

HOUSE BILL NO. 645
INTRODUCED BY D. HAINES

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING COUNTY AND MUNICIPAL GOVERNMENT BIDDING CRITERIA FOR CERTAIN EQUIPMENT PURCHASES AND CONSTRUCTION CONTRACTS; ESTABLISHING A RIGHT OF DUE PROCESS FOR CONTRACTORS UPON BID REJECTION; AND AMENDING SECTIONS 7-5-2301 AND 7-5-4302, MCA."

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

Section 1. Section 7-5-2301, MCA, is amended to read:

"7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts -- criteria for bidders -- definitions. (1) Except as provided in 7-5-2303 and 7-5-2304, a contract must be entered into by a county for the purchase of any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies or the construction, repair, or maintenance of any building, road, or bridge in excess of \$50,000 and may not be entered into by a county governing body without first publishing a notice calling for bids.

(2) The notice must be published as provided in 7-1-2121.

(3) Subject to 7-5-2309, every contract subject to bidding must be let to the ~~lowest and best~~ responsible bidder with the lowest responsive bid.

(4) The county may reject the lowest responsive bid only if it determines that the bidder is not a responsible bidder.

(5) If the county rejects a bid based on a determination that the bidder is not a responsible bidder, the county shall make a written preliminary finding regarding that determination. The preliminary finding of nonresponsibility must set forth the specific reasons for the finding and must include a statement that the bidder has 5 working days from the bidder's receipt of the preliminary finding to contest the finding. A copy of the finding must be delivered to the bidder by certified mail pursuant to 7-1-2122.

(6) A bidder who has been found not responsible may meet with the county and submit documents contesting the preliminary finding of nonresponsibility. The county shall review the testimony and any documents submitted by the bidder and shall either withdraw the preliminary finding and award the contract to the bidder with the lowest responsive bid or make a final determination of nonresponsibility.

(7) The county may not let the contract until:

(a) the time period to contest the preliminary finding pursuant to subsection (5) has expired and the bidder has not contested the preliminary finding; or

(b) a final determination has been reached by the county pursuant to subsection (6).

(8) A bidder who believes that the bidder has been aggrieved by a final determination of nonresponsibility or a determination that a bid was nonresponsive may bring an action against the county in district court for injunctive relief or damages, or both. Damages may not be awarded unless a bidder shows that the finding of nonresponsibility or the determination that the bid was nonresponsive was unreasonable under the totality of the circumstances.

(9) A preliminary or final determination of nonresponsibility for a particular contract may not be used as a basis for any subsequent finding of nonresponsibility and may not be given any weight or consideration by the county in reviewing bids or bidder qualifications for any subsequent contract.

(10) For the purposes of this section:

(a) "county" means the governing body of a county, including a board, commission, authority, or other political subdivision of the county that is authorized to contract for the goods and services described in subsection (1);

(b) "responsible bidder" means a person that has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will ensure good faith performance; and

(c) "responsive bid" means a bid that meets the following criteria:

(i) the bid must be signed;

(ii) the bid bond must be included and signed;

(iii) the bid must acknowledge any and all addendums;

(iv) a signed power of attorney must be included; and

(v) all substantive documents required in the instructions to bidders must be included."

Section 2. Section 7-5-4302, MCA, is amended to read:

"7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts -- criteria for bidders -- definitions. (1) Except as provided in 7-5-4303 or 7-5-4310, all contracts for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, equipment, or materials or supplies of any kind in excess of \$20,000 or for construction, repair, or maintenance in excess of \$25,000 must be let to the ~~lowest~~ responsible bidder with the lowest responsive bid after

advertisement for bids.

(2) The advertisement must be published as provided in 7-1-4127, and the second publication must be made not less than 5 days or more than 12 days before the consideration of bids. If the advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of the advertisement and the day set for considering bids.

(3) The council may postpone action on any contract until the next regular meeting after bids are received in response to the advertisement and may reject any bids and readvertise as provided in this section.

(4) The council may reject the lowest responsive bid only if it determines that the bidder is not a responsible bidder.

(5) If the council rejects a bid based on a determination that the bidder is not a responsible bidder, the council shall make a written preliminary finding regarding that determination. The preliminary finding of nonresponsibility must set forth the specific reasons for the finding and must include a statement that the bidder has 5 working days from the bidder's receipt of the preliminary finding to contest the finding. A copy of the finding must be delivered to the bidder by certified mail pursuant to 7-1-4129.

(6) A bidder who has been found not responsible may meet with the council and submit documents contesting the preliminary finding of nonresponsibility. The council shall review the testimony and any documents submitted by the bidder and shall either withdraw the preliminary finding and award the contract to the bidder with the lowest responsive bid or make a final determination of nonresponsibility.

(7) The council may not let the contract until:

(a) the time period to contest the preliminary finding pursuant to subsection (5) has expired and the bidder has not contested the preliminary finding; or

(b) a final determination has been reached by the council pursuant to subsection (6).

(8) A bidder who believes that the bidder has been aggrieved by a final determination of nonresponsibility or a determination that a bid was nonresponsive may bring an action against the council in district court for injunctive relief or damages, or both. Damages may not be awarded unless a bidder shows that the finding of nonresponsibility or the determination that the bid was nonresponsive was unreasonable under the totality of the circumstances.

(9) A preliminary or final determination of nonresponsibility for a particular contract may not be used as a basis for any subsequent finding of nonresponsibility and may not be given any weight or consideration by the council in reviewing bids or bidder qualifications for any subsequent contract.

(10) For the purposes of this section;

(a) "council" means the governing legislative body of a city, town, or municipality, including a board, commission, authority, or other political subdivision of the city, town, or municipality that is authorized to contract for the goods and services described in subsection (1);

(b) "responsible bidder" means a person that has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will ensure good faith performance; and

(c) "responsive bid" means a bid that meets the following criteria:

(i) the bid must be signed;

(ii) the bid bond must be included and signed;

(iii) the bid must acknowledge any and all addendums;

(iv) a signed power of attorney must be included; and

(v) all substantive documents required in the instructions to bidders must be included."

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