

SENATE BILL 358

Introduced by Williams, B., et al.

2/06	Introduced
2/06	Referred to Judiciary
2/10	Hearing
2/13	Committee Report--Bill Not Passed as Amended
2/13	Adverse Committee Report Adopted
2/14	Reconsidered Adoption of Adverse Committee Report
2/15	2nd Reading Do Pass Motion Failed
2/15	2nd Reading Indefinitely Postponed

1 Sen. Bill BILL NO. 358
 2 INTRODUCED BY W. Williams
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING AN
 5 UNSUCCESSFUL BIDDER ON A PUBLIC CONTRACT THE RIGHT TO
 6 CHALLENGE THE AWARD IN DISTRICT COURT; REQUIRING THE
 7 DISTRICT COURT TO EXPEDITE A PUBLIC CONTRACT AWARD
 8 CHALLENGE; LIMITING DISTRICT COURT REVIEW OF THE BIDDING
 9 PROCESS; AND AMENDING SECTIONS 7-3-1323, 7-5-2301, 7-5-2302,
 10 7-5-4302, 7-12-2135, 7-12-4143, 7-14-2404, 18-1-102,
 11 18-2-103, 18-2-301, 18-4-303, 20-9-204, 20-15-104, 60-2-112,
 12 85-1-219, AND 85-7-1942, MCA."
 13

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

15 **Section 1.** Section 7-3-1323, MCA, is amended to read:

16 "7-3-1323. Competitive, advertised bidding required for
 17 certain contracts. (1) All contracts entered into by the
 18 municipality for supplies or materials, for any public work,
 19 or for the construction, reconstruction, repair,
 20 maintenance, or operation of any public works or
 21 improvements, ~~for which must be paid a sum~~ exceeding \$2,000,
 22 ~~shall must~~ be awarded to the lowest responsible bidder after
 23 public advertisement and competition as may be prescribed by
 24 ordinance~~7~~, ~~but the~~ The manager ~~shall have~~ has the right to
 25 reject all bids and advertise again. All advertisements as

1 to contracts ~~shall~~ must contain a reservation of the
 2 foregoing right. All contracts entered into by the
 3 municipality ~~shall~~ must be signed by the manager after
 4 approval thereof by the commission.

5 (2) (a) Within 30 days of any contract let under this
 6 section, an unsuccessful bidder may challenge the award by
 7 filing an action in district court. The district court shall
 8 expedite any challenge filed. The district court's review of
 9 the bidding process is limited to the question of whether
 10 the contract was let to the lowest responsible bidder.

11 (b) If the court finds that the contract was not let to
 12 the lowest responsible bidder, it shall invalidate the award
 13 and order the municipality to begin the bidding process
 14 again. The bidding process must use the same specifications
 15 contained in the original request for bids."

16 **Section 2.** Section 7-5-2301, MCA, is amended to read:

17 "7-5-2301. Competitive, advertised bidding required for
 18 certain large purchases or construction contracts. (1)
 19 Except as provided in 7-5-2304, no contract for the purchase
 20 of any vehicle, road machinery, or other machinery,
 21 apparatus, appliances, or equipment, or for any materials or
 22 supplies of any kind for which must be paid a sum in excess
 23 of \$10,000, or for the construction of any building, road,
 24 or bridge for which must be paid a sum in excess of \$10,000,
 25 or for the repair or maintenance of any building, road, or

bridge ~~for-which-must-be-paid-a-sum~~ in excess of \$25,000 ~~shall~~ may be entered into by a county governing body without first publishing a notice calling for bids ~~for-furnishing the-same.~~

(2) The notice must be published as provided in 7-1-2121.

(3) Every ~~such~~ contract under this section shall must be let to the lowest and best responsible bidder.

(4) (a) Within 30 days of any award made under this section, an unsuccessful bidder may challenge the award by filing an action in district court. The district court shall expedite any challenge filed. The district court's review of the bidding process is limited to the question of whether the contract was awarded to the lowest and best responsible bidder.

(b) If the court finds that the contract was not awarded to the lowest and best responsible bidder, it shall invalidate the award and order the county governing body to begin the bidding process again. The bidding process must use the same specifications contained in the original request for bids."

Section 3. Section 7-5-2302, MCA, is amended to read:

"7-5-2302. Use of competitive, nonadvertised bidding for certain purchases. (1) Except as provided in 7-5-2303, on any purchase contract entered into by a county governing

body for the purchase of any vehicle, machinery, appliances, apparatus, building, or materials and supplies ~~for-which must-be-paid-a-sum~~ in excess of \$10,000 but less than \$25,000, bids ~~shall~~ must be solicited without advertising from persons, firms, or corporations who have caused to be filed with the governing body of the county a request in writing that its name be listed with the governing body for solicitations on the particular items set forth in the request. The governing body shall solicit bids of prospective suppliers whose names are listed as provided ~~herein--which~~ in this section. The solicitation shall contain the same information as is required to be set forth in advertisements. If a person, firm, or corporation whose name is listed fails for a period of 1 year to respond to any solicitation for bids, ~~such~~ the listing may be canceled.

(2) The governing body of the county shall let ~~such~~ the contract to the lowest and best responsible bidder.

(3) Compliance with the provisions of this section shall be considered as meeting the requirements of 7-5-2301.

(4) (a) Within 30 days of any contract let under this section, an unsuccessful bidder may challenge the award by filing an action in district court. The district court shall expedite any challenge filed. The district court's review of the bidding process is limited to the question of whether the contract was awarded to the lowest and best responsible

1 bidder.

2 (b) If the court finds that the contract was not
3 awarded to the lowest and best responsible bidder, it shall
4 invalidate the award and order the county governing body to
5 begin the bidding process again. The bidding process must
6 use the same specifications contained in the original
7 request for bids."

8 **Section 4.** Section 7-5-4302, MCA, is amended to read:

9 "7-5-4302. Competitive, advertised bidding required for
10 certain purchase and construction contracts. (1) Except as
11 provided in 7-5-4303 or 7-5-4310, all contracts for the
12 purchase of any automobile, truck, other vehicle, road
13 machinery, other machinery, apparatus, appliances, or
14 equipment, for any materials or supplies of any kind, or for
15 construction, repair, or maintenance, ~~for which must be paid~~
16 ~~a sum~~ exceeding \$10,000, must be let to the lowest
17 responsible bidder after advertisement for bids.

18 (2) ~~Such~~ The advertisement ~~shall~~ must be made in the
19 official newspaper of the city or town if there ~~be such is~~
20 ~~an~~ official newspaper, and if not, it shall be made in a
21 daily newspaper of general circulation published in the city
22 or town if there ~~be such is one~~ and, otherwise, by posting
23 in three of the most public places in the city or town. ~~Such~~
24 The advertisement, if by publication in a newspaper, ~~shall~~
25 must be made once each week for 2 consecutive weeks, and the

1 second publication ~~shall~~ must be made not less than 5 days
2 or more than 12 days before the consideration of bids. If
3 ~~such the~~ advertisement is made by posting, 15 days must
4 elapse, including the day of posting, between the time of
5 the posting of ~~such the~~ advertisement and the day set for
6 considering bids.

7 (3) The council may postpone action as to any ~~such~~
8 contract under this section until the next regular meeting
9 after bids are received in response to ~~such the~~
10 advertisement and may reject any and all bids and
11 readvertise as provided herein in this section.

12 (4) (a) Within 30 days of any contract let under this
13 section, an unsuccessful bidder may challenge the award by
14 filing an action in district court. The district court shall
15 expedite any challenge filed. The district court's review of
16 the bidding process is limited to the question of whether
17 the contract was let to the lowest responsible bidder.

18 (b) If the court finds that the contract was not let to
19 the lowest responsible bidder, it shall invalidate the award
20 and order the council to begin the bidding process again.
21 The bidding process must use the same specifications
22 contained in the original request for bids."

23 **Section 5.** Section 7-12-2135, MCA, is amended to read:

24 "7-12-2135. Decision on award of contract. (1) The
25 board of county commissioners may award the contract for

such the work or improvement to the lowest responsible bidder at the prices named in his bid and shall reject all proposals other than the lowest regular proposal or bid of any responsible bidder.

(2) The board:

(a) may reject any and all proposals or bids should it deem consider this for the public good;

(b) may also reject the bid of any party who has been delinquent or unfaithful in any former contract with the board.

(3) (a) Within 30 days of any award made under this section, an unsuccessful bidder may challenge the award by filing an action in district court. The district court shall expedite any challenge filed. The district court's review of the bidding process is limited to the question of whether the contract was awarded to the lowest responsible bidder.

(b) If the court finds that the contract was not awarded to the lowest responsible bidder, it shall invalidate the award and order the board to begin the bidding process again. The bidding process must use the same specifications contained in the original request for bids."

Section 6. Section 7-12-4143, MCA, is amended to read:

"7-12-4143. **Decision on award of contract.** (1) The city council may award the contract for said the work or improvement to the lowest responsible bidder at the prices

named in his bid and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder.

(2) The council may reject any and all proposals or bids should if it deem considers this for in the public good and may also reject the bid of any party who has been delinquent or unfaithful in any former contract with the municipality.

(3) (a) Within 30 days of any award made under this section, an unsuccessful bidder may challenge the award by filing an action in district court. The district court shall expedite any challenge filed. The district court's review of the bidding process is limited to the question of whether the contract was awarded to the lowest responsible bidder.

(b) If the court finds that the contract was not awarded to the lowest responsible bidder, it shall invalidate the award and order the council to begin the bidding process again. The bidding process must use the same specifications contained in the original request for bids."

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

"7-14-2404. **Competitive bids for county road contracts.**

(1) Each bidder shall comply with the requirements of Title 18, chapter 1, part 2. The contract ~~shall~~ must be awarded to the lowest responsible bidder in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2,

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part 4, and the board may reserve the right to reject any and all bids. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract.

(2) (a) Within 30 days of any award made under this section, an unsuccessful bidder may challenge the award by filing an action in district court. The district court shall expedite any challenge filed. The district court's review of the bidding process is limited to the question of whether the contract was awarded to the lowest responsible bidder, pursuant to this section, in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4.

(b) If the court finds that the contract was not awarded to the lowest responsible bidder, in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4, it shall invalidate the award and order the board to begin the bidding process again. The bidding process must use the same specifications contained in the original request for bids.

Section 8. Section 18-1-102, MCA, is amended to read:

"18-1-102. State contracts to lowest resident bidder.

(1) (a) In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction,

repair, and public works of all kinds, a public agency shall award:

(i) a public contract for construction, repair, or public works to the lowest responsible resident bidder whose bid does not exceed the applicable percentage when compared to the lowest responsible nonresident bidder. The applicable percentage is the greater of:

(A) 3%; or

(B) the percentage that applies to a resident bidder in the award of a public contract for construction, repair, or public works in the nonresident bidder's state of residence.

(ii) a public contract for the purchase of goods, if the goods are comparable in quality and performance, to the lowest responsible resident bidder whose:

(A) bid is not more than 3% higher than that of the lowest responsible nonresident bidder;

(B) offered goods are Montana-made and whose bid is not more than 5% higher than that of the lowest responsible nonresident bidder; or

(C) offered goods are Montana-made and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered goods are not Montana-made.

(b) (i) If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the contract must be awarded to the resident bidder whose

1 offered goods are Montana-made if the bid is:

2 (A) not more than 3% higher than that of a resident
3 bidder whose offered goods are not Montana-made; and

4 (B) not more than 5% higher than that of the
5 nonresident bidder.

6 (ii) However, no combination of preferences under this
7 subsection may exceed 5%.

8 (2) The preferences in this section apply:

9 (a) whether the law requires advertisement for bids or
10 does not require advertisement for bids; and

11 (b) to contracts involving funds obtained from the
12 federal government unless expressly prohibited by the laws
13 of the United States or regulations adopted pursuant
14 thereto.

15 (3) (a) Within 30 days of an award of a public contract
16 under this section, an unsuccessful bidder may challenge the
17 award by filing an action in district court. The district
18 court shall expedite any challenge filed. The district
19 court's review of the bidding process is limited to the
20 question of whether the contract was awarded to the lowest
21 responsible bidder in accordance with this section.

22 (b) If the court finds that the contract was not
23 awarded to the lowest responsible bidder in accordance with
24 this section, it shall invalidate the award and order the
25 agency to begin the bidding process again. The bidding

1 process must use the same specifications contained in the
2 original request for bids."

3 **Section 9.** Section 18-2-103, MCA, is amended to read:

4 **"18-2-103. Supervision of construction of buildings.**

5 (1) For the construction of a building costing more than
6 \$25,000, the department of administration shall:

7 (a) review and accept all plans, specifications, and
8 cost estimates prepared by architects or consulting
9 engineers;

10 (b) approve all bond issues or other financial
11 arrangements and supervise and approve the expenditure of
12 all moneys;

13 (c) solicit, accept, and reject bids and award all
14 contracts to the lowest qualified bidder, considering
15 conformity with specifications and terms and reasonableness
16 of bid amount; ~~However, any contract award that is protested~~
17 ~~or any contract that is awarded to a bidder other than the~~
18 ~~lowest bidder is subject to approval by the board of~~
19 ~~examiners;~~

20 (d) review and approve all change orders up to \$5,000.
21 Any other change order must be with the consent of the board
22 of examiners. The board of examiners shall act within 14
23 working days after processing completion by the department.

24 (e) accept the building when completed according to
25 accepted plans and specifications.

1 (2) The department may delegate on a project-by-project
2 basis any powers and duties under subsection (1) to other
3 state agencies, including units of the Montana university
4 system, upon terms and conditions specified by the
5 department. However, any powers and duties subject to the
6 approval of the board of examiners may not be delegated.

7 (3) For repair and maintenance projects, the
8 supervision, approval, and consent of the board of examiners
9 are not required.

10 (4) Before any contract under subsection (1) is
11 awarded, two formal bids must have been received, if
12 reasonably available.

13 (5) The department need not require the provisions of
14 Montana law relating to advertising, bidding, or supervision
15 where proposed construction costs are \$25,000 or less.
16 However, with respect to a project having a proposed cost of
17 \$25,000 or less but more than \$5,000, the agency awarding
18 the contract must procure at least three informal bids from
19 contractors licensed in Montana, if reasonably available.

20 (6) For the construction of buildings owned or to be
21 owned by a school district, the department of administration
22 shall, upon request, provide inspection to insure compliance
23 with the plans and specifications for the construction of
24 such buildings. "Construction" shall include construction,
25 repair, alteration, equipping, and furnishing during

1 construction, repair, or alteration. These services shall be
2 provided at a cost to be contracted for between the
3 department of administration and the school district, with
4 the receipts to be deposited in the department of
5 administration's construction regulation account in a state
6 special revenue fund.

7 (7) It is the intent of the legislature that student
8 housing and other facilities constructed under the authority
9 of the regents of the university system are subject to the
10 provisions of subsections (1) through (4) of this section.

11 (8) The department of military affairs may act as
12 contracting agency for buildings constructed under the
13 authority of 18-2-102(2)(d); however, the department of
14 administration may agree to act as contracting agency on
15 behalf of the department of military affairs. Montana law
16 applies to any controversy involving such a contract.

17 (9) (a) Within 30 days of any award made under this
18 section, an unsuccessful bidder may challenge the award by
19 filing an action in district court. The district court shall
20 expedite any challenge filed. The district court's review of
21 the bidding process is limited to the question of whether
22 the contract was awarded to the lowest qualified bidder,
23 pursuant to this section, considering conformity with
24 specifications and terms and reasonableness of bid amount.

25 (b) If the court finds that the contract was not

1 awarded to the lowest qualified bidder, considering
 2 conformity with specifications and terms and reasonableness
 3 of bid amount, it shall invalidate the award and order the
 4 department to begin the bidding process again. The bidding
 5 process must use the same specifications contained in the
 6 original request for bids."

7 **Section 10.** Section 18-2-301, MCA, is amended to read:

8 "18-2-301. Bids required -- advertising. (1) It is
 9 unlawful for the board of examiners or any offices,
 10 departments, institutions, or any agent of the state of
 11 Montana acting for or in behalf of the state to do, to cause
 12 to be done, or to let any contract for the construction of
 13 buildings or the alteration and improvement of buildings and
 14 adjacent grounds on behalf of and for the benefit of the
 15 state when the amount involved is \$25,000 or more without
 16 first advertising in at least one issue each week for 3
 17 consecutive weeks in two newspapers published in the state,
 18 one of which must be published at the seat of government and
 19 the other in the county where the work is to be performed,
 20 calling for sealed bids to perform such the work and stating
 21 the time and place bids will be considered.

22 (2) All such work referred to in subsection (1) may be
 23 done, caused to be done, or contracted for only after
 24 competitive bidding. Any contract awarded must be awarded to
 25 the lowest responsible bidder.

1 (3) If no bid for such the work is accepted, the work
 2 may not be done or accomplished. The work may be
 3 readvertised from time to time until awarded to a qualified
 4 competitive bidder.

5 (4) This section does not apply to work done by inmates
 6 at an institution in the department of institutions.

7 (5) (a) Within 30 days of any award made under this
 8 section, an unsuccessful bidder may challenge the award by
 9 filing an action in district court. The district court shall
 10 expedite any challenge filed. The district court's review of
 11 the bidding process is limited to the question of whether
 12 the contract was awarded to the lowest responsible bidder,
 13 considering conformity with specifications and terms and
 14 reasonableness of bid amount.

15 (b) If the court finds that the contract was not
 16 awarded to the lowest responsible bidder, it shall
 17 invalidate the award and order the bidding process to begin
 18 again. The bidding process must use the same specifications
 19 contained in the original request for bids."

20 **Section 11.** Section 18-4-303, MCA, is amended to read:

21 "18-4-303. Competitive sealed bidding. (1) An
 22 invitation for bids must be issued and must include a
 23 purchase description and conditions applicable to the
 24 procurement.

25 (2) Adequate public notice of the invitation for bids

1 must be given a reasonable time prior to the date set forth
2 therein for the opening of bids, in accordance with rules
3 adopted by the department. Notice may include publication in
4 a newspaper of general circulation at a reasonable time
5 prior to bid opening.

6 (3) Bids must be opened publicly in the presence of one
7 or more witnesses at the time and place designated in the
8 invitation for bids. Each bidder has the right to be
9 present, either in person or by agent, when the bids are
10 opened and has the right to examine and inspect all bids.
11 The amount of each bid and such other relevant information
12 as may be specified by rule, together with the name of each
13 bidder, must be recorded. The record must be open to public
14 inspection. After the time of award, all bids and bid
15 documents must be open to public inspection in accordance
16 with the provisions of 2-6-102.

17 (4) Bids must be unconditionally accepted without
18 alteration or correction, except as authorized in this
19 chapter. Bids must be evaluated based on the requirements
20 set forth in the invitation for bids, which may include
21 criteria to determine acceptability, such as inspection,
22 testing, quality, workmanship, delivery, and suitability for
23 a particular purpose. Those criteria that will affect the
24 bid price and be considered in evaluation for award must be
25 objectively measurable, such as discounts, transportation

1 costs, and total or life-cycle costs. The invitation for
2 bids shall set forth the evaluation criteria to be used.
3 Only criteria set forth in the invitation for bids may be
4 used in bid evaluation.

5 (5) Correction or withdrawal of inadvertently erroneous
6 bids, before or after award, or cancellation of awards or
7 contracts based on such bid mistakes may be permitted in
8 accordance with rules adopted by the department. After bid
9 opening no changes in bid prices or other provisions of bids
10 prejudicial to the interest of the state or fair competition
11 may be permitted. Except as otherwise provided by rule, all
12 decisions to permit the correction or withdrawal of bids or
13 to cancel awards or contracts based on bid mistakes must be
14 supported by a written determination made by the department.

15 (6) The contract must be awarded with reasonable
16 promptness by written notice to the lowest responsible and
17 responsive bidder whose bid meets the requirements and
18 criteria set forth in the invitation for bids, including the
19 preferences established by Title 18, chapter 1, part 1. If
20 all bids exceed available funds as certified by the
21 appropriate fiscal officer and the low responsive and
22 responsible bid does not exceed such funds by more than 5%,
23 the director or the head of a purchasing agency is
24 authorized, in situations where time or economic
25 considerations preclude resolicitation of a reduced scope,

to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.

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

(8) (a) Within 30 days of any award made under this section, an unsuccessful bidder may challenge the award by filing an action in district court. The district court shall expedite any challenge filed. The district court's review of the bidding process is limited to the question of whether the contract was awarded to the lowest responsive and responsible bidder whose bid met the requirements and criteria set forth in the invitation for bids, including the preferences established by Title 18, chapter 1, part 1.

(b) If the court finds that the contract was not awarded to the lowest responsive and responsible bidder whose bid met the requirements and criteria set forth in the invitation for bids, including the preferences established by Title 18, chapter 1, part 1, it shall invalidate the

award and order the purchasing agency to begin the bidding process again. The bidding process must use the same specifications contained in the original request for bids."

Section 12. Section 20-9-204, MCA, is amended to read:

"20-9-204. Conflicts of interests, letting contracts, and calling for bids. (1) It is unlawful for any a trustee to:

(a) have any a pecuniary interest, either directly or indirectly, in any contract made by him in his official capacity or by the board of trustees of which he is a member; or

(b) be employed in any capacity by the school district of which he is trustee.

(2) For the purposes of subsection (1):

(a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation;

(b) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions auction;

(ii) investments or deposits in financial institutions which are in the business of loaning or receiving money when such* the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

1 (iii) contracts for professional services other than
 2 salaried services or for maintenance or repair services or
 3 supplies when the services or supplies are not reasonably
 4 available from other sources if the interest of any board
 5 member and a determination of such lack of availability are
 6 entered in the minutes of the board meeting at which the
 7 contract is considered.

8 (3) Whenever the estimated cost of any building,
 9 furnishing, repairing, or other work for the benefit of the
 10 district or purchasing of supplies for the district exceeds
 11 the sum of \$7,500, the work done or the purchase made shall
 12 be by contract. Each such contract must be let to the lowest
 13 responsible bidder after advertisement for bids. Such The
 14 advertisement shall be published in the newspaper which will
 15 give notice to the largest number of people of the district
 16 as determined by the trustees. Such The advertisement shall
 17 be made once each week for 2 consecutive weeks, and the
 18 second publication shall be made not less than 5 days or
 19 more than 12 days before consideration of bids. A contract
 20 not let pursuant to this section ~~shall be~~ is void.

21 (4) Whenever bidding is required, the trustees shall
 22 award the contract to the lowest responsible bidder, except
 23 that the trustees may reject any or all bids.

24 (5) Nothing in this section ~~shall require~~ requires the
 25 board of trustees to let a contract for any routine and

1 regularly performed maintenance or repair project or service
 2 which can be accomplished by district staff whose regular
 3 employment with such the school district is related to the
 4 routine performance of maintenance for such the district.

5 (6) (a) Within 30 days of any contract let under this
 6 section, an unsuccessful bidder may challenge the award by
 7 filing an action in district court. The district court shall
 8 expedite any challenge filed. The district court's review of
 9 the bidding process is limited to the question of whether
 10 the contract was let to the lowest responsible bidder.

11 (b) If the court finds that the contract was not let to
 12 the lowest responsible bidder, it shall invalidate the award
 13 and order the board of trustees to begin the bidding process
 14 again. The bidding process must use the same specifications
 15 contained in the original request for bids."

16 **Section 13.** Section 20-15-104, MCA, is amended to read:

17 **"20-15-104. Pecuniary interest and letting contracts.**

18 (1) It shall be unlawful for any a community college
 19 district trustee to have any a pecuniary interest, either
 20 directly or indirectly, in the erection of any a community
 21 college building in his district or in furnishing or
 22 repairing the same a building or be in any manner connected
 23 with the furnishing of supplies for the maintenance of the
 24 college or to receive or accept any compensation or reward
 25 for services rendered as trustee, except as herein provided

1 in this section.

2 (2) The board of trustees shall let contracts for
3 building, furnishing, repairing, or other work or supplies
4 for the benefit of the district according to the following
5 rules and procedures:

6 (a) The board of trustees need not meet requirements
7 relating to advertising or bidding if a proposed contract
8 for building, furnishing, repairing, or other work or
9 supplies is for less than \$5,000.

10 (b) Whenever If the proposed contract costs are less
11 than \$25,000 but more than \$5,000, the board of trustees
12 shall procure at least three informal bids, if reasonably
13 available, from contractors licensed in Montana.

14 (c) Whenever If the proposed contract costs are more
15 than \$25,000, the board of trustees shall solicit formal
16 bids and advertise once each week for at least 2 weeks in a
17 newspaper published in each county wherein in which the area
18 of the district lies, calling for bids to perform such the
19 work or furnish such the supplies. If advertising is
20 required, the board shall award the contract to the lowest
21 responsible bidder. However, the board of trustees has the
22 right to reject any and all bids.

23 (3) (a) Within 30 days of any award made under
24 subsection (2)(c), an unsuccessful bidder may challenge the
25 award by filing an action in district court. The district

1 court shall expedite any challenge filed. The district
2 court's review of the bidding process is limited to the
3 question of whether the contract was awarded to the lowest
4 responsible bidder.

5 (b) If the court finds that the contract was not
6 awarded to the lowest responsible bidder, it shall
7 invalidate the award and order the board of trustees to
8 begin the bidding process again. The bidding process must
9 use the same specifications contained in the original
10 request for bids."

11 **Section 14.** Section 60-2-112, MCA, is amended to read:

12 "60-2-112. Competitive bidding. (1) When the estimated
13 cost of any work exceeds \$10,000, the commission shall let
14 the contract by competitive bidding. Award shall be made
15 upon such notice and upon such terms as the commission may
16 prescribe by its rules. However, except when prohibited by
17 federal law, the commission shall make awards and contracts
18 in accordance with 18-1-102 and 18-1-112. Additionally, the
19 contract must be let to the lowest responsible bidder.

20 (2) The commission may let a contract by means other
21 than competitive bidding if it determines that special
22 circumstances so require. The commission must specify the
23 special circumstances in writing.

24 (3) The commission may enter into contracts with units
25 of local government for the construction of projects without

1 competitive bidding if it finds that the work can be
2 accomplished at lower total costs, including total cost of
3 labor, materials, supplies, equipment usage, engineering,
4 supervision, clerical and accounting services,
5 administrative costs, and reasonable estimates of other
6 costs attributable to the project.

7 (4) (a) Within 30 days of any contract let under this
8 section, an unsuccessful bidder may challenge the award by
9 filing an action in district court. The district court shall
10 expedite any challenge filed. The district court's review of
11 the bidding process is limited to the question of whether
12 the contract was let to the lowest responsible bidder.

13 (b) If the court finds that the contract was not let to
14 the lowest responsible bidder, it shall invalidate the
15 award and order the commission to begin the bidding process
16 again. The bidding process must use the same specifications
17 contained in the original request for bids."

18 **Section 15.** Section 85-1-219, MCA, is amended to read:

19 **"85-1-219.** State-owned works -- department approval --
20 bids. (1) For all state-owned works constructed, repaired,
21 altered, improved, maintained, rehabilitated, or
22 reconstructed, the department shall:

23 (a) review and approve all plans and working drawings
24 prepared by engineers or architects, if any;

25 (b) approve all bond issues or other financial

1 arrangements and supervise and approve the expenditure of
2 all money;

3 (c) solicit, accept, and reject bids and award all
4 contracts to the lowest qualified bidder, considering
5 conformity with specifications and terms and reasonableness
6 of bid amount;

7 (d) review and approve all change orders;

8 (e) accept the works when completed according to
9 approved plans and specifications.

10 (2) (a) Except as provided in subsection (3), the
11 department must solicit sealed, competitive bids before
12 awarding a contract under subsection (1) and may award a
13 contract only after receipt of at least one bid, if
14 reasonably available.

15 (b) Within 30 days of any award made under subsection
16 (1), an unsuccessful bidder may challenge the award by
17 filing an action in district court. The district court shall
18 expedite any challenge filed. The district court's review of
19 the bidding process is limited to the question of whether
20 the contract was awarded to the lowest qualified bidder,
21 considering conformity with specifications and terms and
22 reasonableness of bid amount.

23 (c) If the court finds that the contract was not let to
24 the lowest qualified bidder, considering conformity with
25 specification and terms and reasonableness of bid amount, it

1 shall invalidate the award and order the department to begin
2 the bidding process again. The bidding process must use the
3 same specifications contained in the original request for
4 bids.

5 (3) The department may negotiate a contract, without
6 competitive bidding, with a contractor qualified to do
7 business in Montana if:

- 8 (a) the department rejects all bids for the work;
9 (b) an emergency threatening life or property exists;
10 (c) the proposed construction costs are less than
11 \$25,000; or
12 (d) an exigency exists.

13 (4) The provisions of Title 18, chapter 2, parts 2
14 through 4, apply to contracts awarded under this section.
15 The provisions of Title 18, chapter 2, parts 2 and 3, do not
16 apply to contracts for which the proposed construction costs
17 are less than \$25,000."

18 **Section 16.** Section 85-7-1942, MCA, is amended to read:

19 "85-7-1942. Competitive bidding. (1) The contract shall
20 be awarded only to the lowest responsible bidder, who shall
21 be required to give bond for the faithful performance and
22 completion of the contract. The board shall have the right
23 to reject any and all bids in its discretion.

24 (2) (a) Within 30 days of any award made under this
25 section, an unsuccessful bidder may challenge the award by

1 filing an action in district court. The district court shall
2 expedite any challenge filed. The district court's review of
3 the bidding process is limited to the question of whether
4 the contract was awarded to the lowest responsible bidder.

5 (b) If the court finds that the contract was not
6 awarded to the lowest responsible bidder, it shall
7 invalidate the award and order the board to begin the
8 bidding process again. The bidding process must use the same
9 specifications contained in the original request for bids."

-End-

SENATE BILL NO. 358

INTRODUCED BY WILLIAMS

A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING AN UNSUCCESSFUL BIDDER ON A PUBLIC CONTRACT THE RIGHT TO CHALLENGE THE AWARD IN DISTRICT COURT; REQUIRING THE DISTRICT COURT TO EXPEDITE A PUBLIC CONTRACT AWARD CHALLENGE; LIMITING DISTRICT COURT REVIEW OF THE BIDDING PROCESS; AND AMENDING SECTIONS 7-3-1323, 7-5-2301, 7-5-2302, 7-5-4302, 7-12-2135, 7-12-4143, 7-14-2404, 18-1-102, 18-2-103, 18-2-301, 18-4-303, 20-9-204, 20-15-104, 60-2-112, 85-1-219, AND 85-7-1942, MCA."

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

Section 1. Section 7-3-1323, MCA, is amended to read:

"7-3-1323. Competitive, advertised bidding required for certain contracts. (1) All contracts entered into by the municipality for supplies or materials, for any public work, or for the construction, reconstruction, repair, maintenance, or operation of any public works or improvements, ~~for which must be paid a sum~~ exceeding \$2,000, ~~shall must~~ be awarded to the lowest responsible bidder after public advertisement and competition as may be prescribed by ordinance, ~~but the~~ The manager ~~shall have~~ has the right to reject all bids and advertise again. All advertisements as

to contracts ~~shall must~~ contain a reservation of the foregoing right. All contracts entered into by the municipality ~~shall must~~ be signed by the manager after approval thereof by the commission.

(2) (a) Within 30 days of any contract let under this section, an unsuccessful bidder may challenge the award by filing an action in district court. The district court shall expedite any challenge filed. The district court's review of the bidding process is limited to the question of whether the contract was let to the lowest responsible bidder.

(b) If the court finds that the contract was not let to the lowest responsible bidder, it shall invalidate the award and order the municipality to begin--the--bidding process--again--The--bidding--process--must--use--the--same specifications contained in the original--request--for--bids
AWARD THE BID TO THE LOWEST RESPONSIBLE BIDDER."

Section 2. Section 7-5-2301, MCA, is amended to read:

"7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts. (1) Except as provided in 7-5-2304, no contract for the purchase of any vehicle, road machinery, or 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 \$10,000, ~~or for the construction of any building, road, or bridge for which must be paid a sum~~ in excess of \$10,000,

or for the repair or maintenance of any building, road, or bridge ~~for which must be paid a sum~~ in excess of \$25,000 ~~shall may~~ be entered into by a county governing body without first publishing a notice calling for bids ~~for furnishing the same.~~

(2) The notice must be published as provided in 7-1-2121.

(3) Every ~~such~~ contract under this section shall must be let to the lowest and best responsible bidder.

(4) (a) Within 30 days of any award made under this section, an unsuccessful bidder may challenge the award by filing an action in district court. The district court shall expedite any challenge filed. The district court's review of the bidding process is limited to the question of whether the contract was awarded to the lowest and best responsible bidder.

(b) If the court finds that the contract was not awarded to the lowest and best responsible bidder, it shall invalidate the award and order the county governing body to begin--the--bidding--process--again--The--bidding--process--must use--the--same--specifications--contained--in--the--original request--for--bids AWARD THE BID TO THE LOWEST AND BEST RESPONSIBLE BIDDER."

Section 3. Section 7-5-2302, MCA, is amended to read:

"7-5-2302. Use of competitive, nonadvertised bidding

for certain purchases. (1) Except as provided in 7-5-2303, on any purchase contract entered into by a county governing body for the purchase of any vehicle, machinery, appliances, apparatus, building, or materials and supplies ~~for--which must--be--paid--a--sum~~ in excess of \$10,000 but less than \$25,000, bids ~~shall must~~ be solicited without advertising from persons, firms, or corporations who have caused to be filed with the governing body of the county a request in writing that its name be listed with the governing body for solicitations on the particular items set forth in the request. The governing body shall solicit bids of prospective suppliers whose names are listed as provided ~~herein,--which in this section.~~ The solicitation shall contain the same information as is required to be set forth in advertisements. If a person, firm, or corporation whose name is listed fails for a period of 1 year to respond to any solicitation for bids, such the listing may be canceled.

(2) The governing body of the county shall let ~~such the~~ contract to the lowest and best responsible bidder.

(3) Compliance with the provisions of this section shall be considered as meeting the requirements of 7-5-2301.

(4) (a) Within 30 days of any contract let under this section, an unsuccessful bidder may challenge the award by filing an action in district court. The district court shall expedite any challenge filed. The district court's review of

the bidding process is limited to the question of whether the contract was awarded to the lowest and best responsible bidder.

(b) If the court finds that the contract was not awarded to the lowest and best responsible bidder, it shall invalidate the award and order the county governing body to begin-the-bidding-process-again--The--bidding--process--must use--the--same--specifications--contained--in--the--original request-for-bids AWARD THE BID TO THE LOWEST AND BEST RESPONSIBLE BIDDER."

Section 4. Section 7-5-4302, MCA, is amended to read:

"7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts. (1) Except as provided in 7-5-4303 or 7-5-4310, all contracts for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, or equipment, for any materials or supplies of any kind, or for construction, repair, or maintenance, for-which-must-be-paid a---sum exceeding \$10,000, must be let to the lowest responsible bidder after advertisement for bids.

(2) Such The advertisement ~~shall~~ must be made in the official newspaper of the city or town if there ~~be-such is~~ an official newspaper, and if not, it shall be made in a daily newspaper of general circulation published in the city or town if there ~~be-such is one~~ is one and, otherwise, by posting

in three of the most public places in the city or town. Such The advertisement, if by publication in a newspaper, ~~shall~~ must be made once each week for 2 consecutive weeks, and the second publication ~~shall~~ must be made not less than 5 days or more than 12 days before the consideration of bids. If such the advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of such the advertisement and the day set for considering bids.

(3) The council may postpone action as to any such contract under this section until the next regular meeting after bids are received in response to such the advertisement and may reject any and all bids and readvertise as provided herein in this section.

(4) (a) Within 30 days of any contract let under this section, an unsuccessful bidder may challenge the award by filing an action in district court. The district court shall expedite any challenge filed. The district court's review of the bidding process is limited to the question of whether the contract was let to the lowest responsible bidder.

(b) If the court finds that the contract was not let to the lowest responsible bidder, it shall invalidate the award and order the council to begin-the-bidding-process again--The-bidding-process-must-use-the-same--specifications contained--in-the-original-request-for-bids AWARD THE BID TO

1 THE LOWEST RESPONSIBLE BIDDER."

2 **Section 5.** Section 7-12-2135, MCA, is amended to read:

3 "7-12-2135. Decision on award of contract. (1) The
4 board of county commissioners may award the contract for
5 such the work or improvement to the lowest responsible
6 bidder at the prices named in his bid and shall reject all
7 proposals other than the lowest regular proposal or bid of
8 any responsible bidder.

9 (2) The board:

10 (a) may reject any and all proposals or bids should it
11 deem consider this for the public good;

12 (b) may also reject the bid of any party who has been
13 delinquent or unfaithful in any former contract with the
14 board.

15 (3) (a) Within 30 days of any award made under this
16 section, an unsuccessful bidder may challenge the award by
17 filing an action in district court. The district court shall
18 expedite any challenge filed. The district court's review of
19 the bidding process is limited to the question of whether
20 the contract was awarded to the lowest responsible bidder.

21 (b) If the court finds that the contract was not
22 awarded to the lowest responsible bidder, it shall
23 invalidate the award and order the board to begin the
24 bidding process again. The bidding process must use the same
25 specifications contained in the original request for bids

1 AWARD THE BID TO THE LOWEST RESPONSIBLE BIDDER."

2 **Section 6.** Section 7-12-4143, MCA, is amended to read:

3 "7-12-4143. Decision on award of contract. (1) The
4 city council may award the contract for said the work or
5 improvement to the lowest responsible bidder at the prices
6 named in his bid and shall reject all proposals or bids
7 other than the lowest regular proposal or bid of any
8 responsible bidder.

9 (2) The council may reject any and all proposals or
10 bids should if it deem considers this for in the public good
11 and may also reject the bid of any party who has been
12 delinquent or unfaithful in any former contract with the
13 municipality.

14 (3) (a) Within 30 days of any award made under this
15 section, an unsuccessful bidder may challenge the award by
16 filing an action in district court. The district court shall
17 expedite any challenge filed. The district court's review of
18 the bidding process is limited to the question of whether
19 the contract was awarded to the lowest responsible bidder.

20 (b) If the court finds that the contract was not
21 awarded to the lowest responsible bidder, it shall
22 invalidate the award and order the council to begin the
23 bidding process again. The bidding process must use the same
24 specifications contained in the original request for bids
25 AWARD THE BID TO THE LOWEST RESPONSIBLE BIDDER."

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

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

(2) (a) Within 30 days of any award made under this section, an unsuccessful bidder may challenge the award by filing an action in district court. The district court shall expedite any challenge filed. The district court's review of the bidding process is limited to the question of whether the contract was awarded to the lowest responsible bidder, pursuant to this section, in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4.

(b) If the court finds that the contract was not awarded to the lowest responsible bidder, in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4, it shall invalidate the award and order the board to begin the bidding process again. The bidding

process--must--use--the--same--specifications--contained--in--the original request for bids AWARD THE BID TO THE LOWEST RESPONSIBLE BIDDER."

Section 8. Section 18-1-102, MCA, is amended to read:

"18-1-102. State contracts to lowest resident bidder.

(1) (a) In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency shall award:

(i) a public contract for construction, repair, or public works to the lowest responsible resident bidder whose bid does not exceed the applicable percentage when compared to the lowest responsible nonresident bidder. The applicable percentage is the greater of:

(A) 3%; or

(B) the percentage that applies to a resident bidder in the award of a public contract for construction, repair, or public works in the nonresident bidder's state of residence.

(ii) a public contract for the purchase of goods, if the goods are comparable in quality and performance, to the lowest responsible resident bidder whose:

(A) bid is not more than 3% higher than that of the lowest responsible nonresident bidder;

(B) offered goods are Montana-made and whose bid is not more than 5% higher than that of the lowest responsible nonresident bidder; or

(C) offered goods are Montana-made and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered goods are not Montana-made.

(b) (i) If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the contract must be awarded to the resident bidder whose offered goods are Montana-made if the bid is:

(A) not more than 3% higher than that of a resident bidder whose offered goods are not Montana-made; and

(B) not more than 5% higher than that of the nonresident bidder.

(ii) However, no combination of preferences under this subsection may exceed 5%.

(2) The preferences in this section apply:

(a) whether the law requires advertisement for bids or does not require advertisement for bids; and

(b) to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto.

(3) (a) Within 30 days of an award of a public contract under this section, an unsuccessful bidder may

challenge the award by filing an action in district court. The district court shall expedite any challenge filed. The district court's review of the bidding process is limited to the question of whether the contract was awarded to the lowest responsible bidder in accordance with this section.

(b) If the court finds that the contract was not awarded to the lowest responsible bidder in accordance with this section, it shall invalidate the award and order the agency to begin--the--bidding--process--again--The-bidding process--must--use--the--same--specifications--contained--in--the original--request--for--bids AWARD THE BID TO THE LOWEST RESPONSIBLE BIDDER."

Section 9. Section 18-2-103, MCA, is amended to read:

"18-2-103. Supervision of construction of buildings.

(1) For the construction of a building costing more than \$25,000, the department of administration shall:

(a) review and accept all plans, specifications, and cost estimates prepared by architects or consulting engineers;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys;

(c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder, considering conformity with specifications and terms and reasonableness

1 of bid amount; ~~However, any contract award that is protested~~
 2 ~~or any contract that is awarded to a bidder other than the~~
 3 ~~lowest bidder is subject to approval by the board of~~
 4 ~~examiners;~~

5 (d) review and approve all change orders up to \$5,000.
 6 Any other change order must be with the consent of the board
 7 of examiners. The board of examiners shall act within 14
 8 working days after processing completion by the department.

9 (e) accept the building when completed according to
 10 accepted plans and specifications.

11 (2) The department may delegate on a
 12 project-by-project basis any powers and duties under
 13 subsection (1) to other state agencies, including units of
 14 the Montana university system, upon terms and conditions
 15 specified by the department. However, any powers and duties
 16 subject to the approval of the board of examiners may not be
 17 delegated.

18 (3) For repair and maintenance projects, the
 19 supervision, approval, and consent of the board of examiners
 20 are not required.

21 (4) Before any contract under subsection (1) is
 22 awarded, two formal bids must have been received, if
 23 reasonably available.

24 (5) The department need not require the provisions of
 25 Montana law relating to advertising, bidding, or supervision

1 where proposed construction costs are \$25,000 or less.
 2 However, with respect to a project having a proposed cost of
 3 \$25,000 or less but more than \$5,000, the agency awarding
 4 the contract must procure at least three informal bids from
 5 contractors licensed in Montana, if reasonably available.

6 (6) For the construction of buildings owned or to be
 7 owned by a school district, the department of administration
 8 shall, upon request, provide inspection to insure compliance
 9 with the plans and specifications for the construction of
 10 such buildings. "Construction" shall include construction,
 11 repair, alteration, equipping, and furnishing during
 12 construction, repair, or alteration. These services shall be
 13 provided at a cost to be contracted for between the
 14 department of administration and the school district, with
 15 the receipts to be deposited in the department of
 16 administration's construction regulation account in a state
 17 special revenue fund.

18 (7) It is the intent of the legislature that student
 19 housing and other facilities constructed under the authority
 20 of the regents of the university system are subject to the
 21 provisions of subsections (1) through (4) of this section.

22 (8) The department of military affairs may act as
 23 contracting agency for buildings constructed under the
 24 authority of 18-2-102(2)(d); however, the department of
 25 administration may agree to act as contracting agency on

1 behalf of the department of military affairs. Montana law
2 applies to any controversy involving such a contract.

3 (9) (a) Within 30 days of any award made under this
4 section, an unsuccessful bidder may challenge the award by
5 filing an action in district court. The district court shall
6 expedite any challenge filed. The district court's review of
7 the bidding process is limited to the question of whether
8 the contract was awarded to the lowest qualified bidder,
9 pursuant to this section, considering conformity with
10 specifications and terms and reasonableness of bid amount.

11 (b) If the court finds that the contract was not
12 awarded to the lowest qualified bidder, considering
13 conformity with specifications and terms and reasonableness
14 of bid amount, it shall invalidate the award and order the
15 department to ~~begin the bidding process again. The bidding~~
16 ~~process must use the same specifications contained in the~~
17 ~~original request for bids~~ AWARD THE BID TO THE LOWEST
18 QUALIFIED BIDDER."

19 **Section 10.** Section 18-2-301, MCA, is amended to read:

20 "18-2-301. Bids required -- advertising. (1) It is
21 unlawful for the board of examiners or any offices,
22 departments, institutions, or any agent of the state of
23 Montana acting for or in behalf of the state to do, to cause
24 to be done, or to let any contract for the construction of
25 buildings or the alteration and improvement of buildings and

1 adjacent grounds on behalf of and for the benefit of the
2 state when the amount involved is \$25,000 or more without
3 first advertising in at least one issue each week for 3
4 consecutive weeks in two newspapers published in the state,
5 one of which must be published at the seat of government and
6 the other in the county where the work is to be performed,
7 calling for sealed bids to perform ~~such the~~ work and stating
8 the time and place bids will be considered.

9 (2) All such work referred to in subsection (1) may be
10 done, caused to be done, or contracted for only after
11 competitive bidding. Any contract awarded must be awarded to
12 the lowest responsible bidder.

13 (3) If no bid for such the work is accepted, the work
14 may not be done or accomplished. The work may be
15 readvertised from time to time until awarded to a qualified
16 competitive bidder.

17 (4) This section does not apply to work done by
18 inmates at an institution in the department of institutions.

19 (5) (a) Within 30 days of any award made under this
20 section, an unsuccessful bidder may challenge the award by
21 filing an action in district court. The district court shall
22 expedite any challenge filed. The district court's review of
23 the bidding process is limited to the question of whether
24 the contract was awarded to the lowest responsible bidder,
25 considering conformity with specifications and terms and

1 reasonableness of bid amount.

2 (b) If the court finds that the contract was not
 3 awarded to the lowest responsible bidder, it shall
 4 invalidate the award and order the bidding process to begin
 5 again. The bidding process must use the same specifications
 6 contained in the original request for bids ORDER THE PROPER
 7 ENTITY TO AWARD THE BID TO THE LOWEST RESPONSIBLE BIDDER."

8 **Section 11.** Section 18-4-303, MCA, is amended to read:

9 "18-4-303. Competitive sealed bidding. (1) An
 10 invitation for bids must be issued and must include a
 11 purchase description and conditions applicable to the
 12 procurement.

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

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

1 bidder, must be recorded. The record must be open to public
 2 inspection. After the time of award, all bids and bid
 3 documents must be open to public inspection in accordance
 4 with the provisions of 2-6-102.

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

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

1 correction or withdrawal of bids or to cancel awards or
2 contracts based on bid mistakes must be supported by a
3 written determination made by the department.

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

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

1 (8) (a) Within 30 days of any award made under this
2 section, an unsuccessful bidder may challenge the award by
3 filing an action in district court. The district court shall
4 expedite any challenge filed. The district court's review of
5 the bidding process is limited to the question of whether
6 the contract was awarded to the lowest responsible and
7 responsive bidder whose bid met the requirements and
8 criteria set forth in the invitation for bids, including the
9 preferences established by Title 18, chapter 1, part 1.

10 (b) If the court finds that the contract was not
11 awarded to the lowest responsible and responsive bidder
12 whose bid met the requirements and criteria set forth in the
13 invitation for bids, including the preferences established
14 by Title 18, chapter 1, part 1, it shall invalidate the
15 award and order the purchasing agency to begin-the-bidding
16 process--again--The--bidding--process--must--use--the--same
17 specifications--contained--in--the--original--request--for--bids
18 AWARD THE BID TO THE LOWEST RESPONSIBLE AND RESPONSIVE
19 BIDDER."

20 **Section 12.** Section 20-9-204, MCA, is amended to read:

21 "20-9-204. Conflicts of interests, letting contracts,
22 and calling for bids. (1) It is unlawful for any a trustee
23 to:

24 (a) have any a pecuniary interest, either directly or
25 indirectly, in any contract made by him in his official

1 capacity or by the board of trustees of which he is a
2 member; or

3 (b) be employed in any capacity by the school district
4 of which he is trustee.

5 (2) For the purposes of subsection (1):

6 (a) "pecuniary interest" does not include holding an
7 interest of 10% or less in a corporation;

8 (b) "contract" does not include:

9 (i) merchandise sold to the highest bidder at public
10 ~~auctions~~ auction;

11 (ii) investments or deposits in financial institutions
12 which are in the business of loaning or receiving money when
13 ~~such the~~ investments or deposits are made on a rotating or
14 ratable basis among financial institutions in the community
15 or when there is only one financial institution in the
16 community; or

17 (iii) contracts for professional services other than
18 salaried services or for maintenance or repair services or
19 supplies when the services or supplies are not reasonably
20 available from other sources if the interest of any board
21 member and a determination of ~~such~~ lack of availability are
22 entered in the minutes of the board meeting at which the
23 contract is considered.

24 (3) Whenever the estimated cost of any building,
25 furnishing, repairing, or other work for the benefit of the

1 district or purchasing of supplies for the district exceeds
2 the sum of \$7,500, the work done or the purchase made shall
3 be by contract. Each such contract must be let to the lowest
4 responsible bidder after advertisement for bids. ~~Such~~ The
5 advertisement shall be published in the newspaper which will
6 give notice to the largest number of people of the district
7 as determined by the trustees. ~~Such~~ The advertisement shall
8 be made once each week for 2 consecutive weeks, and the
9 second publication shall be made not less than 5 days or
10 more than 12 days before consideration of bids. A contract
11 not let pursuant to this section ~~shall-be~~ is void.

12 (4) Whenever bidding is required, the trustees shall
13 award the contract to the lowest responsible bidder, except
14 that the trustees may reject any or all bids.

15 (5) Nothing in this section ~~shall-require~~ requires the
16 board of trustees to let a contract for any routine and
17 regularly performed maintenance or repair project or service
18 which can be accomplished by district staff whose regular
19 employment with ~~such the~~ school district is related to the
20 routine performance of maintenance for ~~such the~~ district.

21 (6) (a) Within 30 days of any contract let under this
22 section, an unsuccessful bidder may challenge the award by
23 filing an action in district court. The district court shall
24 expedite any challenge filed. The district court's review of
25 the bidding process is limited to the question of whether

1 the contract was let to the lowest responsible bidder.

2 (b) If the court finds that the contract was not let
 3 to the lowest responsible bidder, it shall invalidate the
 4 award and order the board of trustees to begin--the--bidding
 5 process--again--The--bidding--process--must--use--the--same
 6 specifications-contained-in-the-original--request--for--bids
 7 AWARD THE BID TO THE LOWEST RESPONSIBLE BIDDER."

8 **Section 13.** Section 20-15-104, MCA, is amended to
 9 read:

10 "20-15-104. Pecuniary interest and letting contracts.

11 (1) It shall be unlawful for any a community college
 12 district trustee to have any a pecuniary interest, either
 13 directly or indirectly, in the erection of any a community
 14 college building in his district or in furnishing or
 15 repairing the-same a building or be in any manner connected
 16 with the furnishing of supplies for the maintenance of the
 17 college or to receive or accept any compensation or reward
 18 for services rendered as trustee, except as herein provided
 19 in this section.

20 (2) The board of trustees shall let contracts for
 21 building, furnishing, repairing, or other work or supplies
 22 for the benefit of the district according to the following
 23 rules and procedures:

24 (a) The board of trustees need not meet requirements
 25 relating to advertising or bidding if a proposed contract

1 for building, furnishing, repairing, or other work or
 2 supplies is for less than \$5,000.

3 (b) Whenever If the proposed contract costs are less
 4 than \$25,000 but more than \$5,000, the board of trustees
 5 shall procure at least three informal bids, if reasonably
 6 available, from contractors licensed in Montana.

7 (c) Whenever If the proposed contract costs are more
 8 than \$25,000, the board of trustees shall solicit formal
 9 bids and advertise once each week for at least 2 weeks in a
 10 newspaper published in each county wherein in which the area
 11 of the district lies, calling for bids to perform such the
 12 work or furnish such the supplies. If advertising is
 13 required, the board shall award the contract to the lowest
 14 responsible bidder. However, the board of trustees has the
 15 right to reject any and all bids.

16 (3) (a) Within 30 days of any award made under
 17 subsection (2)(c), an unsuccessful bidder may challenge the
 18 award by filing an action in district court. The district
 19 court shall expedite any challenge filed. The district
 20 court's review of the bidding process is limited to the
 21 question of whether the contract was awarded to the lowest
 22 responsible bidder.

23 (b) If the court finds that the contract was not
 24 awarded to the lowest responsible bidder, it shall
 25 invalidate the award and order the board of trustees to

1 ~~begin-the-bidding-process-again-The--bidding--process--must~~
 2 ~~use--the--same--specifications--contained--in--the--original~~
 3 ~~request-for-bids~~ AWARD THE BID TO THE LOWEST RESPONSIBLE
 4 BIDDER."

5 **Section 14.** Section 60-2-112, MCA, is amended to read:

6 "60-2-112. Competitive bidding. (1) When the estimated
 7 cost of any work exceeds \$10,000, the commission shall let
 8 the contract by competitive bidding. Award shall be made
 9 upon such notice and upon such terms as the commission may
 10 prescribe by its rules. However, except when prohibited by
 11 federal law, the commission shall make awards and contracts
 12 in accordance with 18-1-102 and 18-1-112. Additionally, the
 13 contract must be let to the lowest responsible bidder.

14 (2) The commission may let a contract by means other
 15 than competitive bidding if it determines that special
 16 circumstances so require. The commission must specify the
 17 special circumstances in writing.

18 (3) The commission may enter into contracts with units
 19 of local government for the construction of projects without
 20 competitive bidding if it finds that the work can be
 21 accomplished at lower total costs, including total cost of
 22 labor, materials, supplies, equipment usage, engineering,
 23 supervision, clerical and accounting services,
 24 administrative costs, and reasonable estimates of other
 25 costs attributable to the project.

1 (4) (a) Within 30 days of any contract let under this
 2 section, an unsuccessful bidder may challenge the award by
 3 filing an action in district court. The district court shall
 4 expedite any challenge filed. The district court's review of
 5 the bidding process is limited to the question of whether
 6 the contract was let to the lowest responsible bidder.

7 (b) If the court finds that the contract was not let
 8 to the lowest responsible bidder, it shall invalidate the
 9 award and order the commission to ~~begin-the-bidding-process~~
 10 ~~again-The-bidding-process-must-use-the-same--specifications~~
 11 ~~contained--in-the-original-request-for-bids~~ AWARD THE BID TO
 12 THE LOWEST RESPONSIBLE BIDDER."

13 **Section 15.** Section 85-1-219, MCA, is amended to read:

14 "85-1-219. State-owned works -- department approval --
 15 bids. (1) For all state-owned works constructed, repaired,
 16 altered, improved, maintained, rehabilitated, or
 17 reconstructed, the department shall:

18 (a) review and approve all plans and working drawings
 19 prepared by engineers or architects, if any;

20 (b) approve all bond issues or other financial
 21 arrangements and supervise and approve the expenditure of
 22 all money;

23 (c) solicit, accept, and reject bids and award all
 24 contracts to the lowest qualified bidder, considering
 25 conformity with specifications and terms and reasonableness

1 of bid amount;

2 (d) review and approve all change orders;

3 (e) accept the works when completed according to

4 approved plans and specifications.

5 (2) (a) Except as provided in subsection (3), the

6 department must solicit sealed, competitive bids before

7 awarding a contract under subsection (1) and may award a

8 contract only after receipt of at least one bid, if

9 reasonably available.

10 (b) Within 30 days of any award made under subsection

11 (1), an unsuccessful bidder may challenge the award by

12 filing an action in district court. The district court shall

13 expedite any challenge filed. The district court's review of

14 the bidding process is limited to the question of whether

15 the contract was awarded to the lowest qualified bidder,

16 considering conformity with specifications and terms and

17 reasonableness of bid amount.

18 (c) If the court finds that the contract was not let

19 to the lowest qualified bidder, considering conformity with

20 specification and terms and reasonableness of bid amount, it

21 shall invalidate the award and order the department to begin

22 the-bidding-process-again--The-bidding-process-must-use--the

23 same--specifications--contained--in-the-original-request-for

24 bids AWARD THE BID TO THE LOWEST QUALIFIED BIDDER.

25 (3) The department may negotiate a contract, without

1 competitive bidding, with a contractor qualified to do

2 business in Montana if:

3 (a) the department rejects all bids for the work;

4 (b) an emergency threatening life or property exists;

5 (c) the proposed construction costs are less than

6 \$25,000; or

7 (d) an exigency exists.

8 (4) The provisions of Title 18, chapter 2, parts 2

9 through 4, apply to contracts awarded under this section.

10 The provisions of Title 18, chapter 2, parts 2 and 3, do not

11 apply to contracts for which the proposed construction costs

12 are less than \$25,000."

13 **Section 16.** Section 85-7-1942, MCA, is amended to

14 read:

15 **"85-7-1942. Competitive bidding. (1)** The contract

16 shall be awarded only to the lowest responsible bidder, who

17 shall be required to give bond for the faithful performance

18 and completion of the contract. The board shall have the

19 right to reject any and all bids in its discretion.

20 (2) (a) Within 30 days of any award made under this

21 section, an unsuccessful bidder may challenge the award by

22 filing an action in district court. The district court shall

23 expedite any challenge filed. The district court's review of

24 the bidding process is limited to the question of whether

25 the contract was awarded to the lowest responsible bidder.

1 (b) If the court finds that the contract was not
2 awarded to the lowest responsible bidder, it shall
3 invalidate the award and order the board to begin the
4 bidding process again. The bidding process must use the same
5 specifications contained in the original request for bids
6 AWARD THE BID TO THE LOWEST RESPONSIBLE BIDDER."

-End-