

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

PART A

Sec. A-1. 5 MRSA §1825-K, as enacted by PL 2001, c. 439, Pt. NNNN, §1, is repealed and the following enacted in its place:

§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.

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.

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.

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.

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

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.

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.

Sec. A-2. 5 MRSA §1825-L, sub-§3, as enacted by PL 2001, c. 439, Pt. NNNN, §1, is repealed.

Sec. A-3. 5 MRSA §1825-M, as enacted by PL 2001, c. 439, Pt. NNNN, §1, is repealed.

Sec. A-4. 5 MRSA §1825-N, first ¶, as enacted by PL 2001, c. 439, Pt. NNNN, §1, is amended to read:

The State Purchasing Agent shall provide to bidders and ~~those who have been awarded contracts~~ 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.

Sec. A-5. 5 MRSA §1825-Q is enacted to read:

§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;

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;

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;

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 be signed and dated under oath before an official authorized to administer oaths; or

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.

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.

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.

Sec. A-6. 5 MRSA §1825-R is enacted to read:

§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.

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.

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

Sec. A-7. 5 MRSA §1825-S is enacted to read:

§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 access to independent monitors, if available;

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

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.

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.

PART B

Sec. B-1. Rulemaking pursuant to statutory amendment. Notwithstanding the provisions of the Maine Revised Statutes, Title 5, section 1825-O, amendments to rules that are necessitated to ensure consistency with the amendments to state purchasing code of conduct law in Part A are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

PART C

Sec. C-1. Code of conduct working group. The Commissioner of Administrative and Financial Services, or the commissioner's designee, shall convene a working group to explore whether the State Purchasing Agent should investigate alleged violations of the state purchasing code of conduct established in the Maine Revised Statutes, Title 5, chapter 155, subchapter 1-B by the creation and use of an independent fact-finding consortium. If the working group determines that the use of such a consortium is appropriate, the working group also shall examine the means by which such a consortium would be created and function.

1. Membership. The working group must consist of 4 members who are Maine-based advocates for labor rights and just working conditions in the apparel, footwear and textile industry and 4 members who represent Maine-based businesses having business of the type that could be subject to the state purchasing code of conduct. Members shall serve without compensation. The State Purchasing Agent, or the agent's designee, shall serve as an ex officio, nonvoting member of the working group.

2. Convening of working group. The Commissioner of Administrative and Financial Services shall convene the first meeting of the working group. At that meeting, the members shall elect a chair, who shall convene, set the agenda for and facilitate working group meetings.

3. Duties. The working group shall make recommendations to advise the Department of Administrative and Financial Services on the following issues:

A. The appropriateness of the creation and use of an independent consortium to monitor and investigate alleged violations of the state purchasing code of conduct;

B. The factors that should be considered in defining and ensuring the independence of the consortium;

C. The manner in which other local and state governments would become members of the consortium;

D. The fiscal, personnel and equipment resources that would need to be dedicated by the State to create, implement and administrate the use of a consortium; and

E. The process by which a consortium, if used by the State, would investigate and report on complaints brought under the state purchasing code of conduct law.

4. Monthly reports; notice of meetings. The working group shall provide bimonthly progress reports to the joint standing committee of the Legislature having jurisdiction over state and local government matters and shall notify committee members of each meeting of the working group. A final report with recommendations, including, if necessary, recommended proposed legislation, that are supported by at least 5 of the 8 voting members of the working group regarding the creation and use of a consortium must be submitted to the committee on or before January 15, 2007.

5. Termination of working group. The working group terminates January 15, 2007.

SUMMARY

This bill makes several changes to the law regarding the state purchasing code of conduct. Specifically, the bill:

1. Details the process that bidders must follow in filing an affidavit under the law;

2. Describes when investigations by the State Purchasing Agent will be initiated;

3. Sets out the factors that may be taken into account by the State Purchasing Agent in making a determination of whether the code of conduct has been violated;

4. Permits the State Purchasing Agent to take remedial action, including, but not limited to, terminating contracts, against contractors that do not make good faith efforts to comply with the code of conduct; and

5. Eliminates the State's prerogative to contract with noncompliant contractors when no other procurement source option exists.

Part B of the bill provides that changes to rules made to ensure consistency with changes to the law in this bill are routine technical rules.

Part C establishes a working group whose task is to report on whether the State should form an independent consortium to monitor and investigate complaints of violations of the code of conduct and, if so, the manner in which such a consortium would be created and function.