

HOUSE BILL NO. 216

INTRODUCED BY JANET MOORE

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

IN THE HOUSE

January 16, 1985	Introduced and referred to Committee on State Administration.
January 25, 1985	Committee recommend bill do pass as amended. Report adopted.  Bill printed and placed on members' desks.
January 28, 1985	Second reading, pass consideration.
January 29, 1985	Second reading, do pass as amended.
January 30, 1985	Correctly engrossed.
January 31, 1985	Third reading, passed. Ayes, 99; Noes, 1.  Transmitted to Senate.

IN THE SENATE

February 4, 1985	Introduced and referred to Committee on State Administration.
March 8, 1985	Committee recommend bill be concurrent in as amended. Report adopted.
March 11, 1985	Second reading, concurred in.

March 13, 1985

Third reading, concurred in.  
Ayes, 50; Noes, 0.

Returned to House with  
amendments.

IN THE HOUSE

March 14, 1985

Received from Senate.

April 2, 1985

Second reading, amendments  
concurred in.

April 3, 1985

Third reading, amendments  
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1                        HOUSE BILL NO. 216

2        INTRODUCED BY Janet Mace

3                        BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

4

5        A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE USE OF

6        BID SECURITY IN STATE PROCUREMENTS OF SUPPLIES AND SERVICES;

7        AMENDING SECTIONS 18-1-201 AND 18-4-312, MCA; AND PROVIDING

8        AN IMMEDIATE EFFECTIVE DATE."

9

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

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

12                        "18-1-201. Requirement for bidder's security. (1) A

13        "public authority" or "obligee" includes:

14                        (a) the state of Montana or any department (including

15        the department of administration, unless otherwise

16        authorized by express provision of law), institution, board,

17        commission, agency, authority or subordinate jurisdiction

18        thereof;

19                        (b) any county or other political subdivision of this

20        state;

21                        (c) any municipal corporation or authorized

22        subdivision thereof; or

23                        (d) school districts, irrigation districts, or other

24        public authority organized under the laws of the state of

25        Montana.

1                        (2) ~~in~~ Except as provided in 18-4-312, in all cases

2        where a public authority or obligee is authorized by law to

3        solicit bids, tenders, or proposals for public works,

4        improvements, or undertakings of any kind or for the

5        purchase of commodities, goods, or property or for the

6        procurement of technical or special services on a bid basis

7        (exclusive of services on the basis of salaries or wages) or

8        for the sale and purchase of bonds, debentures, notes, or

9        any other forms of indebtedness of any such public

10        authority, the respective executive, administrative, or

11        other officers of and acting for such public authority shall

12        require, as a condition precedent to considering any such

13        bids, as evidence of good faith on the part of the bidder,

14        and as indemnity for the benefit of such public authority

15        against the failure or refusal of any bidder to enter into

16        any written contract that may be awarded upon and following

17        acceptance of bid or as a condition precedent to

18        consummating any sale and purchase of any forms of

19        indebtedness, that any bid shall contain a written covenant

20        of indemnity conditioned as herein prescribed and that the

21        bid shall be accompanied by bid security of the nature

22        herein specified for the performance of such covenant."

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

24                        "~~18-4-312. Contract---~~performance Bid and contract

25        security. (1) For state contracts for the procurement of

1 supplies and services, the department may in its discretion  
2 require the filing of:

3 (a) bid security;

4 (b) contract performance security to guarantee the  
5 faithful performance of the contract and the payment of all  
6 laborers, suppliers, materialmen, mechanics, and  
7 subcontractors; or

8 (c) both bid and contract performance security.

9 (2) If contract-performance security is required under  
10 subsection (1), the following types of security may be  
11 required to be deposited with the state:

12 (a) a good and sufficient bond with a licensed surety  
13 company as surety;

14 (b) an irrevocable letter of credit not to exceed  
15 \$100,000 in accordance with the provisions of Title 30,  
16 chapter 5, part 1;

17 (c) lawful money of the United States;

18 (d) a cashier's check, certified check, bank money  
19 order, or bank draft, drawn or issued by any banking  
20 corporation incorporated under the laws of Montana or by a  
21 banking association located in Montana; or

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

25 (3) If bid security is required under subsection (1),

1 the bidder or offeror shall include with the bid or proposal  
2 security described in subsection (2)(c) or (2)(d) or a bid  
3 bond executed by a surety company authorized to do business  
4 in the state of Montana.

5 ~~(3)~~(4) The amount and type of the security mentioned  
6 above must be determined by the department to be sufficient  
7 to cover the risk involved to the state, except that the  
8 same shall not be less than 10% of the bid price for bid  
9 security and 25% of the total contract price for contract  
10 performance security, and must be payable to the state of  
11 Montana. In determining the amount and type of contract  
12 performance security required for each contract, the  
13 department shall consider the nature of the performance and  
14 the need for future protection to the state. In determining  
15 the need for and amount of bid security, the department  
16 shall consider the risks involved to the state if a  
17 successful bidder or offeror fails to enter into a formal  
18 contract; such considerations shall include but are not  
19 limited to the type of supply or service being procured,  
20 dollar amount of the proposed contract, or delivery time  
21 requirements. The department may adopt rules to assist it in  
22 making ~~this--determination~~ these determinations and in  
23 protecting the state in dealing with irrevocable letters of  
24 credit. Any Bid and contract security requirements must be  
25 included in the invitations for bids or requests for

1 proposals.

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

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

17 ††(7) The provisions of Title 18, chapter 1, part 2,  
18 and Title 18, chapter 2, parts 2 and 3, of this title do not  
19 apply to procurements under this chapter."

20 NEW SECTION. Section 3. Extension of authority. Any  
21 existing authority of the department of administration to  
22 make rules on the subject of the provisions of this act is  
23 extended to the provisions of this act.

24 NEW SECTION. Section 4. Effective date. This act is  
25 effective on passage and approval.

-End-

APPROVED BY COMMITTEE  
ON STATE ADMINISTRATION

1 HOUSE BILL NO. 216  
 2 INTRODUCED BY JANET MOORE  
 3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION  
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 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE USE OF  
 6 BID SECURITY IN STATE PROCUREMENTS OF SUPPLIES AND SERVICES;  
 7 AMENDING SECTIONS 18-1-201 AND 18-4-312, MCA; AND PROVIDING  
 8 AN IMMEDIATE EFFECTIVE DATE."

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 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 11 Section 1. Section 18-1-201, MCA, is amended to read:

12 "18-1-201. Requirement for bidder's security. (1) A  
 13 "public authority" or "obligee" includes:

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

19 (b) any county or other political subdivision of this  
 20 state;

21 (c) any municipal corporation or authorized  
 22 subdivision thereof; or

23 (d) school districts, irrigation districts, or other  
 24 public authority organized under the laws of the state of  
 25 Montana.

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

23 Section 2. Section 18-4-312, MCA, is amended to read:  
 24 "18-4-312. ~~Contract---~~performance Bid and contract  
 25 security. (1) For state contracts for the procurement of



1 supplies ~~and-services~~, the department may in its discretion  
2 require the filing of:

3 (a) bid security;

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5 faithful performance of the contract and the payment of all  
6 laborers, suppliers, materialmen, mechanics, and  
7 subcontractors; or

8 (c) both bid and contract performance security.

9 (2) FOR STATE CONTRACTS FOR THE PROCUREMENT OF  
10 SERVICES, THE DEPARTMENT SHALL REQUIRE BID SECURITY AND  
11 CONTRACT PERFORMANCE SECURITY, EXCEPT FOR PURCHASES  
12 DESCRIBED IN 18-4-305 AND 18-4-306.

13 ~~(2)(3)~~ If ~~contract-performance~~ security is required  
14 under subsection (1) OR (2), the following types of security  
15 may be required to be deposited with the state:

16 (a) a good and sufficient bond with a licensed surety  
17 company as surety;

18 (b) an irrevocable letter of credit not to exceed  
19 \$100,000 in accordance with the provisions of Title 30,  
20 chapter 5, part 1;

21 (c) lawful money of the United States;

22 (d) a cashier's check, certified check, bank money  
23 order, or bank draft, drawn or issued by any banking  
24 corporation incorporated under the laws of Montana or by a  
25 banking association located in Montana; or

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

4 ~~(3)--if--bid-security-is-required-under-subsection-(1),~~  
5 ~~the-bidder-or-offerer-shall-include-with-the-bid-or-proposal~~  
6 ~~security-described-in-subsection-(2)(c)-or-(2)(d)-or--a--bid~~  
7 ~~bond--executed-by-a-surety-company-authorized-to-do-business~~  
8 ~~in-the-state-of-Montana.~~

9 ~~(3)(4)~~ The amount and type of the security mentioned  
10 above must be determined by the department to be sufficient  
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12 same shall not be less than 10% of the bid price for bid  
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 14 of the bidder or offeror, the maker of the security or bid  
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 20 proposals are not accepted.

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 22 and Title 18, chapter 2, parts 2 and 3, of this title do not  
 23 apply to procurements under this chapter."

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 8 ~~bond--executed--by a surety company authorized to do--business~~  
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SENATE

STANDING COMMITTEE REPORT

.....March 8..... 19.85....

MR. PRESIDENT

We, your committee on.....STATE. ADMINISTRATION.....

having had under consideration.....HOUSE BILL..... No...216.....

third reading copy ( blue )  
color

Senator Mohar will carry the bill

CLARIFYING USE OF BID SECURITY IN STATE PROCUREMENTS

Respectfully report as follows: That.....HOUSE BILL..... No...216.....

be amended as follows:

1. Title, line 5.

Following: "CLARIFY"

Insert: "AND REVISE"

2. Title, line 6.

Following: "BID"

Insert: "AND CONTRACT PERFORMANCE"

3. Page 2, line 24.

Following: "contract"

Insert: "performance"

AND AS AMENDED  
BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

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6 ~~(3)--if--bid--security--is--required--under--subsection--(1)--~~  
7 ~~the--bidder--or--offeror--shall--include--with--the--bid--or--proposal~~  
8 ~~security--described--in--subsection--(2)(c)--or--(2)(d)--or--a--bid~~  
9 ~~bond--executed--by--a--surety--company--authorized--to--do--business~~  
10 ~~in--the--state--of--Montana.~~

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 11 invitation for bid or request for proposal, after  
 12 notification of award, the department may, in its  
 13 discretion, require the bidder to forfeit his bid security  
 14 to the state and become immediately liable on the bid bond,  
 15 but not in excess of the sum stated therein. The liability  
 16 of the bidder or offeror, the maker of the security or bid  
 17 bond, or the liability on the bid bond shall not exceed the  
 18 amount specified in the invitation for bid or request for  
 19 proposal.

20 (6) Negotiable instruments provided as bid security  
 21 must be refunded to those bidders or offerors whose bids or  
 22 proposals are not accepted.

23 ††(7) The provisions of Title 18, chapter 1, part 2,  
 24 and Title 18, chapter 2, parts 2 and 3, ~~of this title~~ do not  
 25 apply to procurements under this chapter."

1 NEW SECTION. Section 3. Extension of authority. Any  
 2 existing authority of the department of administration to  
 3 make rules on the subject of the provisions of this act is  
 4 extended to the provisions of this act.  
 5 NEW SECTION. Section 4. Effective date. This act is  
 6 effective on passage and approval.

-End-