

HOUSE BILL NO. 846

INTRODUCED BY MENAHAN, SQUIRES, DRISCOLL

IN THE HOUSE

FEBRUARY 14, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

FEBRUARY 20, 1991                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 21, 1991                   PRINTING REPORT.

FEBRUARY 23, 1991                   SECOND READING, DO PASS.

FEBRUARY 25, 1991                   ENGROSSING REPORT.

FEBRUARY 26, 1991                   THIRD READING, PASSED.  
AYES, 89; NOES, 8.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 27, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON STATE ADMINISTRATION.

FIRST READING.

MARCH 6, 1991                       ON MOTION, REREFERRED TO COMMITTEE  
ON LABOR & EMPLOYMENT RELATIONS.

APRIL 3, 1991                       COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

APRIL 5, 1991                       SECOND READING, CONCURRED IN.

APRIL 6, 1991                       THIRD READING, CONCURRED IN.  
AYES, 29; NOES, 20.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 10, 1991                      RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS

CONCURRED IN.

APRIL 11, 1991                   THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

April 16, 1991                   REPORTED CORRECTLY ENROLLED.

APRIL 17, 1991                   SIGNED BY SPEAKER.

IN THE SENATE

APRIL 17, 1991                   SIGNED BY PRESIDENT.

IN THE HOUSE

APRIL 17, 1991                   DELIVERED TO GOVERNOR.

APRIL 20, 1991                   RETURNED FROM GOVERNOR WITH  
RECOMMENDED AMENDMENTS.

APRIL 22, 1991                   SECOND READING, GOVERNOR'S  
AMENDMENTS NOT CONCURRED IN.

TRANSMITTED TO SENATE.

IN THE SENATE

APRIL 23, 1991                   SECOND READING, GOVERNOR'S  
AMENDMENTS CONCURRED IN.

APRIL 24, 1991                   THIRD READING, GOVERNOR'S  
AMENDMENTS CONCURRED IN.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 24, 1991                   ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 25, 1991                   ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 25, 1991                   ON MOTION, CONFERENCE COMMITTEE  
DISSOLVED.

SECOND READING, GOVERNOR'S  
AMENDMENTS CONCURRED IN.

IN THE SENATE

APRIL 25, 1991

ON MOTION, CONFERENCE COMMITTEE  
DISSOLVED.

IN THE HOUSE

APRIL 25, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. *846*  
 2 INTRODUCED BY *Mitchell James Emswiler*  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW PUBLIC  
 5 INSPECTION OF COMPETITIVE SEALED BIDS AND PROPOSALS FOR THE  
 6 PRIVATIZATION OF STATE SERVICES AFTER THE BIDS OR PROPOSALS  
 7 ARE OPENED; AMENDING SECTIONS 18-4-301, 18-4-303, AND  
 8 18-4-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

11 **Section 1.** Section 18-4-301, MCA, is amended to read:

12 "18-4-301. Definitions. As used in this part, the  
 13 following definitions apply:

14 (1) "Cost-reimbursement contract" means a contract  
 15 under which a contractor is reimbursed for costs which are  
 16 allowable and allocable in accordance with the contract  
 17 terms and the provisions of this chapter, and a fee, if any.

18 (2) "Displacement" means the layoff, demotion, or  
 19 involuntary transfer of a state employee. The term does not  
 20 include changes in shift or days off or reassignment to  
 21 other positions within the same class and at the same  
 22 general location.

23 ~~(2)~~(3) "Established catalog price" means the price  
 24 included in a catalog, price list, schedule, or other form  
 25 that:

1 (a) is regularly maintained by a manufacturer or  
 2 contractor;

3 (b) is either published or otherwise available for  
 4 inspection by customers; and

5 (c) states prices at which sales are currently or were  
 6 last made to a significant number of any category of buyers  
 7 or buyers constituting the general buying public for the  
 8 supplies or services involved.

9 ~~(3)~~(4) "Invitation for bids" means all documents,  
 10 whether attached or incorporated by reference, utilized for  
 11 soliciting bids.

12 ~~(4)~~(5) "Office supply" means an item included under the  
 13 office supply commodity class codes maintained by the  
 14 department.

15 ~~(5)~~(6) "Purchase description" means the words used in a  
 16 solicitation to describe the supplies or services to be  
 17 purchased and includes specifications attached to or made a  
 18 part of the solicitation.

19 ~~(6)~~(7) "Request for proposals" means all documents,  
 20 whether attached or incorporated by reference, utilized for  
 21 soliciting proposals.

22 ~~(7)~~(8) "Responsible bidder or offeror" means a person  
 23 who has the capability in all respects to perform fully the  
 24 contract requirements and the integrity and reliability  
 25 which will assure good faith performance.

1       ~~(8)~~(9) "Responsive bidder" means a person who has  
2 submitted a bid which conforms in all material respects to  
3 the invitation for bids.

4       ~~(9)~~(10) "Term contract" means a contract in which  
5 supplies or services are purchased at a predetermined unit  
6 price for a specific period of time."

7       **Section 2.** Section 18-4-303, MCA, is amended to read:

8       "18-4-303. Competitive sealed bidding. (1) An  
9 invitation for bids must be issued and must include a  
10 purchase description and conditions applicable to the  
11 procurement.

12       (2) Adequate public notice of the invitation for bids  
13 must be given a reasonable time prior to the date set forth  
14 therein for the opening of bids, in accordance with rules  
15 adopted by the department. Notice may include publication in  
16 a newspaper of general circulation at a reasonable time  
17 prior to bid opening.

18       (3) Bids must be opened publicly in the presence of one  
19 or more witnesses at the time and place designated in the  
20 invitation for bids. Each bidder has the right to be  
21 present, either in person or by agent, when the bids are  
22 opened and has the right to examine and inspect all bids.  
23 The amount of each bid and such other relevant information  
24 as may be specified by rule, together with the name of each  
25 bidder, must be recorded. The record must be open to public

1 inspection. After the time of award, all bids and bid  
2 documents must be open to public inspection in accordance  
3 with the provisions of 2-6-102 and are subject to the  
4 requirements of subsection (4).

5       (4) Bids must be available for public inspection after  
6 the bids are opened if:

7       (a) the invitation for bids is issued by a state agency  
8 to contract with the private sector to provide services  
9 currently conducted by state employees; and

10       (b) acceptance of bids would result in the displacement  
11 of five or more state employees.

12       ~~(4)~~(5) Bids must be unconditionally accepted without  
13 alteration or correction, except as authorized in this  
14 chapter. Bids must be evaluated based on the requirements  
15 set forth in the invitation for bids, which may include  
16 criteria to determine acceptability, such as inspection,  
17 testing, quality, workmanship, delivery, and suitability for  
18 a particular purpose. Those criteria that will affect the  
19 bid price and be considered in evaluation for award must be  
20 objectively measurable, such as discounts, transportation  
21 costs, and total or life-cycle costs. The invitation for  
22 bids shall set forth the evaluation criteria to be used.  
23 Only criteria set forth in the invitation for bids may be  
24 used in bid evaluation.

25       ~~(5)~~(6) Correction or withdrawal of inadvertently

1 erroneous bids, before or after award, or cancellation of  
 2 awards or contracts based on such bid mistakes may be  
 3 permitted in accordance with rules adopted by the  
 4 department. After bid opening no changes in bid prices or  
 5 other provisions of bids prejudicial to the interest of the  
 6 state or fair competition may be permitted. Except as  
 7 otherwise provided by rule, all decisions to permit the  
 8 correction or withdrawal of bids or to cancel awards or  
 9 contracts based on bid mistakes must be supported by a  
 10 written determination made by the department.

11 ~~(6)~~(7) The contract must be awarded with reasonable  
 12 promptness by written notice to the lowest responsible and  
 13 responsive bidder whose bid meets the requirements and  
 14 criteria set forth in the invitation for bids, including the  
 15 preferences established by Title 18, chapter 1, part 1. If  
 16 all bids exceed available funds as certified by the  
 17 appropriate fiscal officer and the low responsive and  
 18 responsible bid does not exceed such funds by more than 5%,  
 19 the director or the head of a purchasing agency is  
 20 authorized, in situations where time or economic  
 21 considerations preclude resolicitation of a reduced scope,  
 22 to negotiate an adjustment of the bid price, including  
 23 changes in the bid requirements, with the low responsive and  
 24 responsible bidder in order to bring the bid within the  
 25 amount of available funds.

1 ~~(7)~~(8) When it is considered impractical to initially  
 2 prepare a purchase description to support an award based on  
 3 price, an invitation for bids may be issued requesting the  
 4 submission of unpriced offers, to be followed by an  
 5 invitation for bids limited to those bidders whose offers  
 6 have been qualified under the criteria set forth in the  
 7 first solicitation."

8 **Section 3.** Section 18-4-304, MCA, is amended to read:  
 9 **"18-4-304. Competitive sealed proposals.** (1) When,  
 10 under rules adopted by the department, the director, the  
 11 head of a purchasing agency, or a designee of either officer  
 12 above the level of the procurement officer determines in  
 13 writing that the use of competitive sealed bidding is either  
 14 not practicable or not advantageous to the state, a contract  
 15 may be entered into by competitive sealed proposals. The  
 16 department may provide by rule that it is either not  
 17 practicable or not advantageous to the state to procure  
 18 specified types of supplies and services by competitive  
 19 sealed bidding.

20 (2) Proposals must be solicited through a request for  
 21 proposals.

22 (3) Adequate public notice of the request for proposals  
 23 must be given in the same manner as provided in 18-4-303(2).

24 (4) Proposals must be opened so as to avoid disclosure  
 25 of contents to competing offerors during the process of

1 negotiation. A register of proposals must be prepared in  
2 accordance with rules adopted by the department and must be  
3 open for public inspection after contract award and is  
4 subject to the requirements of subsection (5).

5 (5) Proposals must be available for public inspection  
6 after the proposals are opened if:

7 (a) the proposals are solicited by a state agency to  
8 contract with the private sector to provide services  
9 currently conducted by state employees; and

10 (b) the proposals would result in the displacement of  
11 five or more state employees.

12 ~~(5)(6)~~ The request for proposals must state the  
13 relative importance of price and other evaluation factors.

14 ~~(6)(7)~~ As provided in the request for proposals and  
15 under rules adopted by the department, discussions may be  
16 conducted with responsible offerors who submit apparently  
17 responsive proposals for the purpose of clarification, to  
18 assure full understanding of and responsiveness to the  
19 solicitation requirements. Offerors must be accorded fair  
20 and equal treatment with respect to any opportunity for  
21 discussion and revision of proposals, and such revisions may  
22 be permitted, after submissions and prior to award, for the  
23 purpose of obtaining best and final offers. In conducting  
24 discussions, there may be no disclosure of any information  
25 derived from proposals submitted by competing offerors. The

1 department may require the submission of cost or pricing  
2 data in connection with an award under this section.

3 ~~(7)(8)~~ The award must be made to the responsible  
4 offeror whose proposal is determined in writing to be the  
5 most advantageous to the state, taking into consideration  
6 price, including the preference in 18-1-102, and the  
7 evaluation factors set forth in the request for proposals.  
8 No other factors or criteria may be used in the evaluation.  
9 The contract file shall contain the basis on which the award  
10 is made."

11 NEW SECTION. Section 4. Effective date. [This act] is  
12 effective on passage and approval.

-End-

APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS

HOUSE BILL NO. 846

INTRODUCED BY MENAHAN, SQUIRES, DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW PUBLIC INSPECTION OF COMPETITIVE SEALED BIDS AND PROPOSALS FOR THE PRIVATIZATION OF STATE SERVICES AFTER WHEN THE BIDS OR PROPOSALS ARE OPENED; AMENDING SECTIONS 18-4-301, 18-4-303, AND 18-4-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 18-4-301, MCA, is amended to read:

"18-4-301. Definitions. As used in this part, the following definitions apply:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

(2) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee. The term does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

(3) "Established catalog price" means the price included in a catalog, price list, schedule, or other form

that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(4) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(5) "Office supply" means an item included under the office supply commodity class codes maintained by the department.

(6) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(7) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(8) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability

SECOND READING



1 which will assure good faith performance.

2 ~~(8)~~(9) "Responsive bidder" means a person who has  
3 submitted a bid which conforms in all material respects to  
4 the invitation for bids.

5 ~~(9)~~(10) "Term contract" means a contract in which  
6 supplies or services are purchased at a predetermined unit  
7 price for a specific period of time."

8 **Section 2.** Section 18-4-303, MCA, is amended to read:

9 "18-4-303. **Competitive sealed bidding.** (1) An  
10 invitation for bids must be issued and must include a  
11 purchase description and conditions applicable to the  
12 procurement.

13 (2) Adequate public notice of the invitation for bids  
14 must be given a reasonable time prior to the date set forth  
15 therein for the opening of bids, in accordance with rules  
16 adopted by the department. Notice may include publication in  
17 a newspaper of general circulation at a reasonable time  
18 prior to bid opening.

19 (3) Bids must be opened publicly in the presence of one  
20 or more witnesses at the time and place designated in the  
21 invitation for bids. Each bidder has the right to be  
22 present, either in person or by agent, when the bids are  
23 opened and has the right to examine and inspect all bids.  
24 The amount of each bid and such other relevant information  
25 as may be specified by rule, together with the name of each

1 bidder, must be recorded. The record must be open to public  
2 inspection. After the time of award, all bids and bid  
3 documents must be open to public inspection in accordance  
4 with the provisions of 2-6-102 and are subject to the  
5 requirements of subsection (4).

6 (4) Bids must be available for public inspection after  
7 WHEN the bids are opened if:

8 (a) the invitation for bids is issued by a state agency  
9 to contract with the private sector to provide services  
10 currently conducted by state employees; and

11 (b) acceptance of bids would result in the displacement  
12 of five or more state employees.

13 ~~(4)~~(5) Bids must be unconditionally accepted without  
14 alteration or correction, except as authorized in this  
15 chapter. Bids must be evaluated based on the requirements  
16 set forth in the invitation for bids, which may include  
17 criteria to determine acceptability, such as inspection,  
18 testing, quality, workmanship, delivery, and suitability for  
19 a particular purpose. Those criteria that will affect the  
20 bid price and be considered in evaluation for award must be  
21 objectively measurable, such as discounts, transportation  
22 costs, and total or life-cycle costs. The invitation for  
23 bids shall set forth the evaluation criteria to be used.  
24 Only criteria set forth in the invitation for bids may be  
25 used in bid evaluation.

1       ~~(5)~~(6) Correction or withdrawal of inadvertently  
 2 erroneous bids, before or after award, or cancellation of  
 3 awards or contracts based on such bid mistakes may be  
 4 permitted in accordance with rules adopted by the  
 5 department. After bid opening no changes in bid prices or  
 6 other provisions of bids prejudicial to the interest of the  
 7 state or fair competition may be permitted. Except as  
 8 otherwise provided by rule, all decisions to permit the  
 9 correction or withdrawal of bids or to cancel awards or  
 10 contracts based on bid mistakes must be supported by a  
 11 written determination made by the department.

12       ~~(6)~~(7) The contract must be awarded with reasonable  
 13 promptness by written notice to the lowest responsible and  
 14 responsive bidder whose bid meets the requirements and  
 15 criteria set forth in the invitation for bids, including the  
 16 preferences established by Title 18, chapter 1, part 1. If  
 17 all bids exceed available funds as certified by the  
 18 appropriate fiscal officer and the low responsive and  
 19 responsible bid does not exceed such funds by more than 5%,  
 20 the director or the head of a purchasing agency is  
 21 authorized, in situations where time or economic  
 22 considerations preclude resolicitation of a reduced scope,  
 23 to negotiate an adjustment of the bid price, including  
 24 changes in the bid requirements, with the low responsive and  
 25 responsible bidder in order to bring the bid within the

1 amount of available funds.

2       ~~(7)~~(8) When it is considered impractical to initially  
 3 prepare a purchase description to support an award based on  
 4 price, an invitation for bids may be issued requesting the  
 5 submission of unpriced offers, to be followed by an  
 6 invitation for bids limited to those bidders whose offers  
 7 have been qualified under the criteria set forth in the  
 8 first solicitation."

9       **Section 3.** Section 18-4-304, MCA, is amended to read:

10       "18-4-304. **Competitive sealed proposals.** (1) When,  
 11 under rules adopted by the department, the director, the  
 12 head of a purchasing agency, or a designee of either officer  
 13 above the level of the procurement officer determines in  
 14 writing that the use of competitive sealed bidding is either  
 15 not practicable or not advantageous to the state, a contract  
 16 may be entered into by competitive sealed proposals. The  
 17 department may provide by rule that it is either not  
 18 practicable or not advantageous to the state to procure  
 19 specified types of supplies and services by competitive  
 20 sealed bidding.

21       (2) Proposals must be solicited through a request for  
 22 proposals.

23       (3) Adequate public notice of the request for proposals  
 24 must be given in the same manner as provided in 18-4-303(2).

25       (4) Proposals must be opened so as to avoid disclosure

1 of contents to competing offerors during the process of  
 2 negotiation. A register of proposals must be prepared in  
 3 accordance with rules adopted by the department and must be  
 4 open for public inspection after contract award and is  
 5 subject to the requirements of subsection (5).

6 (5) Proposals must be available for public inspection  
 7 after the proposals are opened if:

8 (a) the proposals are solicited by a state agency to  
 9 contract with the private sector to provide services  
 10 currently conducted by state employees; and

11 (b) the proposals would result in the displacement of  
 12 five or more state employees.

13 ~~(5)(6)~~ The request for proposals must state the  
 14 relative importance of price and other evaluation factors.

15 ~~(6)(7)~~ As provided in the request for proposals and  
 16 under rules adopted by the department, discussions may be  
 17 conducted with responsible offerors who submit apparently  
 18 responsive proposals for the purpose of clarification, to  
 19 assure full understanding of and responsiveness to the  
 20 solicitation requirements. Offerors must be accorded fair  
 21 and equal treatment with respect to any opportunity for  
 22 discussion and revision of proposals, and such revisions may  
 23 be permitted, after submissions and prior to award, for the  
 24 purpose of obtaining best and final offers. In conducting  
 25 discussions, there may be no disclosure of any information

1 derived from proposals submitted by competing offerors. The  
 2 department may require the submission of cost or pricing  
 3 data in connection with an award under this section.

4 ~~(7)(8)~~ The award must be made to the responsible  
 5 offeror whose proposal is determined in writing to be the  
 6 most advantageous to the state, taking into consideration  
 7 price, including the preference in 18-1-102, and the  
 8 evaluation factors set forth in the request for proposals.  
 9 No other factors or criteria may be used in the evaluation.  
 10 The contract file shall contain the basis on which the award  
 11 is made."

12 NEW SECTION. Section 4. Effective date. [This act] is  
 13 effective on passage and approval.

-End-

## 1 HOUSE BILL NO. 846

2 INTRODUCED BY MENAHAN, SQUIRES, DRISCOLL

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW PUBLIC  
5 INSPECTION OF COMPETITIVE SEALED BIDS AND PROPOSALS FOR THE  
6 PRIVATIZATION OF STATE SERVICES AFTER WHEN THE BIDS OR  
7 PROPOSALS ARE OPENED; AMENDING SECTIONS 18-4-301, 18-4-303,  
8 AND 18-4-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
9 DATE."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 **Section 1.** Section 18-4-301, MCA, is amended to read:13 "18-4-301. Definitions. As used in this part, the  
14 following definitions apply:15 (1) "Cost-reimbursement contract" means a contract  
16 under which a contractor is reimbursed for costs which are  
17 allowable and allocable in accordance with the contract  
18 terms and the provisions of this chapter, and a fee, if any.19 (2) "Displacement" means the layoff, demotion, or  
20 involuntary transfer of a state employee. The term does not  
21 include changes in shift or days off or reassignment to  
22 other positions within the same class and at the same  
23 general location.24 (3) "Established catalog price" means the price  
25 included in a catalog, price list, schedule, or other form

1 that:

2 (a) is regularly maintained by a manufacturer or  
3 contractor;4 (b) is either published or otherwise available for  
5 inspection by customers; and6 (c) states prices at which sales are currently or were  
7 last made to a significant number of any category of buyers  
8 or buyers constituting the general buying public for the  
9 supplies or services involved.10 (4) "Invitation for bids" means all documents,  
11 whether attached or incorporated by reference, utilized for  
12 soliciting bids.13 (5) "Office supply" means an item included under the  
14 office supply commodity class codes maintained by the  
15 department.16 (6) "Purchase description" means the words used in a  
17 solicitation to describe the supplies or services to be  
18 purchased and includes specifications attached to or made a  
19 part of the solicitation.20 (7) "Request for proposals" means all documents,  
21 whether attached or incorporated by reference, utilized for  
22 soliciting proposals.23 (8) "Responsible bidder or offeror" means a person  
24 who has the capability in all respects to perform fully the  
25 contract requirements and the integrity and reliability

THIRD READING

1 which will assure good faith performance.

2 ~~{8}~~{9} "Responsive bidder" means a person who has  
3 submitted a bid which conforms in all material respects to  
4 the invitation for bids.

5 ~~{9}~~{10} "Term contract" means a contract in which  
6 supplies or services are purchased at a predetermined unit  
7 price for a specific period of time."

8 **Section 2.** Section 18-4-303, MCA, is amended to read:

9 "18-4-303. Competitive sealed bidding. (1) An  
10 invitation for bids must be issued and must include a  
11 purchase description and conditions applicable to the  
12 procurement.

13 (2) Adequate public notice of the invitation for bids  
14 must be given a reasonable time prior to the date set forth  
15 therein for the opening of bids, in accordance with rules  
16 adopted by the department. Notice may include publication in  
17 a newspaper of general circulation at a reasonable time  
18 prior to bid opening.

19 (3) Bids must be opened publicly in the presence of one  
20 or more witnesses at the time and place designated in the  
21 invitation for bids. Each bidder has the right to be  
22 present, either in person or by agent, when the bids are  
23 opened and has the right to examine and inspect all bids.  
24 The amount of each bid and such other relevant information  
25 as may be specified by rule, together with the name of each

1 bidder, must be recorded. The record must be open to public  
2 inspection. After the time of award, all bids and bid  
3 documents must be open to public inspection in accordance  
4 with the provisions of 2-6-102 and are subject to the  
5 requirements of subsection (4).

6 (4) Bids must be available for public inspection after  
7 WHEN the bids are opened if:

8 (a) the invitation for bids is issued by a state agency  
9 to contract with the private sector to provide services  
10 currently conducted by state employees; and

11 (b) acceptance of bids would result in the displacement  
12 of five or more state employees.

13 ~~{4}~~{5} Bids must be unconditionally accepted without  
14 alteration or correction, except as authorized in this  
15 chapter. Bids must be evaluated based on the requirements  
16 set forth in the invitation for bids, which may include  
17 criteria to determine acceptability, such as inspection,  
18 testing, quality, workmanship, delivery, and suitability for  
19 a particular purpose. Those criteria that will affect the  
20 bid price and be considered in evaluation for award must be  
21 objectively measurable, such as discounts, transportation  
22 costs, and total or life-cycle costs. The invitation for  
23 bids shall set forth the evaluation criteria to be used.  
24 Only criteria set forth in the invitation for bids may be  
25 used in bid evaluation.

1       †5†(6) Correction or withdrawal of inadvertently  
 2 erroneous bids, before or after award, or cancellation of  
 3 awards or contracts based on such bid mistakes may be  
 4 permitted in accordance with rules adopted by the  
 5 department. After bid opening no changes in bid prices or  
 6 other provisions of bids prejudicial to the interest of the  
 7 state or fair competition may be permitted. Except as  
 8 otherwise provided by rule, all decisions to permit the  
 9 correction or withdrawal of bids or to cancel awards or  
 10 contracts based on bid mistakes must be supported by a  
 11 written determination made by the department.

12       †6†(7) The contract must be awarded with reasonable  
 13 promptness by written notice to the lowest responsible and  
 14 responsive bidder whose bid meets the requirements and  
 15 criteria set forth in the invitation for bids, including the  
 16 preferences established by Title 18, chapter 1, part 1. If  
 17 all bids exceed available funds as certified by the  
 18 appropriate fiscal officer and the low responsive and  
 19 responsible bid does not exceed such funds by more than 5%,  
 20 the director or the head of a purchasing agency is  
 21 authorized, in situations where time or economic  
 22 considerations preclude resolicitation of a reduced scope,  
 23 to negotiate an adjustment of the bid price, including  
 24 changes in the bid requirements, with the low responsive and  
 25 responsible bidder in order to bring the bid within the

1 amount of available funds.

2       †7†(8) When it is considered impractical to initially  
 3 prepare a purchase description to support an award based on  
 4 price, an invitation for bids may be issued requesting the  
 5 submission of unpriced offers, to be followed by an  
 6 invitation for bids limited to those bidders whose offers  
 7 have been qualified under the criteria set forth in the  
 8 first solicitation."

9       **Section 3.** Section 18-4-304, MCA, is amended to read:

10       "18-4-304. Competitive sealed proposals. (1) When,  
 11 under rules adopted by the department, the director, the  
 12 head of a purchasing agency, or a designee of either officer  
 13 above the level of the procurement officer determines in  
 14 writing that the use of competitive sealed bidding is either  
 15 not practicable or not advantageous to the state, a contract  
 16 may be entered into by competitive sealed proposals. The  
 17 department may provide by rule that it is either not  
 18 practicable or not advantageous to the state to procure  
 19 specified types of supplies and services by competitive  
 20 sealed bidding.

21       (2) Proposals must be solicited through a request for  
 22 proposals.

23       (3) Adequate public notice of the request for proposals  
 24 must be given in the same manner as provided in 18-4-303(2).

25       (4) Proposals must be opened so as to avoid disclosure

of contents to competing offerors during the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by the department and must be open for public inspection after contract award and is subject to the requirements of subsection (5).

(5) Proposals must be available for public inspection after the proposals are opened if:

(a) the proposals are solicited by a state agency to contract with the private sector to provide services currently conducted by state employees; and

(b) the proposals would result in the displacement of five or more state employees.

~~(5)(6)~~ The request for proposals must state the relative importance of price and other evaluation factors.

~~(6)(7)~~ As provided in the request for proposals and under rules adopted by the department, discussions may be conducted with responsible offerors who submit apparently responsive proposals for the purpose of clarification, to assure full understanding of and responsiveness to the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted, after submissions and prior to award, for the purpose of obtaining best and final offers. In conducting discussions, there may be no disclosure of any information

derived from proposals submitted by competing offerors. The department may require the submission of cost or pricing data in connection with an award under this section.

~~(7)(8)~~ The award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price, including the preference in 18-1-102, and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The contract file shall contain the basis on which the award is made."

NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
April 3, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 846 (third reading copy -- blue), respectfully report that House Bill No. 846 be amended and as so amended be concurred in:

1. Page 3, line 16.  
Following: "Notice"  
Strike: "may"  
Insert: "must"

Signed: Richard E. Manning  
Richard E. Manning, Chairman

LB 4/3/91  
Amd. Coord.

SB 4/3 1:50  
Sec. of Senate

SENATE  
HB 846



## 1 HOUSE BILL NO. 846

2 INTRODUCED BY MENAHAN, SQUIRES, DRISCOLL

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW PUBLIC  
5 INSPECTION OF COMPETITIVE SEALED BIDS AND PROPOSALS FOR THE  
6 PRIVATIZATION OF STATE SERVICES ~~AFter~~ WHEN THE BIDS OR  
7 PROPOSALS ARE OPENED; AMENDING SECTIONS 18-4-301, 18-4-303,  
8 AND 18-4-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
9 DATE."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 **Section 1.** Section 18-4-301, MCA, is amended to read:13 **"18-4-301. Definitions.** As used in this part, the  
14 following definitions apply:15 (1) "Cost-reimbursement contract" means a contract  
16 under which a contractor is reimbursed for costs which are  
17 allowable and allocable in accordance with the contract  
18 terms and the provisions of this chapter, and a fee, if any.19 (2) "Displacement" means the layoff, demotion, or  
20 involuntary transfer of a state employee. The term does not  
21 include changes in shift or days off or reassignment to  
22 other positions within the same class and at the same  
23 general location.24 ~~+~~2+(3) "Established catalog price" means the price  
25 included in a catalog, price list, schedule, or other form

1 that:

2 (a) is regularly maintained by a manufacturer or  
3 contractor;4 (b) is either published or otherwise available for  
5 inspection by customers; and6 (c) states prices at which sales are currently or were  
7 last made to a significant number of any category of buyers  
8 or buyers constituting the general buying public for the  
9 supplies or services involved.10 ~~+~~3+(4) "Invitation for bids" means all documents,  
11 whether attached or incorporated by reference, utilized for  
12 soliciting bids.13 ~~+~~4+(5) "Office supply" means an item included under the  
14 office supply commodity class codes maintained by the  
15 department.16 ~~+~~5+(6) "Purchase description" means the words used in a  
17 solicitation to describe the supplies or services to be  
18 purchased and includes specifications attached to or made a  
19 part of the solicitation.20 ~~+~~6+(7) "Request for proposals" means all documents,  
21 whether attached or incorporated by reference, utilized for  
22 soliciting proposals.23 ~~+~~7+(8) "Responsible bidder or offeror" means a person  
24 who has the capability in all respects to perform fully the  
25 contract requirements and the integrity and reliability

1 which will assure good faith performance.

2 ~~f8~~(9) "Responsive bidder" means a person who has  
3 submitted a bid which conforms in all material respects to  
4 the invitation for bids.

5 ~~f9~~(10) "Term contract" means a contract in which  
6 supplies or services are purchased at a predetermined unit  
7 price for a specific period of time."

8 **Section 2.** Section 18-4-303, MCA, is amended to read:

9 "18-4-303. **Competitive sealed bidding.** (1) An  
10 invitation for bids must be issued and must include a  
11 purchase description and conditions applicable to the  
12 procurement.

13 (2) Adequate public notice of the invitation for bids  
14 must be given a reasonable time prior to the date set forth  
15 therein for the opening of bids, in accordance with rules  
16 adopted by the department. Notice may MUST include  
17 publication in a newspaper of general circulation at a  
18 reasonable time prior to bid opening.

19 (3) Bids must be opened publicly in the presence of one  
20 or more witnesses at the time and place designated in the  
21 invitation for bids. Each bidder has the right to be  
22 present, either in person or by agent, when the bids are  
23 opened and has the right to examine and inspect all bids.  
24 The amount of each bid and such other relevant information  
25 as may be specified by rule, together with the name of each

1 bidder, must be recorded. The record must be open to public  
2 inspection. After the time of award, all bids and bid  
3 documents must be open to public inspection in accordance  
4 with the provisions of 2-6-102 and are subject to the  
5 requirements of subsection (4).

6 (4) Bids must be available for public inspection after  
7 WHEN the bids are opened if:

8 (a) the invitation for bids is issued by a state agency  
9 to contract with the private sector to provide services  
10 currently conducted by state employees; and

11 (b) acceptance of bids would result in the displacement  
12 of five or more state employees.

13 ~~f4~~(5) Bids must be unconditionally accepted without  
14 alteration or correction, except as authorized in this  
15 chapter. Bids must be evaluated based on the requirements  
16 set forth in the invitation for bids, which may include  
17 criteria to determine acceptability, such as inspection,  
18 testing, quality, workmanship, delivery, and suitability for  
19 a particular purpose. Those criteria that will affect the  
20 bid price and be considered in evaluation for award must be  
21 objectively measurable, such as discounts, transportation  
22 costs, and total or life-cycle costs. The invitation for  
23 bids shall set forth the evaluation criteria to be used.  
24 Only criteria set forth in the invitation for bids may be  
25 used in bid evaluation.

1       †5†(6) Correction or withdrawal of inadvertently  
 2 erroneous bids, before or after award, or cancellation of  
 3 awards or contracts based on such bid mistakes may be  
 4 permitted in accordance with rules adopted by the  
 5 department. After bid opening no changes in bid prices or  
 6 other provisions of bids prejudicial to the interest of the  
 7 state or fair competition may be permitted. Except as  
 8 otherwise provided by rule, all decisions to permit the  
 9 correction or withdrawal of bids or to cancel awards or  
 10 contracts based on bid mistakes must be supported by a  
 11 written determination made by the department.

12       †6†(7) The contract must be awarded with reasonable  
 13 promptness by written notice to the lowest responsible and  
 14 responsive bidder whose bid meets the requirements and  
 15 criteria set forth in the invitation for bids, including the  
 16 preferences established by Title 18, chapter 1, part 1. If  
 17 all bids exceed available funds as certified by the  
 18 appropriate fiscal officer and the low responsive and  
 19 responsible bid does not exceed such funds by more than 5%,  
 20 the director or the head of a purchasing agency is  
 21 authorized, in situations where time or economic  
 22 considerations preclude resolicitation of a reduced scope,  
 23 to negotiate an adjustment of the bid price, including  
 24 changes in the bid requirements, with the low responsive and  
 25 responsible bidder in order to bring the bid within the

1 amount of available funds.

2       †7†(8) When it is considered impractical to initially  
 3 prepare a purchase description to support an award based on  
 4 price, an invitation for bids may be issued requesting the  
 5 submission of unpriced offers, to be followed by an  
 6 invitation for bids limited to those bidders whose offers  
 7 have been qualified under the criteria set forth in the  
 8 first solicitation."

9       **Section 3.** Section 18-4-304, MCA, is amended to read:

10       "18-4-304. Competitive sealed proposals. (1) When,  
 11 under rules adopted by the department, the director, the  
 12 head of a purchasing agency, or a designee of either officer  
 13 above the level of the procurement officer determines in  
 14 writing that the use of competitive sealed bidding is either  
 15 not practicable or not advantageous to the state, a contract  
 16 may be entered into by competitive sealed proposals. The  
 17 department may provide by rule that it is either not  
 18 practicable or not advantageous to the state to procure  
 19 specified types of supplies and services by competitive  
 20 sealed bidding.

21       (2) Proposals must be solicited through a request for  
 22 proposals.

23       (3) Adequate public notice of the request for proposals  
 24 must be given in the same manner as provided in 18-4-303(2).

25       (4) Proposals must be opened so as to avoid disclosure

1 of contents to competing offerors during the process of  
 2 negotiation. A register of proposals must be prepared in  
 3 accordance with rules adopted by the department and must be  
 4 open for public inspection after contract award and is  
 5 subject to the requirements of subsection (5).

6 (5) Proposals must be available for public inspection  
 7 after WHEN the proposals are opened if:

8 (a) the proposals are solicited by a state agency to  
 9 contract with the private sector to provide services  
 10 currently conducted by state employees; and

11 (b) the proposals would result in the displacement of  
 12 five or more state employees.

13 +5+(6) The request for proposals must state the  
 14 relative importance of price and other evaluation factors.

15 +6+(7) As provided in the request for proposals and  
 16 under rules adopted by the department, discussions may be  
 17 conducted with responsible offerors who submit apparently  
 18 responsive proposals for the purpose of clarification, to  
 19 assure full understanding of and responsiveness to the  
 20 solicitation requirements. Offerors must be accorded fair  
 21 and equal treatment with respect to any opportunity for  
 22 discussion and revision of proposals, and such revisions may  
 23 be permitted, after submissions and prior to award, for the  
 24 purpose of obtaining best and final offers. In conducting  
 25 discussions, there may be no disclosure of any information

1 derived from proposals submitted by competing offerors. The  
 2 department may require the submission of cost or pricing  
 3 data in connection with an award under this section.

4 +7+(8) The award must be made to the responsible  
 5 offeror whose proposal is determined in writing to be the  
 6 most advantageous to the state, taking into consideration  
 7 price, including the preference in 18-1-102, and the  
 8 evaluation factors set forth in the request for proposals.  
 9 No other factors or criteria may be used in the evaluation.  
 10 The contract file shall contain the basis on which the award  
 11 is made."

12 NEW SECTION. Section 4. Effective date. [This act] is  
 13 effective on passage and approval.

-End-

GOVERNOR'S AMENDMENTS TO  
HOUSE BILL 846  
(REFERENCE COPY, AS AMENDED)  
April 20, 1991

1. Page 3, line 16.  
Following: "Notice"  
Strike: "MUST"  
Insert: "may"
  
2. Page 7, lines 4 through 12.  
Following: "award"  
Strike: remainder of line 4 through "employees" one line 12  
Renumber: subsequent sections

*Gov. Amend.  
HB 846*



AN ACT TO ALLOW PUBLIC INSPECTION OF COMPETITIVE SEALED BIDS AND PROPOSALS FOR THE PRIVATIZATION OF STATE SERVICES WHEN THE BIDS OR PROPOSALS ARE OPENED; AMENDING SECTIONS 18-4-301 AND 18-4-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 18-4-301, MCA, is amended to read:

"18-4-301. Definitions. As used in this part, the following definitions apply:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

(2) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee. The term does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

(2)(3) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;  
 (b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or

services involved.

(3)(4) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(4)(5) "Office supply" means an item included under the office supply commodity class codes maintained by the department.

(5)(6) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(6)(7) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(7)(8) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

(8)(9) "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

(9)(10) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 2. Section 18-4-303, MCA, is amended to read:

"18-4-303. Competitive sealed bidding. (1) An invitation for

bids must be issued and must include a purchase description and conditions applicable to the procurement.

(2) Adequate public notice of the invitation for bids must be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with rules adopted by the department. Notice may include publication in a newspaper of general circulation at a reasonable time prior to bid opening.

(3) Bids must be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. Each bidder has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids. The amount of each bid and such other relevant information as may be specified by rule, together with the name of each bidder, must be recorded. The record must be open to public inspection. After the time of award, all bids and bid documents must be open to public inspection in accordance with the provisions of 2-6-102 and are subject to the requirements of subsection (4).

(4) Bids must be available for public inspection when the bids are opened if:

(a) the invitation for bids is issued by a state agency to contract with the private sector to provide services currently conducted by state employees; and

(b) acceptance of bids would result in the displacement of five or more state employees.

~~(4)~~(5) Bids must be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. Only criteria set forth in the invitation for bids may be used in bid evaluation.

~~(5)~~(6) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on such bid mistakes may be permitted in accordance with rules adopted by the department. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes must be supported by a written determination made by the department.

~~(6)~~(7) The contract must be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria

set forth in the invitation for bids, including the preferences established by Title 18, chapter 1, part 1. If all bids exceed available funds as certified by the appropriate fiscal officer and the low responsive and responsible bid does not exceed such funds by more than 5%, the director or the head of a purchasing agency is authorized, in situations where time or economic considerations preclude resolicitation of a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.

~~(7)~~(8) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation."

Section 3. **Effective date.** [This act] is effective on passage and approval.



## 1 HOUSE BILL NO. 846

2 INTRODUCED BY MENAHAN, SQUIRES, DRISCOLL

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW PUBLIC  
5 INSPECTION OF COMPETITIVE SEALED BIDS AND PROPOSALS FOR THE  
6 PRIVATIZATION OF STATE SERVICES AFTER WHEN THE BIDS OR  
7 PROPOSALS ARE OPENED; AMENDING SECTIONS 18-4-301, 18-4-303,  
8 AND 18-4-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
9 DATE."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 **Section 1.** Section 18-4-301, MCA, is amended to read:13 "18-4-301. Definitions. As used in this part, the  
14 following definitions apply:15 (1) "Cost-reimbursement contract" means a contract  
16 under which a contractor is reimbursed for costs which are  
17 allowable and allocable in accordance with the contract  
18 terms and the provisions of this chapter, and a fee, if any.19 (2) "Displacement" means the layoff, demotion, or  
20 involuntary transfer of a state employee. The term does not  
21 include changes in shift or days off or reassignment to  
22 other positions within the same class and at the same  
23 general location.24 ~~(2)(3)~~ "Established catalog price" means the price  
25 included in a catalog, price list, schedule, or other form

1 that:

2 (a) is regularly maintained by a manufacturer or  
3 contractor;4 (b) is either published or otherwise available for  
5 inspection by customers; and6 (c) states prices at which sales are currently or were  
7 last made to a significant number of any category of buyers  
8 or buyers constituting the general buying public for the  
9 supplies or services involved.10 ~~(3)(4)~~ "Invitation for bids" means all documents,  
11 whether attached or incorporated by reference, utilized for  
12 soliciting bids.13 ~~(4)(5)~~ "Office supply" means an item included under the  
14 office supply commodity class codes maintained by the  
15 department.16 ~~(5)(6)~~ "Purchase description" means the words used in a  
17 solicitation to describe the supplies or services to be  
18 purchased and includes specifications attached to or made a  
19 part of the solicitation.20 ~~(6)(7)~~ "Request for proposals" means all documents,  
21 whether attached or incorporated by reference, utilized for  
22 soliciting proposals.23 ~~(7)(8)~~ "Responsible bidder or offeror" means a person  
24 who has the capability in all respects to perform fully the  
25 contract requirements and the integrity and reliability

1 which will assure good faith performance.

2 ~~{8}~~{9} "Responsive bidder" means a person who has  
3 submitted a bid which conforms in all material respects to  
4 the invitation for bids.

5 ~~{9}~~{10} "Term contract" means a contract in which  
6 supplies or services are purchased at a predetermined unit  
7 price for a specific period of time."

8 **Section 2.** Section 18-4-303, MCA, is amended to read:

9 "18-4-303. Competitive sealed bidding. (1) An  
10 invitation for bids must be issued and must include a  
11 purchase description and conditions applicable to the  
12 procurement.

13 (2) Adequate public notice of the invitation for bids  
14 must be given a reasonable time prior to the date set forth  
15 therein for the opening of bids, in accordance with rules  
16 adopted by the department. Notice ~~may~~ MUST MAY include  
17 publication in a newspaper of general circulation at a  
18 reasonable time prior to bid opening.

19 (3) Bids must be opened publicly in the presence of one  
20 or more witnesses at the time and place designated in the  
21 invitation for bids. Each bidder has the right to be  
22 present, either in person or by agent, when the bids are  
23 opened and has the right to examine and inspect all bids.  
24 The amount of each bid and such other relevant information  
25 as may be specified by rule, together with the name of each

1 bidder, must be recorded. The record must be open to public  
2 inspection. After the time of award, all bids and bid  
3 documents must be open to public inspection in accordance  
4 with the provisions of 2-6-102 and are subject to the  
5 requirements of subsection (4).

6 (4) Bids must be available for public inspection after  
7 WHEN the bids are opened if:

8 (a) the invitation for bids is issued by a state agency  
9 to contract with the private sector to provide services  
10 currently conducted by state employees; and

11 (b) acceptance of bids would result in the displacement  
12 of five or more state employees.

13 ~~{4}~~{5} Bids must be unconditionally accepted without  
14 alteration or correction, except as authorized in this  
15 chapter. Bids must be evaluated based on the requirements  
16 set forth in the invitation for bids, which may include  
17 criteria to determine acceptability, such as inspection,  
18 testing, quality, workmanship, delivery, and suitability for  
19 a particular purpose. Those criteria that will affect the  
20 bid price and be considered in evaluation for award must be  
21 objectively measurable, such as discounts, transportation  
22 costs, and total or life-cycle costs. The invitation for  
23 bids shall set forth the evaluation criteria to be used.  
24 Only criteria set forth in the invitation for bids may be  
25 used in bid evaluation.

1       ~~(5)~~(6) Correction or withdrawal of inadvertently  
 2 erroneous bids, before or after award, or cancellation of  
 3 awards or contracts based on such bid mistakes may be  
 4 permitted in accordance with rules adopted by the  
 5 department. After bid opening no changes in bid prices or  
 6 other provisions of bids prejudicial to the interest of the  
 7 state or fair competition may be permitted. Except as  
 8 otherwise provided by rule, all decisions to permit the  
 9 correction or withdrawal of bids or to cancel awards or  
 10 contracts based on bid mistakes must be supported by a  
 11 written determination made by the department.

12       ~~(6)~~(7) The contract must be awarded with reasonable  
 13 promptness by written notice to the lowest responsible and  
 14 responsive bidder whose bid meets the requirements and  
 15 criteria set forth in the invitation for bids, including the  
 16 preferences established by Title 18, chapter 1, part 1. If  
 17 all bids exceed available funds as certified by the  
 18 appropriate fiscal officer and the low responsive and  
 19 responsible bid does not exceed such funds by more than 5%,  
 20 the director or the head of a purchasing agency is  
 21 authorized, in situations where time or economic  
 22 considerations preclude resolicitation of a reduced scope,  
 23 to negotiate an adjustment of the bid price, including  
 24 changes in the bid requirements, with the low responsive and  
 25 responsible bidder in order to bring the bid within the

1 amount of available funds.

2       ~~(7)~~(8) When it is considered impractical to initially  
 3 prepare a purchase description to support an award based on  
 4 price, an invitation for bids may be issued requesting the  
 5 submission of unpriced offers, to be followed by an  
 6 invitation for bids limited to those bidders whose offers  
 7 have been qualified under the criteria set forth in the  
 8 first solicitation."

9       **Section 3.** Section 18-4-304, MCA, is amended to read:

10       "**18-4-304. Competitive sealed proposals.** (1) When,  
 11 under rules adopted by the department, the director, the  
 12 head of a purchasing agency, or a designee of either officer  
 13 above the level of the procurement officer determines in  
 14 writing that the use of competitive sealed bidding is either  
 15 not practicable or not advantageous to the state, a contract  
 16 may be entered into by competitive sealed proposals. The  
 17 department may provide by rule that it is either not  
 18 practicable or not advantageous to the state to procure  
 19 specified types of supplies and services by competitive  
 20 sealed bidding.

21       (2) Proposals must be solicited through a request for  
 22 proposals.

23       (3) Adequate public notice of the request for proposals  
 24 must be given in the same manner as provided in 18-4-303(2).

25       (4) Proposals must be opened so as to avoid disclosure

1 of contents to competing offerors during the process of  
 2 negotiation. A register of proposals must be prepared in  
 3 accordance with rules adopted by the department and must be  
 4 open for public inspection after contract award and is  
 5 subject to the requirements of subsection (5).

6 ~~(5) Proposals must be available for public inspection~~  
 7 ~~after WHEN the proposals are opened if:~~

8 ~~(a) the proposals are solicited by a state agency to~~  
 9 ~~contract with the private sector to provide services~~  
 10 ~~currently conducted by state employees; and~~

11 ~~(b) the proposals would result in the displacement of~~  
 12 ~~five or more state employees;~~

13 ~~(5)(6)(5)~~ The request for proposals must state the  
 14 relative importance of price and other evaluation factors.

15 ~~(6)(7)(6)~~ As provided in the request for proposals and  
 16 under rules adopted by the department, discussions may be  
 17 conducted with responsible offerors who submit apparently  
 18 responsive proposals for the purpose of clarification, to  
 19 assure full understanding of and responsiveness to the  
 20 solicitation requirements. Offerors must be accorded fair  
 21 and equal treatment with respect to any opportunity for  
 22 discussion and revision of proposals, and such revisions may  
 23 be permitted, after submissions and prior to award, for the  
 24 purpose of obtaining best and final offers. In conducting  
 25 discussions, there may be no disclosure of any information

1 derived from proposals submitted by competing offerors. The  
 2 department may require the submission of cost or pricing  
 3 data in connection with an award under this section.

4 ~~(7)(8)(7)~~ The award must be made to the responsible  
 5 offeror whose proposal is determined in writing to be the  
 6 most advantageous to the state, taking into consideration  
 7 price, including the preference in 18-1-102, and the  
 8 evaluation factors set forth in the request for proposals.  
 9 No other factors or criteria may be used in the evaluation.  
 10 The contract file shall contain the basis on which the award  
 11 is made."

12 NEW SECTION. Section 4. Effective date. [This act] is  
 13 effective on passage and approval.

-End-