

HOUSE BILL 395

Introduced by Thomas

1/25	Introduced
1/25	Referred to State Administration
1/26	First Reading
2/05	Hearing
2/07	Tabled in Committee

1 HOUSE BILL NO. 395
 2 INTRODUCED BY Thomas
 3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GIVING STATE AGENCIES,
 6 POLITICAL SUBDIVISIONS, AND OTHER PUBLIC AUTHORITIES
 7 DISCRETION IN REQUIRING BID AND PERFORMANCE BONDS; DELETING
 8 MINIMUM AND MAXIMUM THRESHOLDS FOR THOSE BONDS; DELETING THE
 9 REQUIRED AMOUNT OF THOSE BONDS; AMENDING SECTIONS 18-1-201
 10 AND 18-4-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
 11 DATE."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 **Section 1.** Section 18-1-201, MCA, is amended to read:

15 "18-1-201. Requirement for bidder's security. (1) A
 16 "public authority" or "obligee" includes:

17 (a) the state of Montana or any department (including
 18 the department of administration, unless otherwise
 19 authorized by express provision of law), institution, board,
 20 commission, agency, authority or subordinate jurisdiction
 21 thereof;

22 (b) any county or other political subdivision of this
 23 state;

24 (c) any municipal corporation or authorized subdivision
 25 thereof; or

1 (d) school districts, irrigation districts, or other
 2 public authority organized under the laws of the state of
 3 Montana.

4 (2) Except as provided in 18-4-312, in all cases where
 5 a public authority or obligee is authorized by law to
 6 solicit bids, tenders, or proposals for public works,
 7 improvements, or undertakings of any kind or for the
 8 purchase of commodities, goods, or property or for the
 9 procurement of technical or special services on a bid basis
 10 (exclusive of services on the basis of salaries or wages) or
 11 for the sale and purchase of bonds, debentures, notes, or
 12 any other forms of indebtedness of any such public
 13 authority, the respective executive, administrative, or
 14 other officers of and acting for such public authority shall
 15 ~~may require, as a condition precedent to considering any~~
 16 ~~such bids, as~~ evidence of good faith on the part of the
 17 bidder, and as indemnity for the benefit of such public
 18 authority against the failure or refusal of any a bidder to
 19 enter into any written contract that may be awarded upon and
 20 following acceptance of bid or as a condition precedent to
 21 consummating any sale and purchase of any forms of
 22 indebtedness, that any bid shall contain a written covenant
 23 of indemnity conditioned as herein prescribed ~~and that the~~
 24 ~~bid shall be accompanied by bid security of the nature~~
 25 ~~herein specified for the performance of such covenant."~~



-2- INTRODUCED BILL
 HB 395

1 **Section 2.** Section 18-4-312, MCA, is amended to read:

2 **"18-4-312. Bid and contract performance security. (1)**

3 For state contracts for the procurement of services ~~in the~~
4 ~~amount-of-\$10,000-or-less-or-of-supplies,~~ the department may
5 in its discretion require the filing of:

6 (a) bid security;

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

11 (c) both bid and contract performance security.

12 ~~{2}--For-state-contracts-for-the-procurement-of-services~~
13 ~~exceeding-\$10,000,--the-department-shall-require-bid-security~~
14 ~~and--contract--performance--security,--except--for-purchases~~
15 ~~described-in-18-4-305-and-18-4-306.~~

16 ~~{3}{2}~~ If security is required under subsection (1) or
17 ~~{2}~~, the following types of security may be required to be
18 deposited with the state:

19 (a) a good and sufficient bond with a licensed surety
20 company as surety;

21 (b) an irrevocable letter of credit not to exceed
22 \$100,000 in accordance with the provisions of Title 30,
23 chapter 5, part 1;

24 (c) lawful money of the United States;

25 (d) a cashier's check, certified check, bank money

1 order, or bank draft, drawn or issued by any banking
2 corporation incorporated under the laws of Montana or by a
3 banking association located in Montana; or

4 (e) certificates of deposit or money market
5 certificates issued by any bank or savings and loan
6 association licensed to do business in Montana.

7 ~~{4}{3}~~ The amount and type of the security mentioned
8 above must be determined by the department to be sufficient
9 to cover the risk involved to the state, ~~except that the~~
10 ~~same shall not be less than 10% of the bid price for bid~~
11 ~~security and 25% of the total contract price for contract~~
12 ~~performance security,~~ and must be payable to the state of
13 Montana. In determining the amount and type of contract
14 performance security required for each contract, the
15 department shall consider the nature of the performance and
16 the need for future protection to the state. In determining
17 the need for and amount of bid security, the department
18 shall consider the risks involved to the state if a
19 successful bidder or offeror fails to enter into a formal
20 contract; such considerations shall include but are not
21 limited to the type of supply or service being procured,
22 dollar amount of the proposed contract, or delivery time
23 requirements. The department may adopt rules to assist it in
24 making these determinations and in protecting the state in
25 dealing with irrevocable letters of credit. Bid and contract

1 security requirements must be included in the invitations
2 for bids or requests for proposals.

3 {5}(4) If a bidder or offeror to whom a contract is
4 awarded fails or refuses to enter into the contract or
5 provide contract performance security, as if required by the
6 invitation for bid or request for proposal, after
7 notification of award, the department may, in its
8 discretion, require the bidder to forfeit his bid security
9 to the state and become immediately liable on the bid bond,
10 but not in excess of the sum stated therein. The liability
11 of the bidder or offeror, the maker of the security or bid
12 bond, or the liability on the bid bond shall not exceed the
13 amount specified in the invitation for bid or request for
14 proposal.

15 {6}(5) Negotiable instruments provided as bid security
16 must be refunded to those bidders or offerors whose bids or
17 proposals are not accepted.

18 {7}(6) The provisions of Title 18, chapter 1, part 2,
19 and Title 18, chapter 2, parts 2 and 3, do not apply to
20 procurements under this chapter."

21 NEW SECTION. Section 3. Effective date. [This act] is
22 effective on passage and approval.

-End-