

SENATE BILL 245

Introduced by Keating, et al.

1/26	Introduced
1/26	Referred to Business & Industry
1/27	Fiscal Note Requested
1/31	Hearing
2/02	Fiscal Note Received
2/03	Committee Report--Bill Not Passed
2/03	Adverse Committee Report Adopted
2/04	Fiscal Note Printed

1 *Amended* BILL NO. *245*
2 INTRODUCED BY *Deputy Governor J. Cobb Bradley*
3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING PROVISIONS
6 GRANTING PREFERENCES TO RESIDENT BIDDERS IN AWARDING PUBLIC
7 CONTRACTS; AMENDING SECTIONS 7-14-2404, 7-14-2406,
8 7-14-2716, 18-4-303, 18-4-304, 18-5-308, 18-7-107,
9 37-71-301, AND 60-2-112, MCA; AND REPEALING SECTIONS
10 18-1-101 THROUGH 18-1-103, 18-1-106, AND 18-1-111 THROUGH
11 18-1-114, MCA."
12

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

14 **Section 1.** Section 7-14-2404, MCA, is amended to read:

15 "7-14-2404. Competitive bids for county road
16 contracts. Each bidder shall comply with the requirements of
17 Title 18, chapter 1, part 2. The contract shall be awarded
18 to the lowest responsible bidder in accordance with the
19 requirements of ~~18-1-102, 18-1-112, and~~ Title 18, chapter 2,
20 part 4, and the board may reserve the right to reject any
21 and all bids. When there is no prevailing rate of wages set
22 by collective bargaining, the board shall determine the
23 prevailing rate to be stated in the contract."

24 **Section 2.** Section 7-14-2406, MCA, is amended to read:

25 "7-14-2406. Contracts for bridges. (1) All bids for

1 construction or repair of bridges shall meet these
2 requirements:

3 (a) If the department of highways has adopted or
4 established a standard plan and specifications, the bids
5 must be submitted thereon on the plan and specifications.

6 (b) All bids must be sealed. Each bidder shall meet
7 the requirements of Title 18, chapter 1, part 2.

8 (2) The board may reject any and all bids. If a
9 contract is awarded, the board shall do so in accordance
10 with the requirements of ~~18-1-102, 18-1-112, and~~ Title 18,
11 chapter 2, part 4. When there is no prevailing rate of wages
12 set by collective bargaining, the board shall determine the
13 prevailing rate to be stated in the contract. The contract
14 must be entered with the unanimous consent of the members of
15 the board.

16 (3) Before entering upon performance of the work, the
17 contractor shall comply with the requirements of Title 18,
18 chapter 2, part 2. For the purposes of those sections with
19 relation to contracts with the board, a contract ~~shall~~ may
20 not be completed until the board, while formally convened,
21 affirmatively accepts all of the work ~~thereunder~~ under the
22 contract."

23 **Section 3.** Section 7-14-2716, MCA, is amended to read:

24 "7-14-2716. Award of contract by local improvement
25 district. (1) If the committee awards a contract, it shall

1 do so in accordance with the requirements of ~~18-1-102,~~
 2 ~~18-1-112,~~ and Title 18, chapter 2, part 4. When there is no
 3 prevailing : of wages set by collective bargaining, the
 4 committee shall determine the prevailing rate to be stated
 5 in the contract.

6 (2) Partial payments may be provided for in the
 7 contract and paid when certified by the county surveyor and
 8 committee."

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

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

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

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

1 as may be specified by rule, together with the name of each
 2 bidder, must be recorded. The record must be open to public
 3 inspection. After the time of award, all bids and bid
 4 documents must be open to public inspection in accordance
 5 with the provisions of 2-6-102.

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

19 (5) Correction or withdrawal of inadvertently
 20 erroneous bids, before or after award, or cancellation of
 21 awards or contracts based on such bid mistakes may be
 22 permitted in accordance with rules adopted by the
 23 department. After bid opening no changes in bid prices or
 24 other provisions of bids prejudicial to the interest of the
 25 state or fair competition may be permitted. Except as

1 otherwise provided by rule, all decisions to permit the
2 correction or withdrawal of bids or to cancel awards or
3 contracts based on bid mistakes must be supported by a
4 written determination made by the department.

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

20 (7) When it is considered impractical to initially
21 prepare a purchase description to support an award based on
22 price, an invitation for bids may be issued requesting the
23 submission of unpriced offers, to be followed by an
24 invitation for bids limited to those bidders whose offers
25 have been qualified under the criteria set forth in the

1 first solicitation."

2 **Section 5.** Section 18-4-304, MCA, is amended to read:

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

14 (2) Proposals must be solicited through a request for
15 proposals.

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

19 (4) Proposals must be opened so as to avoid disclosure
20 of contents to competing offerors during the process of
21 negotiation. A register of proposals must be prepared in
22 accordance with rules adopted by the department and must be
23 open for public inspection after contract award.

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

(6) 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) 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."

Section 6. Section 18-5-308, MCA, is amended to read:

"18-5-308. Construction with other sections.

Procurement from small businesses under this part is subject

to all other statutes governing state procurement and all rules promulgated thereunder under the statutes, as now or hereafter amended, except that in case of conflict this part governs and the provisions set forth in 18-1-102, 18-1-111, and 18-1-112 shall not apply."

Section 7. Section 18-7-107, MCA, is amended to read:

"18-7-107. State printing, binding, and stationery work ---resident---preference. All printing, binding, and stationery work for the state of Montana must be printed in the state of Montana by a responsible bidder if his bid does not exceed the lowest bid by a nonresident printer by more than the percentage in 18-1-102."

Section 8. Section 37-71-301, MCA, is amended to read:

"37-71-301. Complaints against licensee -- grounds -- investigation -- hearing -- suspension of license -- appeals. (1) Any person or other organization may file a duly verified complaint with the department charging that the licensee is guilty of one or more of the following acts or omissions:

(a) abandonment of any contract without legal excuse;

(b) diversion of funds or property received under express agreement for prosecution or completion of a specific contract under this chapter or for a specified purpose in the prosecution or completion of any contract and their application or use for any other contract, obligation,

1 or purpose with intent to defraud or deceive creditors or
2 the owner;

3 (c) the doing of any willful fraudulent act by the
4 licensee as a public contractor in consequence of which
5 another is substantially injured;

6 (d) the making of any false statement in any
7 application for a license or renewal thereof of a license;

8 ~~(e) the failure to comply with the provisions of~~
9 ~~§8-1-112 requiring preference of products manufactured or~~
10 ~~produced in this state by Montana industry and labor.~~

11 (2) Upon the filing of such a complaint, the
12 department shall investigate the charge and within 60 days
13 after the filing of such the complaint render and file a
14 decision, with the reasons therefor for the decision. If the
15 department's decision be is that the licensee ~~has--been~~ is
16 guilty of any of such the acts or omissions, the department
17 shall suspend the contractor's license. At any time within
18 20 days thereafter after the decision, the complainant or
19 the contractor may petition the department for a rehearing.
20 In the order granting or denying such rehearing, the
21 department shall set forth a statement of the particular
22 grounds and reasons for the department's actions on such the
23 petition and shall mail a copy of such the order to the
24 parties who have appeared in support of or in opposition to
25 the petition for rehearing. If a rehearing be is granted,

1 the department shall set the matter for further hearing on
2 due notice to the parties and, within 30 days after
3 submission of the matter, serve the department's decision
4 after rehearing in a like manner as an original decision.

5 (3) The filing of such a petition for rehearing as to
6 the department's actions in suspending or canceling such a
7 license shall suspend the operation of such the action and
8 permit the licensee to continue to do business as a public
9 contractor pending final determination of the controversy.

10 (4) Within 30 days after the decision on rehearing,
11 any party aggrieved by such the decision of the department
12 may appeal therefrom to the district court in and for the
13 county in which the licensee under this chapter resides or
14 does business as a public contractor by serving upon the
15 department a notice of such appeal. The matter shall
16 thereupon be heard de novo by the district court. An appeal
17 may be taken from the decision of the district court in the
18 same manner as appeals in other civil cases.

19 (5) In all cases where the licensee has filed his
20 notice of appeal from the decision of the department or from
21 the decision of the district court, such the licensee shall
22 be entitled to continue to do business as a public
23 contractor pending final decision of the controversy."

24 **Section 9.** Section 60-2-112, MCA, is amended to read:
25 **"60-2-112. Competitive bidding.** (1) When the estimated

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1 cost of any work exceeds \$10,000, the commission shall let
2 the contract by competitive bidding. Award shall be made
3 upon such any price and upon such terms as the commission
4 may prescribe by its rules. However, ~~except when prohibited~~
5 ~~by federal law, the commission shall make awards and~~
6 ~~contracts in accordance with 18-1-102 and 18-1-112.~~

7 (2) The commission may let a contract by means other
8 than competitive bidding if it determines that special
9 circumstances so require. The commission must specify the
10 special circumstances in writing.

11 (3) The commission may enter into contracts with units
12 of local government for the construction of projects without
13 competitive bidding if it finds that the work can be
14 accomplished at lower total costs, including total cost of
15 labor, materials, supplies, equipment usage, engineering,
16 supervision, clerical and accounting services,
17 administrative costs, and reasonable estimates of other
18 costs attributable to the project."

19 NEW SECTION. **Section 10.** Repealer. Sections 18-1-101
20 through 18-1-103, 18-1-106, and 18-1-111 through 18-1-114,
21 MCA, are repealed.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB245, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act repealing provisions granting preferences to resident bidders in awarding public contracts.

ASSUMPTIONS:

1. The Legislative Auditors completed a Performance Audit of "In-State Bidders Preference" at the Purchasing Bureau, March 1988. Bidders eligible for the preference sold \$9.4 million of goods and services to state government through invitations for bids for FY87. \$284,000 of the \$9.4 million, resulted from application of the preference for an additional cost to the state of \$4,000.
2. No dollar amount is included for purchasing agencies that have purchasing authority, for the Property and Supply Bureau or the Publications and Graphics Bureau.
3. No dollar amount is included for purchases made by the Purchasing Bureau through the term contract process.
4. No inflation is reflected in estimates.

FISCAL IMPACT:

Expenditures for all goods and services purchased for the state would be impacted by this legislation:

FY90			FY91		
Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
\$36,200,000	\$ 36,196,000	(\$ 4,000)	\$36,200,000	\$ 36,196,000	(\$ 4,000)

The net savings of this legislation is estimated at \$8,000 over the 1990 biennium. It is not possible to determine the impact on each fund type because it is dependent upon the funding sources of each agency.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Preference laws apply to local governments and school districts and a savings should result on local expenditures.

Ray Shackelford 2/2/89
 RAY/SHACKLEFORD, BUDGET DIRECTOR DATE
 OFFICE OF BUDGET AND PROGRAM PLANNING

Thomas F. Keating 2/3/89
 THOMAS F. KEATING, PRIMARY SPONSOR DATE

Fiscal Note for SB245, as introduced

SB 245