

CONTRACTS - Preference for resident contractors;
MONTANA CODE ANNOTATED - Sections 1-2-101, 18-1-102(1)
and (2), 18-1-103(4);
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No.
59 (1977).

HELD: A resident bidder whose materials are
manufactured in Montana by Montana labor may
not be awarded a state contract under section
18-1-102, MCA, when his bid is more than 3%
higher than that of the lowest responsible
nonresident bidder.

2 November 1984

Morris Brusett, Director
Department of Administration
Room 155, Sam W. Mitchell Building
Helena MT 59620

Dear Mr. Brusett:

You have requested my opinion on a question which I have
stated as follows:

May a resident bidder whose materials are
manufactured in Montana by Montana labor be
awarded a state contract under section
18-1-102, MCA, when his bid is more than 3%
higher than that of the lowest responsible
nonresident bidder?

Section 18-1-102, MCA, deals with the awarding of
certain state contracts. It provides, in pertinent
part:

(1) In order to provide for an orderly
administration of the business of the state of
Montana in awarding contracts for materials,
supplies, equipment, construction, repair, and
public works of all kinds, it shall be the
duty of each board, commission, officer, or
individual charged by law with the

responsibility for the execution of the contract on behalf of the state, board, commission, political subdivision, agency, school district, or a public corporation of the state of Montana to award such contract to the lowest responsible bidder who is a resident of the state of Montana and whose bid is not more than 3% higher than that of the lowest responsible bidder who is a nonresident of this state.

(2) In awarding contracts for purchase of products, materials, supplies, or equipment, such board, commission, officer, or individual shall award the contract to any such resident whose offered materials, supplies, or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered materials, supplies, or equipment are not so manufactured or produced, provided that such products, materials, supplies, and equipment are comparable in quality and performance. [Emphasis added.]

Subsection (1) grants a preference to a resident with the lowest responsible bid over a nonresident with the lowest responsible bid, so long as the resident's bid is not more than 3% higher than that of the nonresident. (For a discussion of the meaning of the phrase "lowest responsible bidder" see 37 Op. Att'y Gen. No. 59 (1977).) Subsection (2) provides that a preference be granted to a resident with the lowest responsible bid whose supplies are manufactured in-state by Montana labor over a resident with the lowest responsible bid whose supplies are manufactured out-of-state. With respect to contracts for the purchase of products, any bidder whose materials are manufactured in Montana by Montana labor is considered a resident. § 18-1-103(4), MCA.

The confusion surrounding the statute arises where the bidders on a contract are made up of both residents and nonresidents and the bids are fairly close in dollar amounts. In the example cited in the legal memorandum that accompanied your opinion request there are two resident bidders and one nonresident bidder. The lowest

bidder is an out-of-state company. The first resident company's bid is within 3% of the nonresident's bid; however, the materials offered by that resident company are not manufactured in-state. Nevertheless, applying subsection (1) of section 18-1-102, MCA, the first resident bidder would be awarded the contract. However, the bid of the second resident bidder, whose materials are manufactured in-state, is within 3% of the first resident bidder who was awarded the contract under subsection (1). Your specific question concerns whether, applying subsection (2), the resident bidder whose materials are manufactured in-state should be granted preference over the resident bidder who prevailed under subsection (1). I will use the hypothetical situation that you provided in your opinion as an example. The dollar amounts are as follows:

- Bid of resident using out-of-state materials = \$101.00.
- Bid of resident using in-state materials = \$103.00.
- Bid of nonresident = \$99.00.

If both subsections (1) and (2) of section 18-1-102, MCA, are applied to this example, the operation of subsection (1) will result in the awarding of the contract to the resident with the bid of \$101, who will, in turn, lose out to the resident with the bid of \$103, by operation of subsection (2). The final award of the contract will thus go to a resident whose bid is more than 3% higher than the bid of the nonresident. Such a result is in direct conflict with subsection (1).

It is a rule of statutory construction that a statute is to be construed as a whole, with effect being given, if possible, to every provision so that conflicting parts are made to harmonize. See § 1-2-101, MCA; Montana Automobile Association v. Greely, 38 St. Rptr. 1174, 1180, 632 P.2d 300, 306 (1981); McClanathan v. State, 186 Mont. 56, 61, 606 P.2d 507, 510 (1980); Yurkovich v. Industrial Accident Board, 132 Mont. 77, 84, 314 P.2d 866, 870 (1957). Individual sections of an act should be interpreted in such a manner as to ensure coordination with other sections of the act. State v. Meader, 184 Mont. 32, 37, 601 P.2d 386, 389 (1979). Subsections of a statute should be construed to avoid conflict between them. State ex rel. Depuy v. District Court, 142 Mont. 328, 332, 384 P.2d 501, 503 (1963).

Following these rules of statutory construction, I conclude that the two subsections of section 18-1-102, MCA, must operate independently of, rather than in conjunction with, each other. Subsection (1) would apply when the bidders on a particular contract include residents and nonresidents, and where the lowest responsible bid of a resident is not more than 3% higher than the lowest responsible bid of a nonresident. Subsection (2) would apply where the bidders include only residents or where the lowest responsible bidder is not a nonresident. Thus, in the example provided above, subsection (1) would operate to award the contract to the resident whose bid was no more than 3% higher than that of the nonresident, i.e., the bid of \$101. Because the factual situation triggers the application of subsection (1), subsection (2) would not come into operation at all. If section 18-1-102, MCA, is not interpreted in the manner described above, one part of the statute could operate in violation of the other, a result not favored in the law.

THEREFORE, IT IS MY OPINION:

A resident bidder whose materials are manufactured in Montana by Montana labor may not be awarded a state contract under section 18-1-102, MCA, when his bid is more than 3% higher than that of the lowest responsible nonresident bidder.

Very truly yours,

MIKE GREELY
Attorney General