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SENATE BILL NO. 108

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INTRODUCED BY J. SESSO

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ADJUSTING PROCUREMENT LIMITS AND BIDDING
5 REQUIREMENTS RELATED TO CONSTRUCTION OF STATE BUILDINGS; INCREASING CONTRACT LIMITS
6 FOR COMPETITIVE BIDDING; AMENDING SECTIONS 18-2-103, 18-2-105, 18-2-111, 18-2-201, 18-2-301,
7 18-2-302, AND 85-1-219, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8

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

10

11 **Section 1.** Section 18-2-103, MCA, is amended to read:

12 **"18-2-103. Supervision of construction of buildings.** (1) For the construction of a building costing
13 more than \$150,000, the department shall:

14 (a) review and accept all plans, specifications, and cost estimates prepared by architects or consulting
15 engineers;

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

18 (c) solicit, accept, and reject bids and, except as provided in Title 18, chapter 2, part 5, award all
19 contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness
20 of the bid amount;

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

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

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

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

28 (4) The department need not require the provisions of Montana law relating to advertising, bidding, or
29 supervision when proposed construction costs are ~~\$75,000~~ \$150,000 or less. However, with respect to a project
30 having a proposed cost of ~~\$75,000~~ \$150,000 or less but more than ~~\$25,000~~ \$75,000, the agency awarding the



1 contract shall procure at least three informal bids from contractors registered in Montana, if reasonably available.

2 ~~(5)~~ The department may negotiate a contract, without competitive bidding, with a contractor qualified to
 3 do business in Montana if:

4 (a) an emergency threatening life or property exists; or

5 (b) an exigency exists.

6 ~~(5)~~(6) For the construction of buildings owned or to be owned by a school district, the department shall,
 7 upon request, provide inspection to ensure compliance with the plans and specifications for the construction of
 8 the buildings. "Construction" includes construction, repair, alteration, equipping, and furnishing during
 9 construction, repair, or alteration. These services must be provided at a cost to be contracted for between the
 10 department and the school district, with the receipts to be deposited in the department's construction regulation
 11 account in a state special revenue fund.

12 ~~(6)~~(7) It is the intent of the legislature that student housing and other facilities constructed under the
 13 authority of the regents of the university system are subject to the provisions of subsections (1) through (3).

14 ~~(7)~~(8) The department of military affairs may act as the contracting agency for buildings constructed
 15 under the authority of 18-2-102(2)(d). However, the department of administration may agree to act as the
 16 contracting agency on behalf of the department of military affairs. Montana law applies to any controversy
 17 involving a contract."

18

19 **Section 2.** Section 18-2-105, MCA, is amended to read:

20 **"18-2-105. General powers and duties of department of administration.** In carrying out powers
 21 relating to the construction of buildings, the department of administration may:

22 (1) inspect buildings not under construction;

23 (2) contract with the federal government for advance planning funds;

24 (3) transfer funds and authority to agencies and accept funds and authority from agencies;

25 (4) subject to 2-17-135, purchase, lease, and acquire by exchange or otherwise, land and buildings in
 26 Lewis and Clark County and equipment and furnishings for the buildings;

27 (5) issue and sell bonds and other securities;

28 (6) maintain an inventory of all buildings;

29 (7) appoint a project representative to supervise architects' and consulting engineers' inspection of
 30 construction of buildings to ensure that all construction is in accordance with the contracts, plans, and

1 specifications. The cost of supervision may be charged against money available for construction.

2 (8) negotiate deductive changes, not to exceed ~~7%~~ 15% of the total cost of a project, with the lowest
3 responsible bidder when the lowest responsible bid causes the project cost to exceed the appropriation or with
4 the lowest responsible bidders, if multiple contracts will be awarded on the project, when the total of the lowest
5 responsible bids causes the project cost to exceed the appropriation. A bidder is not required to negotiate a bid
6 but is required to honor the bid for the time specified in the bidding documents. The department may terminate
7 negotiations at any time."

8

9 **Section 3.** Section 18-2-111, MCA, is amended to read:

10 **"18-2-111. Policy regarding practice of architecture -- preparation of working drawings by**
11 **department limited.** (1) It is the policy of the state not to engage in the practice of architecture. However, this
12 policy may not be construed as prohibiting the department of administration from:

13 (a) engaging in preplanning functions necessary to prepare a building program for presentation to the
14 legislature;

15 (b) supervising construction as provided in 18-2-105(7); or

16 (c) preparing working drawings for minor projects.

17 (2) The department of administration may not prepare working drawings for the construction of a building,
18 with the exception of repair or maintenance projects, when the total cost of the construction will exceed ~~\$75,000~~
19 \$150,000."

20

21 **Section 4.** Section 18-2-201, MCA, is amended to read:

22 **"18-2-201. Security requirements.** (1) (a) Except as otherwise provided in 85-1-219 and subsections
23 (3) through (5) of this section, whenever any board, council, commission, trustees, or body acting for the state
24 or any county, municipality, or public body contracts with a person or corporation to do work for the state, county,
25 or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall
26 require the person or corporation with whom the contract is made to make, execute, and deliver to the board,
27 council, commission, trustees, or body a good and sufficient bond with a surety company, licensed in this state,
28 as surety, conditioned that the person or corporation shall:

29 (i) faithfully perform all ~~of the~~ provisions of the contract;

30 (ii) pay all laborers, mechanics, subcontractors, and material suppliers; and

1 (iii) pay all persons who supply the person, corporation, or subcontractors with provisions, provender,
2 material, or supplies for performing the work.

3 (b) The state or other governmental entity listed in subsection (1)(a) may not require that any bond
4 required by subsection (1)(a) be furnished by a particular surety company or by a particular insurance producer
5 for a surety company.

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

10 (a) lawful money of the United States; or

11 (b) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate,
12 bank draft, or irrevocable letter of credit, drawn or issued by:

13 (i) any federally or state-chartered bank or savings and loan association that is insured by or for which
14 insurance is administered by the federal deposit insurance corporation; or

15 (ii) a credit union insured by the national credit union share insurance fund.

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

19 (4) Except as provided in subsection (5), the state or other governmental entity may waive the
20 requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101,
21 that cost less than ~~\$50,000~~ \$150,000.

22 (5) A school district may waive the requirements contained in subsections (1) through (3) for building
23 or construction projects, as defined in 18-2-101, that cost less than \$7,500."
24

25 **Section 5.** Section 18-2-301, MCA, is amended to read:

26 **"18-2-301. Bids required -- advertising.** (1) It is unlawful for any offices, departments, institutions, or
27 any agent of the state of Montana acting for or in behalf of the state to do, to cause to be done, or to let any
28 contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on
29 behalf of and for the benefit of the state when the amount involved is ~~\$75,000~~ \$150,000 or more without first
30 advertising in at least one issue each week for 3 consecutive weeks in two newspapers published in the state,

1 one of which must be published at the seat of government and the other in the county where the work is to be
 2 performed, calling for sealed bids to perform the work and stating the time and place bids will be considered.

3 (2) All work may be done, caused to be done, or contracted for only after competitive bidding.

4 (3) If responsible bids are not received after two attempts, the department or agency may contract for
 5 the work in a manner determined to be cost-effective for the state.

6 (4) This section does not apply to work done by inmates at an institution in the department of corrections.

7 (5) (a) The provisions of Montana law governing advertising and competitive bidding do not apply when
 8 the department of fish, wildlife, and parks is preserving or restoring the historic buildings and resources that it
 9 owns at Bannack if:

10 (i) the options listed in subsection (5)(b) are determined to be more cost-effective for the state; and

11 (ii) the implementation of the options listed in subsection (5)(b) is necessary to save historic buildings and
 12 resources from degradation and loss.

13 (b) For the preservation or restoration of historic buildings and resources at Bannack when the conditions
 14 listed in subsection (5)(a) are met, the department of fish, wildlife, and parks may accomplish the preservation
 15 or restoration through:

16 (i) a memorandum of understanding with a local, state, or federal entity or nonprofit organization when
 17 the entity or organization demonstrates the competence, knowledge, and qualifications to preserve or restore
 18 historic resources;

19 (ii) the use of qualified and trained department of fish, wildlife, and parks employees and volunteers;

20 (iii) a training program in historic preservation and restoration conducted by a qualified local, state, or
 21 federal entity or a qualified nonprofit organization; or

22 (iv) any combination of the options described in subsection (5)(b)."

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24 **Section 6.** Section 18-2-302, MCA, is amended to read:

25 **"18-2-302. Bid security -- waiver -- authority to submit.** (1) (a) Except as provided in subsection (2),
 26 each bid must be accompanied by bid security in the amount of 10% of the bid. The security may consist of cash,
 27 a cashier's check, a certified check, a bank money order, a certificate of deposit, a money market certificate, an
 28 irrevocable letter of credit, or a bank draft. The security must be:

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

- 1 (ii) drawn and issued by a credit union insured by the national credit union share insurance fund; or
 2 (iii) a bid bond or bonds executed by a surety company authorized to do business in the state of Montana.

3 (b) The state or other governmental entity may not require that a bid bond or bond provided for in
 4 subsection (1)(a)(iii) be furnished by a particular surety company or by a particular insurance producer for a surety
 5 company.

6 (2) The state or other governmental entity may waive the requirements for bid security on building or
 7 construction projects, as defined in 18-2-101, that cost less than ~~\$25,000~~ \$150,000.

8 (3) The bid security must be signed by an individual authorized to submit the security by the corporation
 9 or other business entity on whose behalf the security is submitted. If the request for bid or other specifications
 10 provided by the state or other governmental entity specify the form or content of the bid security, the security
 11 submitted must comply with the requirements of that specification."
 12

13 **Section 7.** Section 85-1-219, MCA, is amended to read:

14 **"85-1-219. State-owned works -- department approval -- bids -- procurement of goods and**
 15 **services.** (1) For all state-owned works constructed, repaired, altered, improved, maintained, rehabilitated, or
 16 reconstructed, the department shall:

- 17 (a) review and approve all plans and working drawings prepared by engineers or architects, if any;
 18 (b) approve all bond issues or other financial arrangements and supervise and approve the expenditure
 19 of all money;
 20 (c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder, considering
 21 conformity with specifications and terms and reasonableness of bid amount;
 22 (d) review and approve all change orders;
 23 (e) accept the works when completed according to approved plans and specifications.

24 (2) Except as provided in subsection (3), the department shall solicit sealed, competitive bids before
 25 awarding a contract under subsection (1) and may award a contract only after receipt of at least one bid, if
 26 reasonably available.

27 (3) The department may negotiate a contract, without competitive bidding, with a contractor qualified to
 28 do business in Montana if:

- 29 (a) the department rejects all bids for the work;
 30 (b) an emergency threatening life or property exists;

- 1 (c) the proposed construction costs are \$50,000 or less;
- 2 (d) an exigency exists;
- 3 (e) the cost of goods, nonconstruction services, or professional services is ~~\$15,000~~ \$30,000 or less; or
- 4 (f) the cost of architectural, engineering, and land surveying services is ~~\$20,000~~ \$50,000 or less.
- 5 (4) (a) Except as provided in subsection (4)(b), the provisions of Title 18, chapter 2, parts 2 through 4,
- 6 apply to contracts awarded for construction under this section.
- 7 (b) The provisions of Title 18, chapter 2, parts 2 and 3, do not apply to contracts for which the proposed
- 8 construction costs are ~~\$50,000~~ \$75,000 or less.
- 9 (c) The requirements of Title 18, chapter 4, do not apply to contracts for which the cost of goods or
- 10 nonconstruction services is ~~\$15,000~~ \$30,000 or less.
- 11 (d) ~~(i) Except as provided in subsection (4)(d)(ii), the department may contract for professional services~~
- 12 ~~by direct negotiation when the cost of professional services covered by the contract does not exceed \$15,000.~~
- 13 ~~——(ii) The department may contract for architectural, engineering, and land surveying services by direct~~
- 14 ~~negotiation when the cost of the services covered by the contract does not exceed \$20,000.~~
- 15 ~~——(iii) The department may not separate service contracts or split or break projects for the purpose of~~
- 16 ~~circumventing the provisions of Title 18, chapter 8, part 2."~~

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18 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

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