

## 1 HOUSE BILL NO. 678

2 INTRODUCED BY J. KARJALA

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE PURPOSE AND INTENT FOR PUBLIC WORKS  
5 PROCUREMENT, INCLUDING RECOGNITION OF RESPONSIBLE BIDDERS BY IDENTIFYING BAD-ACTOR  
6 CONTRACTORS; PROVIDING RULEMAKING AUTHORITY; PROVIDING A FALSE SWEARING PENALTY;  
7 PROVIDING AN APPROPRIATION; AMENDING SECTION 18-1-102, MCA; AND PROVIDING AN EFFECTIVE  
8 DATE AND AN APPLICABILITY DATE."

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

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12 NEW SECTION. **Section 1. Purpose.** In addition to the purpose outlined in 18-4-122, the purpose of  
13 chapters 2 and 4 and this chapter is to protect local labor markets, to maintain the general welfare of Montana  
14 workers on public works projects, to eliminate wage cutting as a method of competing for public contracts, to  
15 maintain wages and rates paid on public works at a level sufficient to attract highly skilled laborers performing  
16 quality workmanship, and to prevent the rate of wages from adversely affecting the equal opportunity of Montana  
17 contractors to bid on public works.

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19 **Section 2.** Section 18-1-102, MCA, is amended to read:

20 **"18-1-102. State contracts to lowest bidder -- reciprocity -- definition.** (1) In order to provide for an  
21 orderly administration of the business of the state of Montana in awarding public contracts for the purchase of  
22 goods and for construction, repair, and public works of all kinds, a public agency shall, except as provided in Title  
23 18, chapter 2, part 5, award:

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

28 (b) a public contract for the purchase of goods to the lowest responsible bidder without regard to  
29 residency. However, a resident must be allowed a preference on a contract against the bid of a nonresident if the  
30 state or country of the nonresident enforces a preference for residents. The preference must be equal to the

1 preference given in the other state or country.

2 (2) The preferences in this section apply:

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

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

6 (3) The term "responsible bidder" has the meaning provided in 18-5-501 but also includes the ability to  
7 ensure good faith performance without engaging in the use of inappropriate unskilled labor or the use of  
8 substandard materials. The term excludes a bad-actor contractor, as described in [section 3]."

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10 **NEW SECTION. Section 3. Bad-actor contractor adjustment -- definition -- rulemaking -- penalty.**

11 (1) A bid for a construction or a repair project under this title, paid for with public agency funds, is subject to an  
12 add-on percentage to be determined by the department by rule if a bad-actor contractor has been subject to a  
13 penalty in the past 5 years for using:

14 (a) substandard materials; or

15 (b) unqualified labor, including workers engaged in unlicensed practice because the workers are not  
16 licensed under a professional or occupational licensing board in Title 37 or lack appropriate training as evidenced  
17 by change orders being required to redo their work.

18 (2) The public agency awarding the contract:

19 (a) may ask bidders to attest that they have not paid a penalty in the past 5 years; and

20 (b) shall post on the public agency's website a list of bad-actor contractors for whom penalties had been  
21 assessed in the preceding 5 years.

22 (3) For the purposes of this section, the term "penalty" means a fine imposed by a public agency, a fine  
23 imposed by a court of this state, or a settlement that resolves a lawsuit on a public contract.

24 (4) The department shall adopt rules to implement this section.

25 (5) A bidder that falsely attests to having paid no penalty in the 5 years prior to submitting a bid is subject  
26 to a charge of false swearing and may be punished as provided in 45-7-202.

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28 **NEW SECTION. Section 4. Appropriation.** There is appropriated \$500 for the fiscal year beginning  
29 July 1, 2019, from the general fund to the department of administration for the purpose of creating a website  
30 listing for bad-actor contractors as provided in [section 3].

