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An Act To Require Responsible Contracting on Public Construction Projects

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

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

SUBCHAPTER 3

RESPONSIBLE CONTRACTING

§ 1826-P. Definitions

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

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

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

3. Construction project. "Construction project" or "project" means a publicly funded project to build, construct or complete major alteration or repair of buildings or public works that is funded with state funds in excess of \$50,000 or receives other financial assistance from the State with a value in excess of \$50,000.

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

5. Craft worker. "Craft worker" is a person who possesses experience and proficiency in a trade involved in building construction.

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

§ 1826-Q. Contractor responsibility certification

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

1. Certification requirements. A contractor submitting a contractor responsibility certification form under this section shall make the following certifications and meet the following requirements.

A. The contractor and its employees shall hold all valid and effective licenses, registrations or certificates required by federal, state, county or local law, rules or ordinances, including, but not limited to, licenses, registrations or certificates required to conduct business in the designated location and to perform the construction, trade or specialty work the contractor proposes to perform.

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

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

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

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

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

G. If the contractor is the prime contractor on the bid, the contractor shall commit to paying all craft workers employed on the project the wage rates and fringe benefits required by prevailing wage law under Title 26, section 1306 and shall commit to requiring all craft workers employed on the project to complete a 10-hour training course for safety established by the United States Department of Labor, Occupational Safety and Health Administration prior to work on the project.

H. The contractor must have participated in a Class A apprenticeship program for the 3 years prior to the date of the bid for each separate trade or occupational classification in which it proposes to employ craft workers on the project and shall commit to continue such participation for the duration of the contract, except that if the contractor participates in a recently formed apprenticeship program for a craft it employs, it may satisfy the apprenticeship requirement by providing documentation that the program in which it participates has been established within the 5 years prior to the date of the bid; is currently registered with and approved by the United States Department of Labor or a

state apprenticeship agency as defined in Title 26, section 3201, subsection 22; provides bona fide apprenticeship training to participants; and is in compliance with the standards and requirements applicable to registered apprenticeship programs under 29 Code of Federal Regulations, Part 29.

I. The contractor shall certify that it has verified the employment eligibility of all craft workers to be used on the project using the Internet-based program operated by the United States Government to allow businesses to determine the eligibility of their employees to work in the United States.

J. The contractor shall certify that it will require craft workers used on the project to pass a drug and alcohol test administered by a 3rd-party entity approved by the bureau that provides at least preemployment and postaccident testing.

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

L. The contractor shall commit to maintain all qualifications, resources and capabilities referenced in the certification form throughout the duration of the project.

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

N. If the contractor is the prime contractor on the bid, the contractor shall certify that, if it receives a notice of intent to award the contract, it will provide a list of all subcontractors and all required subcontractor information under section 1826-R.

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

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

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

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

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

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

3. Public review period. The bureau shall provide a public review period of 21 days following the issuance of the notice of intent to award the contract. Upon issuing the notice of intent to award the contract, the bureau shall make available to the public the contractor responsibility certification forms and the subcontractor list for the prospective awardee through a publicly accessible website or by other comparable means. During the public review period, any person may protest a contractor or subcontractor for failing to meet applicable requirements of this subchapter or on any other relevant grounds by submitting a letter with supporting evidence to the bureau.

4. Bureau review of contractor and subcontractor. After issuing a notice of intent to award the contract, the bureau shall conduct a review, over a period of 30 days, to verify whether the prospective awardee, including the lead contractor and any subcontractors, meets the responsible contractor requirements of this subchapter, meets the requirements of any other applicable laws and rules and possesses the resources, qualifications and capabilities to successfully perform the contract. As part of this review, the bureau shall verify that the contractor responsibility certification form has been submitted and properly executed for the contractor and all designated subcontractors. The bureau may conduct any additional inquiries necessary to verify that the prospective awardee and its subcontractors have a sufficient record of compliance with the law and business integrity to justify the award of the contract. In conducting the inquiries, the bureau may seek relevant information from the contractor, its prior clients or customers, its subcontractors or any other relevant source.

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

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

§ 1826-S. False or misleading information

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

§ 1826-T. Contract execution

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

§ 1826-U. Relationship to other requirements

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

§ 1826-V. Application

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

§ 1826-W. Rules

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

SUMMARY

The purpose of this bill is to ensure that the work on public construction and maintenance contracts is performed by responsible, qualified firms that maintain the capacity, expertise, personnel and other qualifications and resources necessary to successfully perform public contracts in a timely, reliable and cost-effective manner. This bill establishes responsible contractor requirements for publicly funded construction projects that receive state funds in excess of \$50,000 or other financial assistance from the State with a value in excess of \$50,000. The bill outlines a responsible contractor certification process to be administered by the Department of Administrative and Financial Services, Bureau of General Services.