

CONTRACTS - Waiver of competitive bidding requirements for certain county contracts during disaster or emergency situations; COUNTY COMMISSIONERS - Authority to let certain county contracts without competitive bidding during disaster or emergency situations; DISASTERS - Waiver of competitive bidding requirements for certain county contracts during disaster or emergency situations; EMERGENCIES - Waiver of competitive bidding requirements for certain county contracts during disaster or emergency situations; HIGHWAYS - Waiver of competitive bidding requirements for road and bridge repair contracts during disaster or emergency situations; PUBLIC FUNDS - Waiver of competitive bidding requirements for certain county contracts during disaster or emergency situations; PURCHASING - Waiver of competitive bidding requirements for certain county contracts during disaster or emergency situations; REVISED CODES OF MONTANA, 1947 - Section 16-1803.

HELD: Under section 16-1803, R.C.M. 1947, counties may contract for the repair of bridges and roads damaged by disasters and calamities without competitive bidding, provided there is an express determination the repairs are urgently and immediately needed.

26 September 1978

James E. Seykora, Esq.  
Big Horn County Attorney  
Big Horn County Courthouse  
Hardin, Montana 59034

Dear Mr. Seykora:

You have requested an opinion concerning the following question:

Does section 16-1803, R.C.M. 1947, require a county to call for bids for the repair of roads and bridges damaged by flood or other natural disaster where the cost of repairs will exceed \$10,000 but are urgently and immediately needed?

Section 16-1803, R.C.M. 1947, generally requires counties to let contracts in excess of \$10,000 to the lowest responsible bidder, providing in relevant part:

(1) No contract shall be entered into by a county governing body for the purchase of any vehicle, or road machinery, or for any other machinery, apparatus, appliances or equipment, or for any materials or supplies of any kind for which must be paid a sum in excess of ten thousand dollars (\$10,000), or for the construction of any building, road or bridge for which must be paid a sum in excess of ten thousand dollars (\$10,000), without first publishing a notice calling for bids furnishing the same, which notice must be published at least once a week, for three (3) consecutive weeks before the date fixed therein for receiving bids, in the official newspaper of the county, and every such contract shall be let to the lowest and best responsible bidder; provided that the provisions of this section shall not apply to contracts for public printing entered into in accordance with the provisions of chapter 12 of Title 16 and provided further, that the provisions of this section shall not apply to contracts for purchases, which in the opinion of the governing body, are made necessary by fires, flood, explosion, storm, earthquake, or other elements, epidemic, riot, insurrection, or for the immediate preservation of order, or of the public health, or for the restoration of a condition of usefulness which has been destroyed by accident, wear, tear, mischief, or for the relief of a stricken community overtaken by calamity. (Emphasis added.)

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The section expressly exempts from competitive bidding requirements those "contracts for purchases" which are necessitated by enumerated disasters and calamities. The Legislature's use of the word "purchase" has caused concern that the exemption is limited to contracts for materials, supplies and equipment and does not include contracts for repair of roads and bridges. It is my opinion that the exemption is not so limited.

Section 16-1803 must be construed in its entirety to give effect to all words and provisions. Words cannot be taken out of context and construed in isolation; their meanings

must be determined by the context in which they are employed, from the evident purpose of the Act, and from the subject to which they relate. State ex rel. Bowler v. Board of County Commissioners, 106 Mont. 251, 256, 76 P.2d 648 (1938). In the context of section 16-1803, it is apparent that the Legislature used the word "purchase" in its broad sense to include the "purchase" of construction services as well as the purchase of materials and equipment. At the outset, the section refers to "construction" contracts in the same conjunctive series as contracts for vehicles, machinery, and materials at the beginning of the section. Then, in the exempting language, "purchase" is used without distinction among any of the items in the initial series. The apparent purpose of the exemption is to allow counties to meet emergency, disaster situations without delays of competitive bidding. Reference in the exempting language to "restoration of a condition of usefulness which has been destroyed" clearly contemplates restoration of roads, buildings and bridges, and rebuts any contention that the bidding exemption extends only to the purchase of equipment, materials and supplies.

This opinion should not be construed as granting counties a blanket exemption from the bidding requirements of section 16-1803 in disaster situations. Wherever practical, counties must comply with the bidding requirements. They may dispense with competitive bidding only where equipment, supplies, materials, or services are urgently and immediately needed and the appropriate authority has expressly made this finding.

THEREFORE, IT IS MY OPINION:

Under section 16-1803, R.C.M. 1947, counties may contract for the repair of bridges and roads damaged by disasters and calamities without competitive bidding, provided there is an express determination the repairs are urgently and immediately needed.

Very truly yours,

MIKE GREELY  
Attorney General