

SENATE BILL NO. 459

INTRODUCED BY ELLIOTT, BLACK, TASH, MCGEE, J. PETERSON, WANZENRIED, LASLOVICH,  
STORY, PERRY, BRUEGGEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT GIVING PREFERENCE TO PRODUCTS MADE IN THE UNITED STATES WHEN EQUAL CHOICES EXIST; AND AMENDING SECTIONS 18-4-301 AND 18-4-303, MCA."

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

**Section 1.** Section 18-4-301, MCA, is amended to read:

**"18-4-301. Definitions.** As used in this part, the following definitions apply:

(1) "Alternative procurement method" means a method of procuring supplies or services in a manner not specifically described in this chapter, but instead authorized by the department under 18-4-302.

(2) "American-made" means either a product made exclusively within the United States or a value-added product consisting of a product that contains 50% or more of materials from the United States.

~~(2)~~(3) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs that are allowable and allocable in accordance with the contract terms and the provisions of this chapter and a fee, if any.

~~(3)~~(4) (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

~~(4)~~(5) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

~~(5)~~(6) "Invitation for bids" means all documents, whether attached or incorporated by reference, used for soliciting bids.

~~(6)~~(7) "Office supply" means an item included under the office supply commodity class codes maintained

1 by the department.

2 ~~(7)~~(8) "Purchase description" means the words used in a solicitation to describe the supplies or services  
3 to be purchased and includes specifications attached to or made a part of the solicitation.

4 ~~(8)~~(9) "Request for proposals" means all documents, whether attached or incorporated by reference,  
5 used for soliciting proposals.

6 ~~(9)~~(10) "Responsible" means the capability in all respects to perform fully the contract requirements and  
7 the integrity and reliability that will ensure good faith performance.

8 ~~(10)~~(11) "Responsive" means conforms in all material respects to the invitation for bids or request for  
9 proposals.

10 ~~(11)~~(12) "Term contract" means a contract in which supplies or services are purchased at a  
11 predetermined unit price for a specific period of time."

12

13 **Section 2.** Section 18-4-303, MCA, is amended to read:

14 **"18-4-303. Competitive sealed bidding.** (1) An invitation for bids must be issued and must include a  
15 purchase description and conditions applicable to the procurement.

16 (2) Adequate public notice of the invitation for bids must be given a reasonable time before the date set  
17 forth in the invitation for the opening of bids, in accordance with rules adopted by the department. Notice may  
18 include publication in a newspaper of general circulation at a reasonable time before the bid opening.

19 (3) Bids must be opened publicly at the time and place designated in the invitation for bids. Each bidder  
20 and any member of the public has the right to be present, either in person or by agent, when the bids are opened  
21 and has the right to examine and inspect all bids after they are opened and reviewed by the procurement officer  
22 for release, subject to the same limitations specified in 18-4-304(4) for competitive sealed proposals.

23 (4) The amount of each bid and other relevant information as may be specified by rule, together with the  
24 name of each bidder, must be recorded. The record must be open to public inspection.

25 (5) After the time of award, all bids and bid documents must be open to public inspection in accordance  
26 with the provisions of 18-4-126.

27 (6) Bids must be unconditionally accepted without alteration or correction, except as authorized in this  
28 chapter. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include  
29 criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for  
30 a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award must

1 be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. The invitation for  
2 bids must set forth the evaluation criteria to be used. Only criteria set forth in the invitation for bids may be used  
3 in bid evaluation.

4 (7) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of  
5 awards or contracts based on bid mistakes may be permitted in accordance with rules adopted by the  
6 department. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the  
7 state or fair competition may not be permitted. Except as otherwise provided by rule, all decisions to permit the  
8 correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes must be supported by  
9 a written determination made by the department.

10 (8) If an award is made, it must be made with reasonable promptness by written notice to the lowest  
11 responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for  
12 bids, including the preferences established by Title 18, chapter 1, part 1. If all bids exceed available funds as  
13 certified by the appropriate fiscal officer and the lowest responsible and responsive bid does not exceed the funds  
14 by more than 5%, the director or the head of a purchasing agency may, in situations in which time or economic  
15 considerations preclude resolicitation of a reduced scope, negotiate an adjustment of the bid price, including  
16 changes in the bid requirements, with the lowest responsible and responsive bidder in order to bring the bid within  
17 the amount of available funds.

18 (9) When it is considered impractical to initially prepare a purchase description to support an award  
19 based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be followed  
20 by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in  
21 the first solicitation.

22 (10) In case of a tie bid, preference must be given to the bidder, IF ANY, offering American-made products  
23 or supplies."

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