

SENATE BILL NO. 229

INTRODUCED BY F. THOMAS, R. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT, WITH RESPECT TO CERTAIN TYPES OF SURETY BONDS REQUIRED TO BE FURNISHED ON VARIOUS PUBLIC CONTRACTS, THE STATE OR OTHER GOVERNMENTAL AGENCIES MAY NOT REQUIRE THAT THE BONDS BE FURNISHED BY A PARTICULAR SURETY COMPANY OR BY A PARTICULAR ~~AGENT OR BROKER~~ INSURANCE PRODUCER FOR A SURETY COMPANY; AND AMENDING SECTIONS 18-1-203, 18-2-201, 18-2-302, AND 18-4-312, MCA."

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

Section 1. Section 18-1-203, MCA, is amended to read:

"18-1-203. Form of security. (1) (a) In all cases under 18-1-202(1), the bidder, offeror, or tenderer shall accompany any bid with either:

~~(a)~~(i) lawful money of the United States;

~~(b)~~(ii) a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a federally chartered or state-chartered bank insured by the federal deposit insurance corporation; or

~~(c)~~(iii) a bid bond, guaranty bond, or surety bond executed by a surety corporation authorized to do business in the state of Montana. If a financial guaranty bond or surety bond is provided to secure the purchase of indebtedness, the long-term indebtedness of the company executing the financial guaranty bond or surety bond must carry an investment grade rating of one or more nationally recognized independent rating agencies.

(b) The public authority soliciting or advertising for bids may not require that a bid bond, guaranty bond, or surety bond provided for in subsection (1)(a)(iii) be furnished by a particular surety company or by a particular ~~agent or broker~~ INSURANCE PRODUCER for a surety company.

(2) The money or, in lieu of money, the bank instruments or bid bonds, financial guaranty bonds, or surety bonds must be payable directly to the public authority soliciting or advertising for bids."

Section 2. Section 18-2-201, MCA, is amended to read:

"18-2-201. Security requirements. (1) (a) Except as otherwise provided in 85-1-219 and subsections (3) through (5) of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or public body contracts with a person or corporation to do work for the state, county,

or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall require the person or corporation, ~~person, or persons~~ with whom the contract is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and sufficient bond with a ~~licensed~~ surety company, licensed in this state, as surety, conditioned that the person or corporation, ~~person, or persons~~ shall:

- (~~a~~)(i) faithfully perform all of the provisions of the contract;
- (~~b~~)(ii) pay all laborers, mechanics, subcontractors, and material suppliers; and
- (~~c~~)(iii) pay all persons who supply the person, corporation, ~~person or persons~~, or subcontractors with provisions, provender, material, or supplies for performing the work.

(b) The state or other governmental entity listed in subsection (1)(a) may not require that any bond required by subsection (1)(a) be furnished by a particular surety company or by a particular agent or broker INSURANCE PRODUCER for a surety company.

(2) ~~Notwithstanding the provisions of subsection (1), the~~ The state or other governmental entity listed in subsection (1)(a) may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and subcontractors:

- (a) lawful money of the United States; or
- (b) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, or bank draft, drawn or issued by:
 - (i) any federally or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation; or
 - (ii) a credit union insured by the national credit union share insurance fund.

(3) ~~Notwithstanding the provisions of subsection (1), any~~ Any board, council, commission, trustee, or body acting for any county, municipality, or ~~any~~ public body other than the state may, subject to the provisions of subsection (1)(b), in lieu of a bond from a licensed surety company, accept good and sufficient bond with two or more sureties acceptable to the governmental ~~body~~ entity.

(4) Except as provided in subsection (5), the state or other governmental entity may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than \$50,000.

(5) A school district may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than \$7,500."

Section 3. Section 18-2-302, MCA, is amended to read:

"18-2-302. Bid security -- waiver -- authority to submit. (1) (a) Except as provided in subsection (2), each bid must be accompanied by bid security in the amount of 10% of the bid. The security may consist of cash, a cashier's check, a certified check, a bank money order, a certificate of deposit, a money market certificate, or a bank draft. The security must be:

~~(a)~~(i) drawn and issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation;

~~(b)~~(ii) drawn and issued by a credit union insured by the national credit union share insurance fund; or

~~(c)~~(iii) a bid bond or bonds executed by a surety company authorized to do business in the state of Montana.

(b) The state or other governmental entity may not require that a bid bond or bond provided for in subsection (1)(a)(iii) be furnished by a particular surety company or by a particular ~~agent or broker~~ INSURANCE PRODUCER for a surety company.

(2) The state or other governmental entity may waive the requirements for bid security on building or construction projects, as defined in 18-2-101, that cost less than \$25,000.

(3) The bid security must be signed by an individual authorized to submit the security by the corporation or other business entity on whose behalf the security is submitted. If the request for bid or other specifications provided by the state or other governmental entity specify the form or content of the bid security, the security submitted must comply with the requirements of that specification."

Section 4. Section 18-4-312, MCA, is amended to read:

"18-4-312. Bid and contract performance security. (1) For state contracts for the procurement of services or of supplies, the department may in its discretion require:

(a) bid security;

(b) contract performance security to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, mechanics, and subcontractors; or

(c) both bid and contract performance security.

(2) (a) If security is required under subsection (1), the following types of security may be required to be deposited with the state:

~~(a)~~(i) a sufficient bond with a licensed surety company as surety;

~~(b)~~(ii) an irrevocable letter of credit not to exceed \$100,000 in accordance with the provisions of Title 30,

chapter 5, part 1;

~~(e)(iii)~~ money of the United States;

~~(d)(iv)~~ a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, or bank draft that is drawn or issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation or that is drawn and issued by a credit union insured by the national credit union share insurance fund.

(b) The department may not require that a bond required pursuant to subsection (2)(a)(i) be furnished by a particular surety company or by a particular agent or broker INSURANCE PRODUCER for a surety company.

(3) The amount and type of the security must be determined by the department to be sufficient to cover the risk involved to the state. The security must be payable to the state of Montana. Contract performance security must remain in effect for the entire contract period. In determining the amount and type of contract performance security required for each contract, the department shall consider the nature of the performance and the need for future protection to the state. In determining the need for and amount of bid security, the department shall consider the risks involved to the state if a successful bidder or offeror fails to enter into a formal contract. The considerations must include but are not limited to the type of supply or service being procured, the dollar amount of the proposed contract, and delivery time requirements. The department may adopt rules to assist it in making these determinations and in protecting the state in dealing with irrevocable letters of credit. Bid and contract security requirements must be included in the invitations for bids or requests for proposals.

(4) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract or provide contract performance security, as required by the invitation for bid or request for proposal, after notification of award, the department may, in its discretion, require the bidder to forfeit the bid security to the state and become immediately liable on the bid security, but not in excess of the sum stated in the security. The liability of the bidder or offeror, the maker of the security or bid bond, or the liability on the bid bond or other security may not exceed the amount specified in the invitation for bid or request for proposal.

(5) Negotiable instruments provided as bid security must be refunded to those bidders or offerors whose bids or proposals are not accepted.

(6) The provisions of Title 18, chapter 1, part 2, and Title 18, chapter 2, parts 2 and 3, do not apply to procurements under this chapter."

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