

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Create the Procurement Review Board

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

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

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

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

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

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

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

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

§ 1815. Requisitions required

Except as otherwise provided in subchapter 3 and chapters 141 to 155 and the rules and regulations adopted hereunder under those provisions, services, supplies, materials and equipment ~~shall~~may 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.

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

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

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

§ 1819. Unlawful purchases

Whenever any department or agency of the State Government, required by subchapter 3 and chapters 141 to 155 and rules and regulations adopted pursuant thereto to those provisions, applying to the purchase of services, supplies, materials or equipment through the State Purchasing Agent, ~~shall contract~~ contracts for the purchase of such services, supplies, materials or equipment contrary to subchapter 3 or chapters 141 to 155 or the rules and regulations made hereunder under those provisions, such contract shall be void and have no effect. If any such department or agency purchases any services, supplies, materials or equipment contrary to subchapter 3 or chapters 141 to 155 or rules and regulations made hereunder under those provisions, 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 ~~monies~~ money, the amount thereof may be recovered in the name of the State in an appropriate action instituted therefor.

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

§ 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; authorized purchases are subject to review by the Procurement Review Board under subchapter 3. 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~~ authorizations of the Commissioner of Administrative and Financial Services and the Procurement Review Board.

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

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

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

§ 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. Rules adopted pursuant to this section must be in accordance with the authority of the Procurement Review Board to review, comment upon and approve or disapprove all requests for proposals; bids; and contract renewals, amendments, extensions or other changes to existing contracts pursuant to subchapter 3. 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.

Sec. 10. 5 MRSA §1825-E, first ¶, as amended by PL 2015, c. 179, §6, is further amended to read:

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 except that a decision of the Procurement Review Board under subchapter 3 may not be appealed pursuant to this section. 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.

Sec. 11. 5 MRSA §1825-M, as enacted by PL 2001, c. 439, Pt. NNNN, §1, is amended to read:

§ 1825-M.Exception

The State Purchasing Agent may accept and award a bid, subject to review by the Procurement Review Board under subchapter 3, 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.

Sec. 12. 5 MRSA §1825-O, first ¶, as enacted by PL 2001, c. 439, Pt. NNNN, §1, is amended to read:

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. Rules adopted pursuant to this section must be in accordance with the authority of the Procurement Review Board to review, comment upon and approve or disapprove all requests for proposals; bids; and contract renewals, amendments, extensions or other changes to existing contracts pursuant to subchapter 3.

Sec. 13. 5 MRSA §1826-C, sub-§8 is enacted to read:

8. Review by Procurement Review Board. All contracts awarded pursuant to this section are subject to review by the Procurement Review Board under subchapter 3.

Sec. 14. 5 MRSA c. 155, sub-c. 3 is enacted to read:

SUBCHAPTER 3

PROCUREMENT REVIEW BOARD

§ 1826-E. Procurement Review Board

1. Board established. The Procurement Review Board, referred to in this subchapter as "the board," is established pursuant to section 12004-G, subsection 32-A.

A. The board consists of 7 members:

(1) The Attorney General or the Attorney General's designee;

(2) The Treasurer of State or the Treasurer of State's designee; and

(3) Five members nominated by the Governor and confirmed by a majority vote of the joint standing committee of the Legislature having jurisdiction over state and local government matters and by a majority vote of the Senate. Each member must have demonstrated sufficient business or professional experience in the area of procurement to perform the functions of the board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. The contract is critical or essential to department or agency responsibilities or operations;

B. Insufficient staffing or expertise is available from within the department or agency or through other government entities;

C. The supplies or services required are unique to a specific contractor; or

D. Timeliness in supporting department or agency responsibilities or operations is an immediate concern through no fault of the department or agency and only one known source can meet the department's or agency's needs within the required time frame.

8. Cost overrun. A state department or agency shall notify the legislative committee of jurisdiction of a contract that results in a cost overrun and shall report the dollar amount of the overrun.

9. Staff support. Upon a majority vote of its voting members, the board may employ an executive director, subject to appropriation. The board also may employ a reasonable and necessary number of staff persons, subject to appropriation.

Sec. 15. 5 MRSA §12004-G, sub-§32-A is enacted to read:

32-A.

<u>State Procurement</u>	<u>Procurement Review</u>	<u>Expenses Only</u>	<u>5 MRSA §1826-E</u>
	<u>Board</u>		

Sec. 16. Initial terms of Procurement Review Board. Notwithstanding the Maine Revised Statutes, Title 5, section 1826-E, subsection 1, paragraph C, of the initial confirmed members of the Procurement Review Board, the first member serves for a one-year term, the 2nd and 3rd members serve for 2-year terms and the 4th and 5th members serve for 3-year terms.

SUMMARY

This bill establishes the Procurement Review Board, which is required to review and approve or disapprove all requests for proposals, bids, contract renewals, amendments, extensions or other changes to an existing contract for the State's procurement of supplies, professional or artistic services, construction and real property and capital improvement leases valued at \$1,000,000 or more. The board by majority vote may review procurements valued at less than \$1,000,000.