

**18-554 DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES,
BUREAU OF GENERAL SERVICES**

**Chapter 130: IMPLEMENTING THE STATE PURCHASING CODE OF CONDUCT
REQUIRING THAT VENDORS FURNISHING APPAREL, FOOTWEAR, OR
TEXTILES TO THE STATE PROVIDE HEALTHY, SAFE, AND FAIR
WORKING CONDITIONS**

Purpose: This Chapter supplements the State purchasing code of conduct, as set forth in 5 M.R.S.A. §1825-K *et seq.*, and applies to competitive bids for sale of apparel, footwear, or textiles pursuant to 5 M.R.S.A., C. 155, sub-c. I-A, and as set forth in 5 M.R.S.A. §1825-B, establishes a fee for vendors for developing a consortium to monitor and investigate alleged violations of the code of conduct.

TABLE OF CONTENTS

§ 1.	DEFINITIONS.....	2
§ 2.	FILING REQUIREMENT.....	3
§ 3.	FEE	4
§ 4.	COMPLAINTS OF NON-COMPLIANCE WITH THE CODE.....	4
§ 5.	DETERMINATIONS OF COMPLIANCE OR NON-COMPLIANCE WITH THE CODE	5
§ 6.	CONSEQUENCES OF A DETERMINATION OF NON-COMPLIANCE WITH THE CODE....	6
§ 7.	SUPPORT TO BIDDERS AND VENDORS	6

§ 1. DEFINITIONS

Unless otherwise stated, for the purposes of this Chapter, the words appearing below are defined as follows:

- A. Bidder.** “Bidder” means a person responding to a solicitation issued by the State of Maine Division of Purchases with a proposal, a bid, or both, to provide to the State a good subject to this Chapter.
- B. Code.** “Code” means the Maine purchasing code of conduct, as set forth in 5 M.R.S.A. §1825-K *et seq.*
- C. Division.** “Division” means the Division of Purchases in the Bureau of General Services, Maine Department of Administrative and Financial Services.
- D. Fee.** “Fee” means a charge made by the State of Maine to a vendor who is under contract to provide goods subject to this Chapter.
- E. Independent monitor.** “Independent monitor” has the meaning given in Title 5, Chapter 155, sub-chapter 1-A of the Maine Revised Statutes Annotated.
- F. Person.** “Person” means any individual, partnership, corporation, association, federal, state or local government entity, or public or private organization of any character.
- G. State Purchasing Agent.** “State Purchasing Agent” means the Director of the Division of Purchases in the Bureau of General Services, Maine Department of Administrative and Financial Services, or the director’s authorized designee.
- H. Sub-vendor.** “Sub-vendor” means a person acting as a vendor’s supplier at the point of assembly of a good covered by this Chapter.
- I. Vendor.** “Vendor” means a person who, after bidding, has been awarded a contract by, and in fact contracts with, the State to provide a good subject to this Chapter.

§ 2. FILING REQUIREMENT

- A.** Any bidder making a competitive bid to sell apparel, footwear, or textiles to the State of Maine must file with the State Purchasing Agent a signed affidavit stating that the bidder, if awarded a State contract, shall comply with the Code and that, to the best of the bidder's knowledge, each sub-vendor named in the bid that would perform work for the bidder if it were awarded a contract, is in compliance with the Code.
- B.** Prior to submitting a bid, the bidder must:

 - 1.** Furnish a copy of the Code to each sub-vendor that would perform work for the bidder if it were awarded the contract, and then,
 - 2.** Affirmatively require that each sub-vendor inform the bidder of whether the sub-vendor is in compliance with the Code.
- C.** The affidavit executed and filed with the State Purchasing Agent by the bidder must be signed by a person authorized to commit the bidder to the Code.
- D.** The affidavit must include the unaltered text of the Code, as well as the following provisions:

 - 1.** A requirement that the bidder must comply with all applicable wage, health, labor, environmental and safety laws, legal guarantees of freedom of association, building and fire codes, and laws relating to discrimination in hiring, promotion, or compensation on the basis of race, disability, national origin, gender, sexual orientation, or affiliation with any political, nongovernmental, or civic group except when federal law precludes the State from attaching the procurement conditions provided 5 M.R.S.A., C. 155, sub-c. 1-B; and
 - 2.** A requirement that the bidder must comply with all human and labor rights treaty obligations—including those obligations regarding forced labor, indentured labor, slave labor, child labor, involuntary prison labor, physical and sexual abuse, and freedom of association—that are shared by the United States and the country in which the goods subject to this Chapter are assembled.
- E.** The affidavit must be signed and dated under oath before an official authorized by applicable law to administer oaths.
- F.** All bidders subject to this Chapter must submit the affidavits described in this section prior to the close of the bidding deadline. Bids that do not include an affidavit must be rejected by the State Purchasing Agent, unless, after reasonable investigation, 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.
- G.** If, after complying with the filing requirements of this Section, a bidder is awarded a contract, the bidder must, during the term of the contract, promptly inform the State Purchasing Agent of any change of which the bidder is aware 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 provisions (A) through (E) of this section.

§ 3. FEE

- A.** Any Vendor, who has been awarded a contract or purchase order for apparel, footwear or textiles from the State of Maine pursuant to the requirements of 5 M.R.S.A. §1825-K shall be subject to a 1% fee of the total amount of the contract or purchase order.
- B.** The State Purchasing Agent shall apply this fee to the costs of implementing and administering the code under section 1825-L, including development of a consortium to developing a consortium to monitor and investigate alleged violations of the code of conduct.
- C.** This payment may be made separately by the vendor and is exclusive of the cost of the contract or purchase order. Payment of the fee is to be made within 30 days of the contract or purchase order execution/start date and is non-refundable.
- D.** In the event of circumstances when the total contract or purchase order value is not known at the time of the contract award, the State Purchasing Agent, is authorized to collect an estimated fee and subsequent installments as often as the State Purchasing Agent determines necessary, up to 180 days following the termination of the contract or purchase order, to equal the amount of the 1% fee.
- E.** Failure to pay the 1% fee may result in:
 - 1.** Loss of future contracts or purchase orders with the State of Maine, at the discretion of the State Purchasing Agent,
 - 2.** Immediate termination of the existing contract, within 30 days of written notification,

§ 4. COMPLAINTS OF NON-COMPLIANCE WITH THE CODE

- A.** The State Purchasing Agent must initiate an investigation to determine whether there has been a violation of the Code if:
 - 1.** The State Purchasing Agent has independent knowledge that a vendor or a sub-vendor is not in compliance with the Code;
 - 2.** The vendor informs the State Purchasing Agent that the vendor or a sub-vendor is not in compliance with the Code;
 - 3.** A worker for a vendor or sub-vendor files a written complaint directly with the State Purchasing Agent that the vendor or sub-vendor, to the best of the worker's knowledge, is not in compliance with the Code;
 - 4.** A third-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 that a vendor or a sub-vendor, to the best of the third-party complainant's knowledge, is not in compliance with the Code. If possible, the third-party's written complaint will be signed and dated under oath before an official authorized to administer oaths;

5. A third-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, that, to the best of the third-party complainant's knowledge, a vendor or a sub-vendor is not in compliance with the Code.

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.

- B. After receiving a complaint, filed in accordance with subsection A, *above*, alleging non-compliance with the Code, the State Purchasing Agent must timely contact, in writing and by certified letter, the vendor that is that subject of the complaint to inform the vendor of, and request a response to, the allegations made within fifteen (15) calendar days of receipt of the certified letter.
- C. The failure to respond to the State Purchasing Agent's request within fifteen (15) calendar days shall be deemed a strong indication that the vendor may not be in compliance with the Code, in which case the State Purchasing Agent shall require the subject vendor to supplement its response with a newly executed affidavit, per section 2, *above*. If a vendor fails to respond within thirty (30) calendar days of receipt of the State Purchasing Agent's certified letter requesting a response, the State Purchasing Agent may initiate further action, up to and including termination of the State's contract with the subject vendor.

§ 5. DETERMINATIONS OF COMPLIANCE OR NON-COMPLIANCE WITH THE CODE

- A. In making a determination of whether there has been a violation of the Code, the State Purchasing Agent may take into account any factors, information, sources of information, and materials deemed reliable and relevant by the State Purchasing Agent, as determined on a case-by-case basis.
- B. The determination of whether a party subject to a complaint is in compliance with the Code shall be solely that of the State Purchasing Agent.
- C. After rendering a determination, the State Purchasing Agent promptly shall inform the complainant and vendor in writing.

§ 6. CONSEQUENCES OF A DETERMINATION OF NON-COMPLIANCE WITH THE CODE

- A.** If a vendor or a sub-vendor is determined by the State Purchasing Agent to be in non-compliance with the Code, the State Purchasing Agent shall inform the vendor and engage in discussions with the vendor about the violation. The purpose of the discussions is to work in partnership with the vendor to influence the vendor to change its practices or to use its bargaining position with the offending sub-vendor to change its practices, rather than to cease doing business with the vendor or sub-vendor.
- B.** The State Purchasing Agent shall prescribe appropriate measures for the vendor to take in order to comply with the Code. Those steps may include, but are not limited to, the following:
1. Requesting disclosure of names and addresses of suppliers at sub-vendors and sub-vendors' working conditions;
 2. Requesting that sub-vendors provide access to independent monitors;
 3. Requesting that sub-vendors offer their workers the training and guidelines necessary to bring the workplace into compliance with the Code.

§ 7. SUPPORT TO BIDDERS AND VENDORS

The State Purchasing Agent shall provide to bidders and vendors resources to assist with compliance with the Code. One such resource shall be a publicly accessible list of bidders and vendors that have adopted the Code.

ORIGINAL STATUTORY AUTHORITY: 5 M.R.S.A. §1825-O
AMENDING STATUTORY AUTHORITY: 5 M.R.S.A §1825-B

EFFECTIVE DATE:

February 2, 2009 – filing 2006-424 (final adoption, routine technical)