

HOUSE BILL 588

IN THE HOUSE

February 6, 1979

Introduced and referred to  
Committee on State Administration.

February 19, 1979

Committee recommend bill, do  
not pass.

February 20, 1979

Report adopted.

*House* BILL NO. *511*

INTRODUCED BY

*Handwritten signature: Vincent Green*  
*Handwritten signature: Sarah Marie Farris*  
*VINCENT Green*

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING POLICIES AND PROCEDURES FOR CONTRACTING PROFESSIONAL SERVICES BY THE STATE; PROHIBITING THE PAYMENT OF CONTINGENT FEES FOR PROFESSIONAL SERVICES CONTRACTS; PROVIDING PENALTIES; AND REPEALING SECTION 18-2-112, MCA."

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

NEW SECTION. Section 1. Short title. [This act] may be cited as the "Professional Services Procurement Act".

NEW SECTION. Section 2. Purpose. It is the purpose of [this act] to effectuate the policy of the state of Montana that the state procure professional services solely with those professionals who have demonstrated competence in and the qualifications for the type of professional service required. All selection processes are open to the public and the remunerations paid are matters of public record.

NEW SECTION. Section 3. Definitions. As used in [this act], unless the context clearly requires otherwise, the following definitions apply:

(1) "Professional services" means services in work that:

(a) is predominantly intellectual and varied in

character as opposed to routine, menial, manual, mechanical, or physical;

(b) involves the exercise of discretion and judgment in its performance;

(c) is of such a character that the output produced or the result accomplished cannot be judged objectively; or

(d) requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine, menial, manual, or physical processes; and

(e) includes but is not limited to such professions as accounting, actuarial science, advertising, architecture, engineering, landscape architecture, land surveying, law, medicine, optometry, planning, and ecological science.

(2) "Agency" means the state of Montana, its boards, institutions, and agencies.

(3) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice a specified profession.

(4) "Department" means the department of administration.

(5) "Committee" means a selection committee composed

*H 13 288*

1 of one person from the department of administration and two  
 2 persons from the agency involved, specifically excluding the  
 3 head of the agency.

4 (6) "Panel" means a public advisory panel created by  
 5 [section 4].

6 NEW SECTION. Section 4. Public advisory panel created  
 7 -- composition. (1) There is created a public advisory  
 8 panel. The panel shall consist of five appointive members.  
 9 The members shall be appointed by the governor from the  
 10 following backgrounds: one accountant, one architect, one  
 11 attorney, one engineer, and one private citizen. The  
 12 governor, in making such appointments, shall request and  
 13 consider recommendations made to him by the membership of  
 14 the particular interest from which the appointments are to  
 15 be made. Members shall serve for only one term of 2 years.  
 16 During their association with the panel, they may not  
 17 participate in any of the awarded professional services,  
 18 either directly or indirectly.

19 (2) The department of administration will serve as  
 20 secretary to the panel, furnishing any required information,  
 21 but will not offer advice about or vote for any firms.

22 NEW SECTION. Section 5. Qualification procedures --  
 23 public announcement. (1) Professionals who seek to provide  
 24 services for an agency shall submit annually a statement of  
 25 qualifications and performance data to the department.

1 Attorneys at law are not required to submit a statement of  
 2 qualifications and performance data but may be required to  
 3 submit information that does not violate their canons of  
 4 ethics.

5 (2) Statewide announcements of all projects requiring  
 6 professional services and those selected professionals shall  
 7 be made to the department semimonthly.

8 NEW SECTION. Section 6. Selection of firm. (1) The  
 9 method of selection shall be established by the head of the  
 10 agency involved in accordance with the following estimated  
 11 fees:

12 (a) If the fee is \$3,000 or less, the agency head  
 13 shall select the firm directly from those expressing  
 14 interest, negotiate the fee, and enter into a contract on  
 15 behalf of the state.

16 (b) If the fee is between \$3,000 and \$25,000, the  
 17 committee shall, for each proposed professional service:

18 (i) evaluate current statements of qualifications and  
 19 performance data of applicants;

20 (ii) review the written submittal requesting  
 21 consideration from each firm;

22 (iii) reduce the list of applicants to no less than  
 23 three or more than five;

24 (iv) conduct discussions with the applicant regarding  
 25 anticipated concepts and the relative utility of alternative

1 methods of approach for furnishing the required services;

2 (v) rank the firms based upon criteria established and  
3 published;

4 (vi) submit the firms, as ranked, to the head of the  
5 agency.

6 (c) If the fee is \$25,000 or more, the panel shall,  
7 for each proposed professional service:

8 (i) evaluate current statements of qualifications and  
9 performance data of applicants;

10 (ii) review the written submittal requesting  
11 consideration from each firm;

12 (iii) select from those applying no less than three or  
13 more than five and submit to the committee for review, as  
14 described in (iv), (v), and (vi) of (1)(b) of [this  
15 section]; and

16 (iv) furnish a written statement as to why each firm  
17 was accepted or rejected. This statement shall be kept by  
18 the department and be available to the individual applicant  
19 for his own information.

20 (2) The department shall adopt, in conjunction with  
21 the various agencies, rules to implement the selection  
22 process.

23 (3) The provisions of this section do not apply to  
24 extraordinary situations where there are less than three  
25 qualified firms.

1 **NEW SECTION.** Section 7. Fees. (1) The agency head  
2 shall negotiate a contract with the highest qualified firm  
3 for the professional service at a compensation that the  
4 agency head determines is fair and reasonable. In making  
5 such determination, the agency head must consider the  
6 estimated value of the services to be rendered using a base  
7 fee schedule and either increase or decrease the value based  
8 on the scope, complexity, and professional nature of the  
9 required services.

10 (2) Should the agency head be unable to negotiate a  
11 contract with the most qualified firm at a price he  
12 determines to be fair and reasonable, negotiations with that  
13 firm must be formally terminated. The agency head shall then  
14 undertake negotiations with the second most qualified firm.  
15 Failing accord with the second most qualified firm, the  
16 agency head shall terminate negotiations. The agency head  
17 shall then undertake negotiations with the third most  
18 qualified firm.

19 (3) Should the agency head be unable to negotiate a  
20 satisfactory contract with any of the selected firms, he  
21 shall select additional firms in order of their competence  
22 and qualification and continue negotiations in accordance  
23 with this section until an agreement is reached.

24 (4) The department shall adopt base fee schedules for  
25 similar services in conjunction with the various

1 professional societies and using agencies.

2 NEW SECTION. Section 8. Limitations on seeking and  
3 awarding professional service contracts -- penalty. (1) A  
4 professional may not seek a professional services contract  
5 with the state through a third party other than a full-time  
6 employee. This prohibition must be contained in all  
7 contracts for professional services as follows: "The  
8 professional warrants that he has not employed or retained  
9 any company or person, other than a bona fide full-time  
10 employee, to solicit or secure the agreement and that he has  
11 not paid or agreed to pay any person, company, corporation,  
12 individual, or firm, other than a bona fide full-time  
13 employee, any fee, commission, percentage, gift, or any  
14 other consideration contingent upon or resulting from the  
15 award or making of this agreement."

16 (2) The agency shall have the right to terminate the  
17 agreement without liability and, at its discretion, to  
18 deduct from the contract price, or otherwise recover, the  
19 full amount of such fee, commission, percentage, gift, or  
20 consideration upon violation of this prohibition.

21 (3) No individual, corporation, partnership, firm,  
22 company, or public official other than the agency head may  
23 offer, agree to, or contract for professional services for  
24 the state.

25 (4) A person convicted of violating subsections (1) or

1 (2) of this section is subject to a fine not exceeding \$500  
2 or to imprisonment in the county jail not exceeding 6  
3 months, or both.

4 NEW SECTION. Section 9. Exemptions. A contract is  
5 exempt from [this act] when a department head enters into a  
6 contract relating to an existing or probable lawsuit in  
7 which the state of Montana or any of its subdivisions is a  
8 party.

9 Section 10. Repealer. Section 18-2-112, MCA, is  
10 repealed.

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