

### §1743. Public improvement construction contracts

The Department of Administrative and Financial Services through the Bureau of General Services shall award a contract in accordance with this section for any public improvement that the State or any of its agencies hold in fee involving a total cost in excess of \$100,000, except contracts for professional, architectural and engineering services. The bureau may reject any public improvement bid, qualification package or proposal when it determines that to do so is in the best interests of the State. The contract must be awarded by competitive bid as provided in subsection 2 or by the bid method provided in subsections 3 to 7 for alternative methods of project delivery. [PL 2001, c. 271, §1 (RPR).]

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

A. "Bureau" means the Bureau of General Services. [PL 2001, c. 271, §1 (NEW).]

B. "Construction-manager-advisor method" means a method of project delivery in which the bureau engages a single firm for a fee to advise and consult with the bureau as to design and construction and may include consultation as to the selection of one or more design professionals to furnish the design when trade contracts for performance are held directly by the bureau. The firm is contractually bound to manage the schedule and budget to ensure adherence to both by the trade contractors. [PL 2001, c. 271, §1 (NEW).]

C. "Construction-manager-at-risk method" means a method of project delivery in which the bureau engages a single firm for a fee to advise and consult with the bureau as to design and construction and separately engages one or more design professionals to furnish the design, and in which the firm is responsible to the bureau for schedule and price. The firm engaged to act as construction manager at-risk may perform all or a portion of the work on the project at the bureau's discretion. [PL 2001, c. 271, §1 (NEW).]

D. "Design-build method" means a method of project delivery in which a single firm is contractually responsible to perform design, construction and related services. [PL 2001, c. 271, §1 (NEW).]

E. "Design-build team" means representatives of an individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship or other entity that submits a prequalification package in response to a request for qualifications under subsection 5, paragraph A, subparagraph (2). [PL 2001, c. 271, §1 (NEW).]

F. "Director" means the Director of the Bureau of General Services. [PL 2001, c. 271, §1 (NEW).]

G. "Proposer" means an individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship or other entity that submits a proposal. [PL 2001, c. 271, §1 (NEW).]

H. "Quality" means those features that the bureau determines are most important to the project. "Quality" includes design quality; feasibility of construction; long-term maintenance costs; life-cycle costs, particularly energy efficiency; service life; and other factors the bureau determines in the best interest of the State. [PL 2001, c. 271, §1 (NEW).]

I. "Review panel" means the Alternative Delivery System Review Panel established in subsection 4. [PL 2001, c. 271, §1 (NEW).]

[PL 2001, c. 271, §1 (NEW).]

**2. Competitive bids.** A public improvement contract may be awarded under a system of competitive bidding in accordance with this Part and such other conditions as the Governor may prescribe. The competitive bidding process may be waived in individual cases involving emergency circumstances with the written approval of the director.

[PL 2007, c. 9, §1 (AMD); PL 2007, c. 466, Pt. C, §2 (AMD).]

**3. Alternative methods of project delivery.** As an alternative to the competitive bid method provided in subsection 2, a public improvement contract may be undertaken using the construction-manager-advisor, construction-manager-at-risk or design-build method of construction.

A. To the extent the provisions of this section do not address specific alternative delivery procurement, award or administration issues, the provisions may be supplemented at the discretion of the director with the concepts contained in the Bureau's architect-engineer selection procedures that are designed to achieve quality-based selection and with policies and procedures adopted by rule of the bureau with the advice of the review panel. [PL 2001, c. 271, §1 (NEW).]

B. After award of a contract or contracts for a project under an alternative method of delivery, the bureau shall notify all unsuccessful proposers in writing within a reasonable amount of time of the final selection and award, and make available to them all scoring information used in the selection process. Upon award of the contract or contracts and after resolution of any procurement disputes, the bureau shall return documents submitted by unsuccessful proposers upon request. [PL 2001, c. 271, §1 (NEW).]

C. Using the time frames and procedures established in section 1749, this paragraph governs appeals from decisions on alternative methods of project delivery.

(1) Resolution of disputes must be by appeal to the director, whose decision is the final administrative appeal.

(2) Nothing in this paragraph prevents an aggrieved party from seeking judicial review, which may include a request for stay of award pursuant to applicable laws, judicial decisions, rules and any other applicable procedures. [PL 2001, c. 271, §1 (NEW).]

D. The director may adopt rules necessary to implement the provisions for alternative project delivery methods set out in this section in accordance with the Maine Administrative Procedure Act. Prior to the procurement or award of any contract under an alternative delivery method, the director shall adopt by rule policies and procedures to implement that method. Rules adopted under this subsection are routine technical rules pursuant to chapter 375, subchapter II-A. [PL 2001, c. 271, §1 (NEW).]

[PL 2001, c. 271, §1 (NEW).]

**4. Alternative Delivery System Review Panel.** The director shall establish the Alternative Delivery System Review Panel to advise the director in developing alternative project delivery policies, procedures and rules and in selecting public improvement projects for construction under an alternative delivery method.

A. The review panel is composed of 6 members as follows:

(1) Two representatives of the bureau designated by the Commissioner of Administrative and Financial Services;

(2) Two representatives of the construction trade, one of whom is a building contractor designated by the president of a state-based organization that represents building contractors and one of whom is designated by the president of a state-based organization that represents specialty contractors;

(3) One representative designated by the president of a state-based organization that represents architects; and

(4) One representative designated by the president of a state-based organization that represents consulting engineers.

The private sector members serve terms of 3 years each and each appointing authority shall designate an alternate who shall serve in the event of a conflict of interest. [PL 2001, c. 271, §1 (NEW).]

B. In making a recommendation on selection of projects to the bureau, the review panel shall consider the following criteria:

- (1) Technical complexity of the project;
- (2) Substantial time or schedule savings that are necessary to the success of the project;
- (3) Project cost control;
- (4) The bureau's capacity to plan and manage the selected alternative project delivery method of construction, either in house or through outside contract;
- (5) Consistency and fairness in the procurement process;
- (6) Assurance of competition; and
- (7) Advancement of the public interest. [PL 2001, c. 271, §1 (NEW).]

[PL 2001, c. 271, §1 (NEW).]

**5. Design-build method.** The design-build method must be consistent with guidelines approved by a national architect, general contractor or design-build organization or a combined or modified version of the guidelines approved by those entities, with the final design-build procedures and documents to be determined at the discretion of the bureau. The bureau may prequalify design-build teams using criteria that must include at a minimum those set forth in section 1747 and may also include additional criteria considered appropriate by the director.

A. Selection of the design-build teams is governed by this paragraph.

(1) Prior to publication of a request for qualifications, the bureau shall develop concept and schematic designs incorporating a detailed set of program requirements for the project using the services of a qualified architect, engineer or other professional who is selected using the bureau's architect-engineer selection rules. Individuals who are involved in developing the project's program requirements may not participate in the design-build teams.

(2) For each project, the bureau shall publish a request for qualifications in at least 2 newspapers distributed in the State, one of which must be the Kennebec Journal. The bureau shall issue a request-for-qualifications package to all firms requesting one in accordance with the notice. The bureau shall evaluate and rate all firms submitting a responsive statement of qualifications and select the most qualified firms to receive a request for proposals. Selection criteria at this stage include at a minimum the ability of the competitor to satisfactorily carry out the project design and construction requirements, past performance, relevant experience and financial capacity to perform. The bureau may select a short list of 3 to 5 firms. The bureau may pay a reasonable stipend to all responsive proposers who were not selected. The amount of the stipend must be published together with the evaluation criteria in the request for proposals.

(3) The request for proposals must set forth the scope of work, design parameters, construction requirements, time constraints and all other requirements that the bureau determines have a substantial impact on the cost or quality of the project and the project development process. The request for proposals must include the criteria for acceptable proposals and state clearly what weight will be assigned to each criterion. A description of the scoring process and quality criteria to be used to judge the proposals must also be contained in the request for proposals. As part of the selection process, proposers must make oral presentations to the selection panel established under subparagraph (4).

(4) The director shall appoint members of a selection panel for each project. The selection panel in both the request-for-qualifications and request-for-proposals phases must include design and construction professionals from within the bureau, design and construction professionals from outside the bureau and individuals who will use the facility.

(5) Each proposal must be submitted to the bureau in 2 separate components: a sealed technical proposal and a sealed price proposal. These 2 components must be submitted simultaneously. The selection panel shall first open and evaluate and score each responsive technical proposal based on the quality criteria contained in the request for proposals. Nonresponsive proposals must be rejected. During this evaluation process, the price proposals must remain sealed and all technical proposals are confidential. After completion of the evaluation of the technical proposals, the selection panel shall publicly open and read each price proposal. The bureau shall award the contract to the proposer with the lowest price per quality score point, as long as that proposal meets all request-for-proposals requirements. The bureau shall be permitted to modify the scoring of price and quality in accordance with rules adopted by the bureau. [PL 2001, c. 271, §1 (NEW).]

[PL 2001, c. 271, §1 (NEW).]

**6. Construction-manager-at-risk method.** The construction-manager-at-risk method must be consistent with the concepts set forth in a standard form of agreement between an owner and a construction manager when the construction manager is also the constructor as established by national architect or general contractor organizations. The final procedures and documents for this method of delivery are determined at the discretion of the director.

A. The bureau shall publish in at least 2 newspapers distributed in the State, one of which must be the Kennebec Journal, a request for qualifications that must contain the evaluation criteria upon which proposals are evaluated. Evaluation criteria include project size and scope, and relevant experience and financial and staff capability of proposers. The bureau shall evaluate the proposals and determine which proposers, if any, are qualified to perform the project. The bureau may select a short list of 3 to 5 firms. [PL 2001, c. 271, §1 (NEW).]

B. Proposers determined to be qualified must be invited to submit a fee proposal. The bureau shall, in advance of soliciting a fee proposal, publish the evaluation criteria upon which the proposers are evaluated. Evaluation criteria at a minimum must include the following:

- (1) Fee;
- (2) Technical capacity;
- (3) Management plan and project schedule if available;
- (4) Experience;
- (5) Past performance;
- (6) Technical approach; and
- (7) Composition and qualifications of the proposers' workforce.

As part of the selection process, proposers must make oral presentations to the selection panel established under paragraph C. [PL 2001, c. 271, §1 (NEW).]

C. The director shall appoint members of a selection panel for each project. The selection panel must include representatives of the owner, designer, if selected, and individuals who will use the facility. From among the proposals submitted, the bureau shall select the most advantageous proposal that meets the published evaluation criteria. [PL 2001, c. 271, §1 (NEW).]

D. Subcontractors must be selected in accordance with the following provisions. The bureau shall create a subcontractor prequalification panel, composed of a representative from the designer, the

construction manager and the bureau. The construction manager shall develop detailed bid packages based on the industry standard practice. The bureau shall advertise in at least 2 newspapers distributed in the State, one of which must be the Kennebec Journal, for requests for qualifications for each trade. The subcontractor prequalification panel shall, from the qualifications submitted, determine a short list of trade contractors who must be permitted to submit bids in accordance with the bid package requirements, pursuant to a publicly advertised process and deadline. Bids must be opened publicly and be awarded to the lowest responsive eligible bidder.

[PL 2001, c. 271, §1 (NEW).]

[PL 2001, c. 271, §1 (NEW).]

**7. Construction-manager-advisor method.** The construction-manager-advisor method must be consistent with the standard scope of services employed by the bureau in public improvement projects.

A. The bureau shall publish in at least 2 newspapers distributed in the State, one of which must be the Kennebec Journal, a request for proposals that identifies the evaluation criteria upon which proposers are evaluated. Evaluation criteria must include:

- (1) Fee;
- (2) Technical capacity;
- (3) Management plan;
- (4) Experience;
- (5) Past performance; and
- (6) Composition of the project team, with individual resumes.

As part of the selection process, proposers must make oral presentations to the selection panel established under paragraph B. [PL 2001, c. 271, §1 (NEW).]

B. The director shall appoint members of a selection panel for each project. The selection panel must include representatives of the owner, designer, if selected, and individuals who will use the facility. From among the proposals submitted, the bureau shall select the most advantageous proposal according to the published evaluation criteria. [PL 2001, c. 271, §1 (NEW).]

C. The position of general contractor must be awarded to the lowest responsive and eligible bidder. Additional trade contracts, if any, must be awarded to the lowest responsive and eligible bidder or bidders. [PL 2001, c. 271, §1 (NEW).]

[PL 2001, c. 271, §1 (NEW).]

**8. Owner's representative.** The bureau may employ a qualified individual to represent the owner on any public improvement project awarded under the competitive bid process provided in subsection 2 or an alternative method of project delivery provided in subsection 3. Owner's representative services must be consistent with the standard scope of services employed by the bureau. The services of the owner's representative must be procured in a manner consistent with the bureau's rules governing selection of architects and engineers or with policies and procedures adopted by rule of the bureau with the advice of the review panel.

[PL 2001, c. 271, §1 (NEW).]

#### SECTION HISTORY

PL 1967, c. 409, §2 (AMD). PL 1973, c. 274, §1 (AMD). PL 1975, c. 771, §82 (AMD). PL 1977, c. 303, §1 (RPR). PL 1985, c. 785, §A69 (AMD). PL 1989, c. 596, §N3 (AMD). PL 2001, c. 271, §1 (RPR). PL 2007, c. 9, §1 (AMD). PL 2007, c. 466, Pt. C, §2 (AMD).

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