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An Act To Create a Fair Process for Energy Service Companies Contracting with Maine Schools

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

Sec. 1. 20-A MRSA §15915, sub-§1, as amended by PL 2005, c. 499, §1, is further amended to read:

1. Initial agreement. Any school administrative unit may enter into an agreement of up to 15 years with a private party, such as an energy service or 3rd-party financing company, for the design, installation, operation, maintenance and financing of energy conservation or combined energy conservation and air quality improvements at existing school administrative unit facilities. The school administrative unit's costs to enter into such an agreement are not applicable to the unit's school construction project costs, the debt service on which is eligible for subsidy purposes under section 15907. Such an agreement is deemed to be a professional service, which is not subject to the competitive bidding requirements of Title 5, section 1743-A, if the agreement:

- A. ~~Provides for operation or maintenance of the improvement for at least 5 years or the entire term of the financing agreement if longer than 5 years;~~
- B. ~~Requires a guaranty by the contractor that the improvement will meet performance criteria set forth in the agreement for at least 5 years or for the entire term of the financing agreement if longer than 5 years; and~~
- C. ~~Has a total contract cost, excluding interest and operating and maintenance costs, of less than \$2,000,000 for any school building.~~

~~A school administrative unit may~~shall select contractors for these professional services ~~on the basis of a request for qualifications or a request for proposals and it is not required to use~~using a competitive method set forth in this chapter and Title 5, section 1743-A and ~~Private and Special Law 1999, chapter 79. The selection process must include at a minimum a request for qualifications or a request for proposals that is advertised in a newspaper of general circulation in the school administrative unit and a newspaper of general circulation in the City of Augusta. The school administrative unit shall interview not fewer than 3 service providers unless a smaller number of service providers responds to the request for qualifications or requests for proposals ensure that all qualified contractors are allowed to compete fairly on the basis of their qualifications. The~~Unless the school administrative unit uses a model contract developed by the Department of Administrative and Financial Services, Bureau of General Services, the performance criteria in the agreement is subject to approval~~unit's solicitation for bids and any contract for services must be approved by the Department of Administrative and Financial Services, Bureau of General Services~~bureau. A request for qualifications or proposals~~The school administrative unit may not contain terms that require service providers to have more than 3 years of experience in the energy conservation field or the use of equipment that is not generally available to service providers or~~impose

other terms that are otherwise included for the purpose of bias or favoritism toward a particular service provider. Objections to the terms of a request for qualifications or proposals under this subsection are deemed waived if not delivered in writing to the office of the superintendent of schools in that school administrative unit within 21 days of the last publication of the newspaper advertisementBy January 1, 2012, the bureau shall adopt by rule a model contract for services under this section that establishes performance criteria and other terms and conditions that are fair, nondiscriminatory and appropriate to meet the purposes of this subsection. Rules adopted by the bureau under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill removes provisions of law that allow school administrative units to use a process other than a competitive bid process in selecting energy service providers for the design, installation, operation, maintenance and financing of energy conservation or combined energy conservation and air quality improvements. This bill requires the Department of Administrative and Financial Services, Bureau of General Services to adopt by rule a model contract for these services.