

SECTION HISTORY

PL 2005, c. 554, §A6 (NEW). PL 2007, c. 193, §3 (AMD).

§1825-T. Citizens' Code of Conduct Working Group

(REPEALED)

SECTION HISTORY

PL 2007, c. 193, §4 (NEW). PL 2015, c. 491, §2 (RP).

SUBCHAPTER 2

PRODUCTS AND SERVICES FROM REHABILITATION FACILITIES AND WORK CENTERS

§1826-A. Purpose and intent

The Legislature finds that the goal of integrating persons with disabilities into all aspects of community life is enhanced by providing expanded markets for products and services of work centers. The Legislature further believes that work centers provide a valuable means of transitional employment for the State's disabled population and for some, such as the most severely disabled persons, they may offer the only opportunities available for long-term, gainful employment. [PL 2003, c. 515, §1 (AMD).]

In order to assure continued opportunities for persons with disabilities to obtain this employment through work centers, it is the intent of the Legislature to provide reliable and steady income and job opportunities to work centers. It is the purpose of this section and sections 1826-B and 1826-C to ensure

that some portion of state purchases for commodities and services be available to work centers. [RR 2015, c. 1, §1 (COR).]

SECTION HISTORY

PL 1985, c. 359, §3 (NEW). RR 2001, c. 1, §9 (COR). PL 2003, c. 515, §1 (AMD). RR 2015, c. 1, §1 (COR).

§1826-B. Definitions

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [PL 1985, c. 359, §3 (NEW).]

1. Persons with disabilities. "Persons with disabilities" means individuals who have physical or mental impairments that substantially limit one or more major life activities, have a record of those impairments or are perceived to have those impairments. [PL 2003, c. 515, §2 (RPR).]

2. Work center. "Work center" means a program that provides vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement. For the purposes of sections 1826-A and 1826-C, a work center must meet the following conditions:

A. [PL 1999, c. 543, §1 (RP).]

B. Has complied with occupational health and safety standards required by the laws of the United States or this State; [PL 1985, c. 359, §3 (NEW).]

C. Employs during the fiscal year in commodity production or service provision persons with disabilities at a quota of not less than 66% of the total hours of direct labor on all production, whether or not government related; and [PL 2003, c. 515, §3 (AMD).]

D. Has, is part of or demonstrates a formal relationship for support with an ongoing placement program that includes at least preadmission evaluation and annual review to determine each worker's capability for normal competitive employment and maintenance of liaison with the appropriate community services for the placement in the employment of any of its workers who may qualify for that placement. [PL 2003, c. 515, §4 (AMD).]

[RR 2015, c. 1, §2 (COR).]

3. Director. "Director" means the Director of the Bureau of General Services within the Department of Administrative and Financial Services. [PL 2007, c. 395, §2 (NEW).]

SECTION HISTORY

PL 1985, c. 359, §3 (NEW). PL 1999, c. 543, §1 (AMD). PL 2003, c. 515, §§2-4 (AMD). PL 2007, c. 395, §2 (AMD). RR 2015, c. 1, §2 (COR).

§1826-C. Work center purchases

1. Committee established. [PL 2007, c. 395, §3 (RP).]

2. Appointments; terms; compensation. [PL 2007, c. 395, §3 (RP).]

3. Powers and duties. [PL 2007, c. 395, §3 (RP).]

4. Work center purchases schedule. The director shall develop and use a work center purchases schedule. The director shall:

A. Identify and develop a list of all products and services purchased or scheduled to be purchased by State Government; [PL 1985, c. 359, §3 (NEW).]

B. Identify and develop a list of all work centers in the State, including a description of the products and services work centers are currently providing or have recently provided and including an assessment of the products and services that work centers are capable of providing, but have not recently provided; and [PL 1985, c. 359, §3 (NEW).]

C. Develop from the information obtained in paragraphs A and B a work center purchases schedule that describes all products and services to be purchased by the State that, in the view of the director, could be provided by work centers. In developing this schedule, the director shall give consideration to the abilities of work centers to meet contract requirements and to meet generally accepted quality control standards and any potential technical assistance that may be required to enable a work center to compete fairly for contracts, pursuant to this subchapter. [PL 2007, c. 395, §3 (AMD).]

[PL 2007, c. 395, §3 (AMD).]

5. Competitive bidding. The director shall develop procedures for competitive bidding by eligible work centers only for products and services identified on the work center purchase schedule. If no bid is received from a work center for any product or service on the schedule, the director shall confer with the Department of Corrections to determine whether the Department of Corrections is able to provide the product or service at a fair price. If the director and the Department of Corrections do not come to agreement, the product or service must be put out to general bid by the director, in accordance with standard rules and procedures. If only one work center bid is received, the director shall review the bid and make a determination regarding the fairness of the price and terms of the proposed contract. If the director determines that the work center may not be awarded this bid, the director shall confer with the Department of Corrections to determine whether the Department of Corrections is able to provide the product or service at a fair price. If the director and the Department of Corrections do not come to agreement, the contract must be offered for standard competitive bid by the director in accordance with standard rules and procedures.

[PL 2007, c. 395, §3 (AMD).]

6. Award of contracts; fair price. The director has final determination in awarding contracts to work centers through the competitive bidding process. The director's judgment prevails in the determination that the price and contract terms are fair and reasonable both to the work center and to the State. In determining a fair price, the director shall ensure the ability of the work center to recover the costs of labor, material, equipment, overhead and delivery.

[PL 2007, c. 395, §3 (AMD).]

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

[PL 2007, c. 395, §3 (AMD).]

SECTION HISTORY

PL 1985, c. 359, §3 (NEW). PL 1991, c. 515, §2 (AMD). PL 1993, c. 708, §J5 (AMD). PL 1995, c. 560, §§F5,K82 (AMD). PL 1995, c. 560, §K83 (AFF). PL 1999, c. 543, §2 (AMD). PL 2001, c. 354, §3 (AMD). PL 2003, c. 515, §§5-8 (AMD). PL 2003, c. 689, §B6 (REV). PL 2007, c. 395, §3 (AMD).

§1826-D. Sunset

(REPEALED)

SECTION HISTORY

PL 1985, c. 359, §3 (NEW). PL 1987, c. 816, §W (RP).

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