



STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

Janet T. Mills
GOVERNOR

Bruce A. Van Note
COMMISSIONER

**Testimony of Nina Fisher
Maine Department of Transportation
Before the Joint Standing Committee on Labor and Housing
May 5, 2021**

In Opposition to LD 1633

An Act to Require Responsible Contracting Practices for Public Construction Projects

Senator Hickman, Representative Sylvester and members of the Joint Standing Committee on Labor and Housing, my name is Nina Fisher, Deputy Commissioner at MaineDOT. MaineDOT submits the following testimony in opposition to LD 1633, *An Act to Require Responsible Contracting Practices for Public Construction Projects*.

LD 1633 sets forth requirements for construction projects that receive state funds and establishes a contractor certification process to be administered by the Department of Administrative and Financial Services (DAFS). The bill also requires the use of project labor agreements on projects that receive more than \$10 million of state funds. The provisions of LD 1633 are not new proposals. These provisions, along with others that were not included in this year's bill, were introduced last session as part of LD 1639.

By way of background, in 2020, during a worldwide pandemic, MaineDOT opened 618 bids on 185 projects with a total construction value of \$339,190,506. National estimates indicate that these contracts provided direct, indirect, and induced jobs for 4,409 people. According to the Associated General Contractors (AGC) of Maine, the State of Maine has an estimated 4,800 construction firms, most of which are considered small businesses with fewer than twenty people employed. Approximately 9% of the construction workers are unionized. Passage of this bill would *drastically* reduce the number of bidders on our infrastructure projects. History shows that project bids will increase dramatically with a lack of open, competitive bidding. Competition breeds better prices.

Contractor Responsibility Certification:

As drafted, LD 1633 would require that all MaineDOT projects flow through the Bureau of General Services within DAFS. Imposing this requirement upon MaineDOT will significantly delay our construction contracts. MaineDOT's contracting process is efficient because we can advertise a project, open bids and file a notice of intent award in a short period of time. This is critical due to the short construction season we experience in Maine. Most of our contractors are ready to begin our projects immediately upon learning that they are the low bidder, with the project commencing shortly after the contract is in place.

MaineDOT already has a robust prequalification process for our contractors that addresses the requirements outlined within the bill relating to bonding, defaulting on a project, certification of

not being convicted of a crime, etc. This prequalification process ensures open-competitive bidding as well as qualified and safety conscious contractors. Our timely, efficient, thorough bid review and award process leads to rational and prudent contracting decisions for the State of Maine.

LD 1633 requires that a contractor must have participated in a Class A apprenticeship program for the three years prior to the date of the bid of the project. Most Maine contractors would not be able to satisfy the Class A Apprenticeship Program requirements thereby making them ineligible. Their inability to bid on our projects would *further reduce* the competitive bidding climate.

Contract Award; Public Review; Bureau Review

LD 1633 proposes to require that a contract be awarded to the best-value bidder. Many of MaineDOT's projects include both state and federal funding. The Federal Highway Administration (FHWA) requires that federally funded projects use a low-bid system for construction projects. This provision of the bill would put us at odds with this federal requirement and could jeopardize our more than \$200 million received annually in federal funding.

LD 1633's requirement of public and bureau review will add costly delays to an already time limited construction season and will further deter interest from bidders, resulting in increased construction cost due to a lack of bids.

Project Labor Agreements

While this provision of LD 1633 only applies to projects over ten million dollars, the MaineDOT still has many projects of this size within our Three-Year Workplan. These projects are currently performed by qualified Maine companies that would not meet this project labor agreement requirement. The success of these companies, who employ Maine people, is dependent on the ability to bid and perform the type of work that MaineDOT advertises. LD 1633 would limit their ability to do so and limit the number of contractors able to bid on our projects. Competition breeds better prices.

The United States is currently experiencing a significant decline in the construction labor market and Maine is no different. We have seen a steady decline from our largest to smallest contractors. This results in less competition and increased costs on projects. To entice more contractors to bid our work, MaineDOT has made significant efforts over the past few years to make contracting more streamlined. Competition results in lower construction costs and a *better value* for the Maine taxpayer. Passage of this bill would negatively impact this effort, tying the hands of our contractors and adding layers that would be required of a "responsible" bidder. The end result will be that MaineDOT, Maine taxpayers, and the users of our system will pay more for construction projects. An increase in cost will result in fewer projects being completed.

It is for these reasons that we request that the committee vote ought not to pass on LD 1633.