

Amendment to SB 495-FN

1 Amend the title of the bill by replacing it with the following:

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3 AN ACT establishing a task force on state procurement policies and procedures, and
4 authorizing pilot projects using best value procurement.
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6 Amend the bill by replacing all after the enacting clause with the following:

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8 1 New Chapter; State Procurement Policies and Procedures; Task Force; Pilot Program.

9

STATE PROCUREMENT POLICIES AND PROCEDURES

10 21-S:1 Task Force Established.

11 I. There is established a task force on state procurement policies and procedures, which
12 shall study procurement preference systems, best value contracting, and existing state procurement
13 procedures, intending to enhance the state's ability to obtain optimal value for taxpayer dollars.

14 II. The task force shall consist of the following 11 members:

15 (a) The commissioner of the department of administrative services, or designee.

16 (b) The commissioner of the department of resources and economic development, or
17 designee.

18 (c) The attorney general, or designee.

19 (d) The commissioner of the department of transportation, or designee.

20 (e) The commissioner of the department of labor, or designee.

21 (f) The commissioner of the department of environmental services, or designee

22 (g) The commissioner of the department of health and human services, or designee

23 (h) Three members of the house of representatives, appointed by the speaker of the
24 house of representatives.

25 (i) One member of the senate, appointed by the senate president.

26 III. Members of the task force shall serve without compensation; except that legislative
27 members of the task force shall receive mileage at the legislative rate when attending to the duties of
28 the task force.

29 IV. The members of the task force shall elect a chairperson from among the members. The
30 first meeting of the task force shall be called by the first-named house member and shall be held
31 within 45 days of the effective date of this section. Six members of the task force shall constitute a
32 quorum. The task force shall establish subcommittees to focus on different types of procurements.

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1 Subcommittee members shall be selected by the task force from among its members, with a
2 minimum of 3 members for each subcommittee including at least one legislative member. Task force
3 members can serve on more than one subcommittee.

4 21-S:2 Task Force; Duties. The task force shall:

5 I. Review all state procurement policies and procedures, seeking input from New Hampshire
6 businesses and workers, and review recent performance audits of state procurement practices as well
7 as the work of previous or concurrent studies of state procurement.

8 II. Review procurement preference systems in other states, with special emphasis on best
9 value contracting, and solicit testimony from members of the public and others with information and
10 expertise relevant to the task force's study.

11 III. Consider whether the state's current and prospective procurement procedures or policies
12 present barriers that hinder New Hampshire-based businesses, particularly small businesses, from
13 competing for state contracts and consider approaches to overcome any such barriers while fostering
14 an atmosphere conducive to the start up of businesses in the state.

15 IV. Consider whether state procurement procedures should award preferences to New
16 Hampshire-based businesses bidding on state contracts and assess any constitutional or legal
17 limitations on such preferences.

18 V. Consider what factors other than bid price should be included in purchasing decisions,
19 including but not limited to: vendors or contractors providing sustainable wages and health
20 insurance or other benefits to their workers; vendor reliability and experience; life cycle costs;
21 quality of products or services; warranties; product ease of maintenance, repair, or upgrade;
22 commonality; support to New Hampshire workers and their families; and energy usage; as well as
23 criteria for determining which factors should be included in which types of procurement.

24 VI. Identify up to 5 pilot projects contained in the capital budget or the operating budget
25 adopted by the legislature in order to explore using best value procurement.

26 VII. Establish specific guidelines, standards, definitions, criteria, and weighting factors for
27 each pilot project identified in paragraph VI as well as the proposed method for implementing those
28 guidelines, standards, definitions, and criteria.

29 VIII. Establish standards to evaluate the use of best value procurement and apply these
30 evaluation standards to each pilot project conducted under this section.

31 IX. Determine if any statutory amendments are necessary to permanently implement best
32 value procurement in New Hampshire.

33 21-S:3 Pilot Projects; Best Value Procurement.

34 I. Notwithstanding RSA 21-I:80, or the provisions of any other law to the contrary, state
35 agencies are authorized to solicit bids or proposals and issue or recommend awards of contracts on
36 the basis of best value for the pilot projects identified by the task force under RSA 21-S:2, VI using
37 guidelines, standards, definitions, criteria, and weighting of factors specified by the task force under

1 RSA 21-S:2, VII. A request for bid or proposal under this provision shall stipulate that the award
2 will be made on the basis of best value, shall state the criteria that will be used to determine best
3 value, and shall state the manner in which each of the criteria, including price, will be weighted.
4 Any award made under this section shall not be made on criteria that are unknown to the parties
5 submitting bids or proposals. Nothing in this section shall preclude an agency from determining
6 whether, in its judgment, a vendor meets qualification or prequalification criteria established by the
7 agency, nor shall it preclude an agency from determining whether, in its judgment, a bid or proposal
8 meets bid requirements or specifications.

9 II. In the case of any pilot projects where the department of administrative services solicits
10 bids or proposals for projects on the basis of best value, if the bid or proposal is issued, received, or
11 reviewed by the department of transportation on behalf of the department of administrative services,
12 the department of transportation shall issue the award on the basis of best value in accordance with
13 this section.

14 III. No person shall be subject to the criminal penalties of RSA 96:2, or any other law, for
15 recommending to the governor and executive council the approval of any award to other than the
16 lowest responsible bidder, for a pilot project under this section, if he or she recommends that the
17 award be made on the basis of best value in accordance with this section.

18 IV. For purposes of this chapter "best-value" means a procurement process where price and
19 other non-price factors are considered in the evaluation and selection process to enhance the long-
20 term performance and value of the goods or services for which bids are solicited. Such factors may
21 include: vendors or contractors providing sustainable wages, health insurance and other benefits to
22 their workers; the extent of job creation for New Hampshire workers; registered apprenticeship
23 participation or other provision of workforce training or skill upgrading; provision of safety training,
24 and vendor's safety experience rating; vendor reliability and experience; life cycle costs; quality of
25 products or services; warranties; product ease of maintenance, repair or upgrade; commonality;
26 energy usage and the other items identified under RSA 21-S:2, V.

27 21-S:4 Task Force Reports.

28 I. The task force shall submit findings and recommendations regarding the identification of
29 opportunities for the use of value-based practices in New Hampshire, and the parameters to be used
30 as performance measures for the implementation of such practices, by December 1, 2010. Such
31 findings shall include any recommendations for further legislation, including legislation addressing
32 pilot programs. In addition, the task force shall submit further findings and recommendations on or
33 before November 1, 2011, December 1, 2012, and November 1, 2013. Reports shall be submitted to
34 the senate president, the speaker of the house of representatives, the senate and house committees
35 on executive departments and administration, the senate and house public works committees, the
36 governor, and the state library.

37 II. In making its recommendations, the task force shall consider:

1 (a) The potential for increased costs incurred by the state as the result of giving a
2 preference to New Hampshire-based companies or those offering sustainable wages and benefits.

3 (b) The potential for cost savings or other state benefits resulting from implementation
4 of a procurement preference system.

5 (c) What impact such policies could have on New Hampshire-based businesses
6 competing for contracts in other states with particular attention to small businesses and recently
7 established businesses. The task force shall also consider what impact such policies might have
8 upon New Hampshire workers, their families, and the New Hampshire economy.

9 (d) For which goods and services adoption of a procurement preference system or best
10 value procurement would be appropriate and beneficial, and which types of preference should be
11 included.

12 (e) Guidelines or criteria for determining what constitutes a New Hampshire-based
13 business.

14 2. Application; Validity of Projects Undertaken Pursuant to RSA 21-S. Projects that are bid,
15 awarded, or completed pursuant to the authorization for pilot projects under RSA 21-S:3 shall
16 remain valid without regard to the repeal of RSA 21-S by section 3 of this act, and projects which are
17 in the process of being bid, awarded, or completed under this act may proceed to completion
18 according to the terms of the pilot project. Notwithstanding such repeal, RSA 21-S:3, II and III shall
19 continue in force as they apply to those projects. Any modification, reconstruction, maintenance, or
20 rebidding of projects awarded under the authorization for pilot projects under RSA 21-S:3 shall be
21 conducted in accordance with the laws in effect at the time of the modification, reconstruction,
22 maintenance, or rebidding.

23 3. Repeal. RSA 21-S relative to state procurement policies and procedures, is repealed.

24 4. Effective Date.

25 I. Section 3 of this act shall take effect on November 2, 2013.

26 II. The remainder of this act shall take effect upon its passage.

2010-1817h

AMENDED ANALYSIS

This bill establishes a task force on state procurement policies and procedures and authorizes pilot projects using best value procurement practices. These provisions of the bill are repealed November 2, 2013.

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