

## 1 HOUSE BILL NO. 473

2 INTRODUCED BY M. LANGE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO  
5 AWARD CERTAIN CONSTRUCTION CONTRACTS ON THE BASIS OF BEST VALUE; REQUIRING THAT  
6 CERTAIN CRITERIA BE CONSIDERED WHEN AWARDING CERTAIN CONSTRUCTION CONTRACTS ON  
7 THE BASIS OF BEST VALUE; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO REQUEST  
8 CERTAIN INFORMATION FROM CONTRACTORS WISHING TO PARTICIPATE IN PROJECTS TO BE  
9 AWARDED BY A BEST VALUE DETERMINATION; REQUIRING THE DEPARTMENT OF ADMINISTRATION  
10 TO DETERMINE THAT A CONTRACTOR IS RESPONSIBLE IN THE CONTEXT OF PROJECTS TO BE  
11 AWARDED ON THE BASIS OF BEST VALUE; PROVIDING FOR AN APPEAL PROCESS FOR A  
12 CONTRACTOR WHO IS DETERMINED TO BE NONRESPONSIBLE FOR THE PURPOSES OF CONTRACTS  
13 AWARDED ON THE BASIS OF BEST VALUE; ESTABLISHING A DEADLINE FOR AWARDING A CONTRACT  
14 FOR A PROJECT AWARDED ON THE BASIS OF BEST VALUE; AMENDING SECTIONS 18-1-101, 18-1-102,  
15 AND 18-2-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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19 NEW SECTION. **Section 1. Optional best-value award for construction contracts.** (1) The  
20 department may award a construction contract on the basis of a best value determination.

21 (2) (a) The determination of best value must be based upon objective criteria that are clearly delineated  
22 in the request for proposals. The criteria used in determining best value must include:

- 23 (i) the financial solvency of the bidder as determined by prudent banking standards;  
24 (ii) the amount by which wages paid to the employees of the contractor exceed 125% of the federal  
25 poverty level for a family of two; and  
26 (iii) the positive impact on the community in which the project will be performed.

27 (b) The criteria to be considered in determining best value must be assigned a weight as follows:  
28 (i) The price quoted in the proposal must be at least 70% but not more than 80% of the overall weight.  
29 (ii) The schedule for completing the project must be at least 20% but not more than 30% of the overall  
30 weight.

1 (iii) Other objective criteria identified in the request for proposals may not exceed, in total, 10% of the  
2 overall weight.

3 (3) The department shall rank the proposals according to the established criteria and weighting and  
4 award the contract to the proposal that earns the highest ranking.

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6 **NEW SECTION. Section 2. Information from contractors.** (1) Subject to the provisions of subsection  
7 (2), the department may require a contractor who desires to submit a proposal for a construction contract that  
8 will be awarded on the basis of best value under [section 1] to provide any of the following information:

9 (a) an audited financial statement or financial statement review completed within the preceding 12  
10 months by an accountant certified under 37-50-302;

11 (b) the contractor's experience on other public or private projects, including but not limited to the size,  
12 complexity, and scope of the contractor's prior projects;

13 (c) reviews of the contractor's performance on public works or private construction projects undertaken  
14 by the contractor within the preceding 5 years;

15 (d) any civil judgments and any criminal history of the contractor or the contractor's principals within the  
16 preceding 5 years;

17 (e) any debarment or suspension of the contractor by any local, state, or federal governmental entity  
18 within the preceding 5 years;

19 (f) any violation of labor standards by the contractor within the preceding 5 years;

20 (g) any revocation or suspension of a license held by the contractor or any action taken by a board, as  
21 defined in 37-1-130, against the contractor within the preceding 5 years; or

22 (h) any bankruptcy filings or proceedings by the contractor within the preceding 7 years.

23 (2) With respect to a project that is to be awarded on the basis of best value, if the department requests  
24 information described in subsection (1)(a) from a contractor who wishes to submit a proposal for the project, the  
25 same information must be requested from all contractors who wish to submit a proposal for the project.

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27 **NEW SECTION. Section 3. Determination of responsibility -- prequalification -- appeal.** (1) Based  
28 upon the information provided to the department under [section 2], the department shall determine a contractor  
29 to be either responsible or nonresponsible for a project to be awarded on the basis of best value.

30 (2) The department may find a contractor to be nonresponsible for any of the following reasons:

- 1 (a) insufficient financial ability to perform the contract;
- 2 (b) inadequate experience to undertake the project;
- 3 (c) documented failure to perform on a prior public or private construction contract, including but not  
4 limited to final adjudication or admission of violations of prevailing wage laws in Montana or in any other state;
- 5 (d) a prior judgment for breach of contract that indicates that the contractor has not performed the work  
6 or completed the project as contracted for;
- 7 (e) a criminal conviction for fraud, misrepresentation, or theft relating to contract procurement;
- 8 (f) previous debarment or suspension of the contractor by any local, state, or federal government  
9 agency that indicates that the contractor may not be capable of performing the work or completing the project;
- 10 (g) previous revocation or suspension of a license that indicates that the contractor may not be capable  
11 of performing the work or completing the project;
- 12 (h) a previous disciplinary action taken against the contractor by a board, as defined in 37-1-130, that  
13 indicates that the contractor may not be capable of performing the work or completing the project;
- 14 (i) bankruptcy proceedings that indicate that the contractor may not be capable of performing the work  
15 or completing the project;
- 16 (j) a previous violation of law or labor standards that indicates that the proposing contractor may not be  
17 capable of performing the work or completing the project;
- 18 (k) failure or refusal to provide any of the information requested under [section 2]; or
- 19 (l) providing false information.
- 20 (3) (a) For the purpose of enhancing the efficiency and effectiveness of projects that are to be awarded  
21 on the basis of best value, the department may adopt rules to provide for the prequalification of contractors who  
22 may desire to submit proposals.
- 23 (b) As used in this section, prequalification applies only to a determination by the department of a  
24 contractor's status as responsible or nonresponsible.
- 25 (c) Prequalification under this section may not extend for a period in excess of 2 years.
- 26 (4) (a) The department shall assess the responsibility of each contractor separately for each project  
27 to be awarded under [section 1].
- 28 (b) If the department determines that a contractor is nonresponsible for a project, the determination has  
29 no bearing on a determination for any other project.
- 30 (5) If the department determines that a contractor is nonresponsible, the department shall notify the

1 contractor, in writing, within 5 working days of the determination.

2 (6) If the department receives a proposal from a contractor who has been determined to be  
3 nonresponsible under this section, the department shall reject the proposal.

4 (7) A contractor who is declared nonresponsible by the department may request the department to  
5 review the determination, and the provisions of 18-4-242 apply.

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7 **NEW SECTION. Section 4. Requirements for consideration of best-value proposal.** For a proposal  
8 submitted pursuant to [section 1] to be considered by the department:

9 (1) the proposal must conform in all material respects to the requirements and criteria set forth in the  
10 request for proposals, including any contract plans or specifications included by reference; and

11 (2) the contractor submitting the proposal must be determined by the department to be responsible  
12 under [section 3].

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14 **NEW SECTION. Section 5. Award of contract for best-value project.** For a project awarded on the  
15 basis of best value under [section 1], the department shall award the contract within 30 days of the date on which  
16 proposals were required to be submitted, unless the request for proposals specifically states a different date by  
17 which the contract will be awarded.

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19 **Section 6.** Section 18-1-101, MCA, is amended to read:

20 **"18-1-101. Definitions.** (1) Unless the context requires otherwise, in this title, "department" means the  
21 department of administration provided for in Title 2, chapter 15, part 10.

22 (2) Unless the context requires otherwise, in this part, the following definitions apply:

23 (a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured products.

24 (b) "Nonresident bidder" means a bidder whose residence is not in this state as determined under  
25 18-1-103.

26 (c) (i) "Public agency" means a department, commission, council, board, bureau, committee, institution,  
27 agency, government corporation, or other entity, instrumentality, or official of the legislative, executive, or judicial  
28 branch of this state and its political subdivisions, including the board of regents and the Montana university  
29 system.

30 (ii) Public agency does not include a political subdivision for purposes of 18-1-102(1)(b).

1 (d) "Resident bidder" means a bidder whose residence is in this state as determined under 18-1-103.

2 (e) "Written" means that whenever written or in-writing determinations or documents are required, the  
3 public agency responsible for the procurement may specify an appropriate visual medium, such as by computer  
4 transmission or by facsimile machine transmission, in the specifications, contract, or rules of the public agency.

5 (3) Unless the context requires otherwise, as used in chapter 2 and this chapter, "bid" includes a  
6 proposal requested or offered for a project to be awarded on the basis of a best-value determination under  
7 [section 1]."

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9 **Section 7.** Section 18-1-102, MCA, is amended to read:

10 **"18-1-102. State contracts to lowest bidder -- reciprocity.** (1) Except as provided in [section 1], in  
11 ~~the~~ order to provide for an orderly administration of the business of the state of Montana in awarding public  
12 contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency  
13 shall award:

14 (a) a public contract for construction, repair, or public works to the lowest responsible bidder without  
15 regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of  
16 a nonresident bidder from any state or country that enforces a preference for resident bidders. The preference  
17 given to resident bidders of this state must be equal to the preference given in the other state or country.

18 (b) a public contract for the purchase of goods to the lowest responsible bidder without regard to  
19 residency. However, a resident must be allowed a preference on a contract against the bid of a nonresident if  
20 the state or country of the nonresident enforces a preference for residents. The preference must be equal to the  
21 preference given in the other state or country.

22 (2) The preferences in this section apply:

23 (a) whether the law requires advertisement for bids or does not require advertisement for bids; and

24 (b) to contracts involving funds obtained from the federal government unless expressly prohibited by  
25 the laws of the United States or regulations adopted pursuant to federal laws."

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27 **Section 8.** Section 18-2-103, MCA, is amended to read:

28 **"18-2-103. Supervision of construction of buildings.** (1) For the construction of a building costing  
29 more than \$150,000, the department shall:

30 (a) review and accept all plans, specifications, and cost estimates prepared by architects or consulting

1 engineers;

2 (b) approve all bond issues or other financial arrangements and supervise and approve the expenditure  
3 of all money;

4 (c) solicit, accept, and reject bids and, unless a project is to be awarded as provided in [section 1],  
5 award all contracts to the lowest qualified bidder considering conformity with specifications and terms and  
6 reasonableness of the bid amount;

7 (d) review and approve all change orders; and

8 (e) accept the building when completed according to accepted plans and specifications.

9 (2) The department may delegate on a project-by-project basis any powers and duties under subsection  
10 (1) to other state agencies, including units of the Montana university system, upon terms and conditions specified  
11 by the department.

12 (3) Before a contract under subsection (1) is awarded, two formal bids must have been received, if  
13 reasonably available.

14 (4) The department need not require the provisions of Montana law relating to advertising, bidding, or  
15 supervision when proposed construction costs are \$75,000 or less. However, with respect to a project having  
16 a proposed cost of \$75,000 or less but more than \$25,000, the agency awarding the contract shall procure at  
17 least three informal bids from contractors registered in Montana, if reasonably available.

18 (5) For the construction of buildings owned or to be owned by a school district, the department shall,  
19 upon request, provide inspection to ensure compliance with the plans and specifications for the construction of  
20 the buildings. "Construction" includes construction, repair, alteration, equipping, and furnishing during  
21 construction, repair, or alteration. These services must be provided at a cost to be contracted for between the  
22 department and the school district, with the receipts to be deposited in the department's construction regulation  
23 account in a state special revenue fund.

24 (6) It is the intent of the legislature that student housing and other facilities constructed under the  
25 authority of the regents of the university system are subject to the provisions of subsections (1) through (3).

26 (7) The department of military affairs may act as the contracting agency for buildings constructed under  
27 the authority of 18-2-102(2)(d). However, the department of administration may agree to act as the contracting  
28 agency on behalf of the department of military affairs. Montana law applies to any controversy involving a  
29 contract."  
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1            NEW SECTION. **Section 9. Codification instruction.** [Sections 1 through 5] are intended to be  
2 codified as an integral part of Title 18, chapter 2, part 1, and the provisions of Title 18, chapter 2, part 1, apply  
3 to [sections 1 through 5].

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5            NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

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