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House BILL NO. 163

INTRODUCED BY

Dexter Harding

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE REQUIREMENTS FOR BID SECURITY AND CONTRACT PERFORMANCE SECURITY; REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION REQUIRE BID SECURITY IN CERTAIN CIRCUMSTANCES; CHANGING THE AMOUNT OF CONTRACT PERFORMANCE SECURITY REQUIRED; EXTENDING THE TERM OF CERTAIN CONTRACTS; AMENDING SECTIONS 18-2-201, 18-2-202, 18-2-203, 18-2-204, 18-2-205, 18-2-206, 18-2-207, 18-2-208, 18-2-302, 18-4-304, 18-4-312, AND 18-4-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 18-2-201, MCA, is amended to read:

"18-2-201. Bonding Security requirements. (1) Except as otherwise provided in 85-1-219 and subsections (4) through (6) of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or any public body contracts with ~~any~~ a person or corporation to do ~~any~~ work for the state, county, or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall require the corporation, person, or persons with whom the contract is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and sufficient bond with a licensed surety company as surety, conditioned that the corporation, person, or persons shall:

- (a) faithfully perform all of the provisions of the contract;
- (b) pay all laborers, mechanics, subcontractors, and material suppliers; and
- (c) pay all persons who supply the corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for performing the work.

(2) A copy of the bond must be filed with the county clerk and recorder of the county in which the work is to be performed or the improvement is to be made or, if the work is to be performed or the improvement is to be made in more than one county, ~~then~~ with the county clerk of either county, except

1 in cases of cities and towns, in which case the bond must be filed with the city or town clerk.

2 (3) Notwithstanding the provisions of subsections (1) and (2), the state or other governmental
3 entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency
4 of the following securities in an amount at least equal to the contract sum to guarantee the faithful
5 performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and
6 subcontractors:

7 (a) lawful money of the United States; or

8 (b) a cashier's check, certified check, bank money order, certificate of deposit, money market
9 certificate, or bank draft, drawn or issued by:

10 (i) any banking corporation incorporated under the laws of the state of Montana or by a national
11 banking association located in Montana; or federally or state chartered bank or savings and loan association
12 that is insured by or for which insurance is administered by the federal deposit insurance corporation; or

13 (ii) a credit union insured by the national credit union share insurance fund.

14 ~~(c) certificates of deposit or money market certificates issued by any bank or savings and loan~~
15 ~~association licensed to do business in Montana.~~

16 (4) Notwithstanding the provisions of subsections (1) and (2), any board, council, commission,
17 trustee, or body acting for any county, municipality, or any public body other than the state may, in lieu
18 of a bond from a licensed surety company, accept a good and sufficient bond with two or more sureties
19 acceptable to the governmental body.

20 (5) Except as provided in subsection (6), the state or other governmental entity may waive the
21 requirements contained in subsections (1) through (4) for building or construction projects, as defined in
22 18-2-101, that cost less than \$5,000.

23 (6) A school district may waive the requirements contained in subsections (1) through (4) for
24 building or construction projects, as defined in 18-2-101, that cost less than \$7,500."

25

26 **Section 2.** Section 18-2-202, MCA, is amended to read:

27 **"18-2-202. Failure to require bond security -- waiver of bond.** If any board, council, commission,
28 trustee, or body acting for the state or any board of county commissioners or any mayor and common
29 council of any incorporated city or town or tribunal transacting the business of any such municipal
30 corporation waives or fails to take ~~such bond, cash, checks, drafts, money orders, or certificates of deposit~~

1 ~~as herein required~~ the security required or authorized by 18-2-201, the state or ~~such the~~ county,
 2 incorporated city or town, or other municipal corporation ~~shall be~~ is liable to the persons mentioned in
 3 18-2-201 to the full extent and for the full amount of all of ~~such the contracted~~ debts ~~so contracted~~ by any
 4 ~~such~~ subcontractor as well as ~~such the~~ contractor."

5

6 **Section 3.** Section 18-2-203, MCA, is amended to read:

7 "**18-2-203. Amount and terms of bond security.** The ~~bond security~~ mentioned in 18-2-201 ~~shall~~
 8 must be in an amount equal to the full contract price agreed to be paid for ~~such the~~ work or improvement
 9 and ~~shall must~~ be to the state of Montana, except in cases of cities and towns, in which case ~~such the~~
 10 municipality may by general ordinance fix and determine the amount of ~~such bond the security~~ and to
 11 ~~whom such bond shall run~~ the name of the secured party, provided that the ~~same shall~~ amount may not
 12 be for a less ~~amount~~ than 25% of the contract price of ~~any such the~~ improvement, and the security may
 13 designate that the ~~same shall be~~ amount is payable to ~~such the~~ city or town and not to the state of
 14 Montana."

15

16 **Section 4.** Section 18-2-204, MCA, is amended to read:

17 "**18-2-204. Right of action on bond security -- notice.** (1) All ~~such~~ persons mentioned in 18-2-201
 18 ~~shall~~ have a right of action in ~~his or her or~~ their own name or names on any bond security furnished under
 19 the terms of this part for work done by ~~such the~~ laborers or mechanics and for provender, materials,
 20 supplies, provisions, or goods supplied and furnished in the ~~prosecution of such~~ work or the making of ~~such~~
 21 the improvements, ~~provided that such~~ The persons shall do not have any right of action on ~~such bond for~~
 22 ~~any sum whatever~~ the security unless within 90 days ~~from and~~ after the completion of the contract with
 23 an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer,
 24 or body acting for the state, county, or municipality or other public body, city, town, or district, the laborer,
 25 mechanic or subcontractor, or materialman or person claiming to have supplied provender, materials,
 26 provisions, or goods for the prosecution of ~~such the~~ work or the making of ~~such the~~ improvement ~~shall~~
 27 ~~present~~ presents to and file files with ~~such the~~ board, council, commission, trustees, or body acting for the
 28 state, county, or municipality or other public body, city, town, or district a notice in writing in substance
 29 as follows:

30 "TO (here insert the name of the state, county, or municipality or other public body, city, town, or

1 district):

2 NOTICE IS HEREBY GIVEN that the undersigned (here insert the name of the laborer, mechanic or
3 subcontractor, or materialman or person claiming to have furnished labor, materials, or provisions for ~~or~~
4 ~~upon such~~ the contract or work) has a claim in the sum of dollars (here insert the amount) against the
5 ~~bond security~~ taken from (here insert the name of the principal and ~~surety or sureties upon such bond~~
6 name of the person providing the security) for the work of (here insert a brief mention or description
7 of the work concerning which ~~said bond~~ the security was taken).

8 (Here to be signed)"

9 (2) ~~Such~~ The notice ~~shall~~ must be signed by the person or corporation making the claim or giving
10 the notice, ~~and said notice, after.~~ After being presented and filed, ~~shall be~~ the notice is a public record
11 open to inspection by any person."

12

13 **Section 5.** Section 18-2-205, MCA, is amended to read:

14 **"18-2-205. Effect of dealing with subcontractor.** ~~Any A~~ corporation, ~~or person, or persons~~
15 performing ~~such~~ services or furnishing ~~such~~ provender, provisions, supplies, or material to ~~any a~~
16 subcontractor ~~shall have~~ has the same right under the provisions of ~~such bond~~ the security as if ~~such~~ the
17 work, services, provender, provisions, supplies, or material was furnished to the original contractor."

18

19 **Section 6.** Section 18-2-206, MCA, is amended to read:

20 **"18-2-206. Notice to contractor concerning subcontractor.** (1) ~~Every~~ A person, firm, or
21 corporation furnishing provender, provisions, materials, or supplies to be used in the construction,
22 performance, carrying on, prosecution, or doing of any work for the state or any county, city, town,
23 district, municipality, or other public body shall, not later than 30 days after the date of the first delivery
24 to ~~any a~~ subcontractor or agent of ~~any a~~ person, firm, or corporation having a subcontract for the
25 construction, performance, carrying on, prosecution, or doing of ~~such~~ the work, give a notice of a right of
26 action on the ~~bond~~ security.

27 (2) (a) The notice must be delivered personally or sent by certified mail to the contractor.

28 (b) The notice must be in writing and state:

29 (i) that it is a notice of a right of action on the ~~bond~~ security;

30 (ii) that the person, firm, or corporation giving the notice has commenced to deliver provender,

1 provisions, materials, or supplies;

2 (iii) the name of the subcontractor or agent who placed the order or to whom the provender,
3 provisions, materials, or supplies were delivered; and

4 (iv) that the contractor and ~~his bond~~ the contractor's security will be held for the unpaid price if the
5 supplier is not paid.

6 (3) To have a right of action against the contractor and ~~his bond~~ the security under this part, a
7 person, firm, or corporation ~~must~~ shall give the written notice required by this section in substantially ~~this~~
8 the form described in subsection (2). Any other type of actual or constructive notice is not sufficient.

9 (4) ~~No~~ A suit or action may ~~not~~ not be maintained in any court against the contractor or ~~his bond~~ the
10 security to recover for ~~such~~ the provender, provisions, ~~material~~ materials, or supplies or any part thereof
11 unless the provisions of this part have been complied with."

12

13 **Section 7.** Section 18-2-207, MCA, is amended to read:

14 "18-2-207. **Costs --** ~~attorneys'~~ attorney fees. In ~~any~~ a suit or action brought against ~~such surety~~
15 ~~or sureties~~ the surety, payor, or other person liable on the security by ~~any such~~ a person or corporation to
16 recover for any of the items ~~hereinbefore~~ specified in this part, the prevailing party ~~shall be~~ is entitled to
17 recover, in addition to all other costs, ~~attorneys'~~ attorney fees in ~~such~~ a sum ~~as that~~ the court shall ~~adjudge~~
18 finds reasonable, ~~provided, however, that no attorneys' fees shall.~~ However, attorney fees may not be
19 allowed in ~~any~~ a suit or action brought or instituted before the expiration of 30 days following the date of
20 filing of the notice ~~hereinbefore mentioned~~ required in 18-2-206."

21

22 **Section 8.** Section 18-2-208, MCA, is amended to read:

23 "18-2-208. **Exceptions.** (1) The provisions of this part ~~shall do~~ do not apply to ~~any~~ money loaned
24 or advanced to ~~any such~~ a contractor, subcontractor, or other person in the performance of ~~any such~~ the
25 work.

26 (2) ~~Any~~ A city or town may impose any other or further conditions and obligations in ~~such bond~~
27 ~~as may be deemed~~ the security that is considered necessary for its proper protection in the fulfillment of
28 the terms of the contract ~~secured thereby~~ and not in conflict ~~herewith~~ with this part.

29 (3) ~~Nothing herein referred to with reference to the giving of such~~ The notice required by 18-2-204
30 to be given within 90 days ~~from and~~ after completion of the contract and acceptance of the work ~~shall~~ may

1 not be construed to prevent or delay the payment of ~~moneys~~ money due the contractor under the terms
2 and conditions specified in ~~his~~ the contract."
3

4 **Section 9.** Section 18-2-302, MCA, is amended to read:

5 **"18-2-302. Bid security -- waiver.** (1) Except as provided in subsection (2), each bid must be
6 accompanied by bid security in the amount of 10% of the bid, ~~such~~. The security ~~to~~ may consist of cash,
7 a cashier's check, a certified check, a bank money order, a certificate of deposit, a money market
8 certificate, or a bank draft, in any case. The security must be:

9 (a) drawn and issued by a national banking association located in the state of Montana or by any
10 banking corporation incorporated under the laws of the state of Montana federally chartered or
11 state-chartered bank or savings and loan association that is insured by or for which insurance is
12 administered by the federal deposit insurance corporation;

13 (b) drawn and issued by a credit union insured by the national credit union share insurance fund;
14 or

15 (c) a bid bond or bonds executed by a surety ~~corporation~~ company authorized to do business in

16 the state of Montana.

17 (2) The state or other governmental entity may waive the requirements for bid security on building
18 or construction projects, as defined in 18-2-101, that cost less than \$5,000."
19

20 **Section 10.** Section 18-4-304, MCA, is amended to read:

21 **"18-4-304. Competitive sealed proposals.** (1) When, under rules adopted by the department, the
22 director, the head of a purchasing agency, or a designee of either officer above the level of the procurement
23 officer determines ~~in writing~~ that the use of competitive sealed bidding is either not practicable or not
24 advantageous to the state, a contract may be entered into by competitive sealed proposals. The
25 department may provide by rule that it is either not practicable or not advantageous to the state to procure
26 specified types of supplies and services by competitive sealed bidding.

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

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

30 (4) Proposals must be opened so as to avoid disclosure of contents to competing offerors during

1 the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by
2 the department and must be open for public inspection after contract award.

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

5 (6) As provided in the request for proposals and under rules adopted by the department,
6 discussions ~~may be conducted~~ with responsible offerors who submit apparently responsive proposals may
7 be conducted for the purpose of clarification, in order to assure full understanding of and responsiveness
8 to the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any
9 opportunity for discussion and revision of proposals, and ~~such~~ revisions may be permitted, after
10 submissions and prior to award, for the purpose of obtaining best and final offers. In conducting
11 discussions, there may not be ~~no~~ disclosure of any information derived from proposals submitted by
12 competing offerors. The department may require the submission of cost or pricing data in connection with
13 an award under this section.

14 (7) The award must be made to the responsible offeror whose proposal is determined in writing
15 to be the most advantageous to the state, taking into consideration price, including the preference in
16 18-1-102, and the evaluation factors set forth in the request for proposals. No other factors or criteria may
17 be used in the evaluation. The contract file ~~shall~~ must contain the basis on which the award is made."
18

19 **Section 11.** Section 18-4-312, MCA, is amended to read:

20 **"18-4-312. Bid and contract performance security.** (1) For state contracts for the procurement
21 of services in the amount of \$10,000 or less or of supplies, the department may in its discretion require
22 ~~the filing of:~~

23 (a) bid security;

24 (b) contract performance security to guarantee the faithful performance of the contract and the
25 payment of all laborers, suppliers, materialmen, mechanics, and subcontractors; or

26 (c) both bid and contract performance security.

27 (2) For state contracts for the procurement of services exceeding \$10,000, the department shall
28 require ~~bid security and~~ contract performance security, except for purchases described in 18-4-305 and
29 18-4-306, and may in its discretion require bid security.

30 (3) If security is required under subsection (1) or (2), the following types of security may be

1 required to be deposited with the state:

2 (a) a ~~good and~~ sufficient bond with a licensed surety company as surety;

3 (b) an irrevocable letter of credit not to exceed \$100,000 in accordance with the provisions of Title
4 30, chapter 5, part 1;

5 (c) ~~lawful~~ money of the United States;

6 (d) a cashier's check, certified check, bank money order, certificate of deposit, money market
7 certificate, or bank draft, that is drawn or issued by any banking corporation incorporated under the laws
8 of Montana or by a banking association located in Montana; or

9 ~~(e) certificates of deposit or money market certificates issued by any bank or savings and loan~~
10 ~~association licensed to do business in Montana~~ a federally chartered or state-chartered bank or savings and
11 loan association that is insured by or for which insurance is administered by the federal deposit insurance
12 corporation or that is drawn and issued by a credit union insured by the national credit union share
13 insurance fund.

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

28 (5) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract
29 or provide contract performance security, as required by the invitation for bid or request for proposal, after
30 notification of award, the department may, in its discretion, require the bidder to forfeit ~~his~~ the bid security

1 to the state and become immediately liable on the bid ~~bond~~ security, but not in excess of the sum stated
 2 ~~therein in the security~~. The liability of the bidder or offeror, the maker of the security or bid bond, or the
 3 liability on the bid bond or other security shall may not exceed the amount specified in the invitation for
 4 bid or request for proposal.

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

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

9

10 **Section 12.** Section 18-4-313, MCA, is amended to read:

11 **"18-4-313. Contracts -- terms, extensions, and time limits.** (1) Unless otherwise provided by law,
 12 a contract, lease, or rental agreement for supplies or services may not be made for a ~~longer~~ period of more
 13 than 3 7 years; however, the department may contract for the lease or purchase of telecommunications
 14 equipment and systems, data processing equipment, the department of revenue liquor agencies, and the
 15 department of social and rehabilitation services medicaid management information system (MMIS) for a
 16 period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed,
 17 ~~notwithstanding the time limits stated in this section,~~ if the terms of the extension or renewal, if any, are
 18 included in the solicitation, and if funds are available for the first fiscal period at the time of the agreement,
 19 and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and
 20 performance obligations for succeeding fiscal periods are subject to the availability and appropriation of
 21 funds for the fiscal periods.

22 (2) Prior to the issuance, extension, or renewal of a contract, it must be determined ~~in writing~~ that:

23 (a) estimated requirements cover the period of the contract and are reasonably firm and continuing;

24 and

25 (b) the contract will serve the best interests of the state by encouraging effective competition or
 26 otherwise promoting economies in state procurement.

27 (3) When funds are not appropriated or otherwise made available to support continuation of
 28 performance in a subsequent fiscal period, the contract must be canceled."

29

30 **NEW SECTION. Section 13. Effective date.** [This act] is effective on passage and approval.

-END-

- 9 -

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0163, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the requirements for bid security and contract performance security; removing the requirement that the Department of Administration require bid security in certain circumstances; changing the amount of contract performance security required; extending the term of certain contracts.

ASSUMPTIONS:

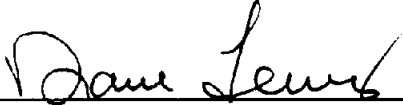
1. Less stringent bid and contract performance security requirements would promote greater vendor participation for state contracts, possibly resulting in lower bid prices to the state.
2. Less stringent bid and contract performance security requirements would reduce costs for successful vendors, potentially reducing bid prices for the state.
3. Fewer warrants would need to be issued for returning some types of security to unsuccessful bidders.
4. In purchasing situations where longer contract periods would be advantageous, state agencies would realize cost savings both in the actual cost of the contract and in reduced personnel time spent rebidding and reissuing contracts.

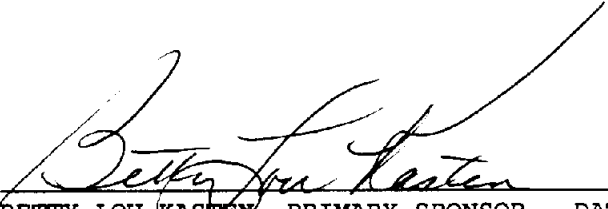
FISCAL IMPACT:

Insufficient information is available to make a specific estimate but at least minor savings in some state contracts is likely to occur as a result of HB0163.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Savings similar to what would be experienced for the state.

 1-11-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


BETTY LOU KASTEN, PRIMARY SPONSOR DATE

Fiscal Note for HB0163, as introduced

HB163

APPROVED BY COMMITTEE
ON BUSINESS AND LABOR

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House BILL NO. 163

INTRODUCED BY

Dexter Harding

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE REQUIREMENTS FOR BID SECURITY AND CONTRACT PERFORMANCE SECURITY; REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION REQUIRE BID SECURITY IN CERTAIN CIRCUMSTANCES; CHANGING THE AMOUNT OF CONTRACT PERFORMANCE SECURITY REQUIRED; EXTENDING THE TERM OF CERTAIN CONTRACTS; AMENDING SECTIONS 18-2-201, 18-2-202, 18-2-203, 18-2-204, 18-2-205, 18-2-206, 18-2-207, 18-2-208, 18-2-302, 18-4-304, 18-4-312, AND 18-4-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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"18-2-201. Bonding Security requirements. (1) Except as otherwise provided in 85-1-219 and subsections (4) through (6) of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or any public body contracts with ~~any~~ a person or corporation to do ~~any~~ work for the state, county, or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall require the corporation, person, or persons with whom the contract is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and sufficient bond with a licensed surety company as surety, conditioned that the corporation, person, or persons shall:

- (a) faithfully perform all of the provisions of the contract;
- (b) pay all laborers, mechanics, subcontractors, and material suppliers; and
- (c) pay all persons who supply the corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for performing the work.

(2) A copy of the bond must be filed with the county clerk and recorder of the county in which the work is to be performed or the improvement is to be made or, if the work is to be performed or the improvement is to be made in more than one county, ~~then~~ with the county clerk of either county, except

1 in cases of cities and towns, in which case the bond must be filed with the city or town clerk.

2 (3) Notwithstanding the provisions of subsections (1) and (2), the state or other governmental
3 entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency
4 of the following securities in an amount at least equal to the contract sum to guarantee the faithful
5 performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and
6 subcontractors:

7 (a) lawful money of the United States; or

8 (b) a cashier's check, certified check, bank money order, certificate of deposit, money market
9 certificate, or bank draft, drawn or issued by:

10 (i) ~~any banking corporation incorporated under the laws of the state of Montana or by a national~~
11 ~~banking association located in Montana; or~~ federally or state chartered bank or savings and loan association
12 that is insured by or for which insurance is administered by the federal deposit insurance corporation; or

13 (ii) a credit union insured by the national credit union share insurance fund.

14 ~~(c) certificates of deposit or money market certificates issued by any bank or savings and loan~~
15 ~~association licensed to do business in Montana.~~

16 (4) Notwithstanding the provisions of subsections (1) and (2), any board, council, commission,
17 trustee, or body acting for any county, municipality, or any public body other than the state may, in lieu
18 of a bond from a licensed surety company, accept a good and sufficient bond with two or more sureties
19 acceptable to the governmental body.

20 (5) Except as provided in subsection (6), the state or other governmental entity may waive the
21 requirements contained in subsections (1) through (4) for building or construction projects, as defined in
22 18-2-101, that cost less than \$5,000.

23 (6) A school district may waive the requirements contained in subsections (1) through (4) for
24 building or construction projects, as defined in 18-2-101, that cost less than \$7,500."

25

26 **Section 2.** Section 18-2-202, MCA, is amended to read:

27 "**18-2-202. Failure to require bond security -- ~~waiver of bond~~.** If any board, council, commission,
28 trustee, or body acting for the state or any board of county commissioners or any mayor and common
29 council of any incorporated city or town or tribunal transacting the business of any such municipal
30 corporation waives or fails to take ~~such bond, cash, checks, drafts, money orders, or certificates of deposit~~

1 ~~as herein required~~ the security required or authorized by 18-2-201, the state or ~~such~~ the county,
 2 incorporated city or town, or other municipal corporation ~~shall be~~ is liable to the persons mentioned in
 3 18-2-201 to the full extent and for the full amount of all of ~~such~~ the contracted debts ~~so contracted~~ by any
 4 ~~such~~ subcontractor as well as ~~such~~ the contractor."

5
 6 **Section 3.** Section 18-2-203, MCA, is amended to read:

7 **"18-2-203. Amount and terms of bond security.** The ~~bond~~ security mentioned in 18-2-201 ~~shall~~
 8 must be in an amount equal to the full contract price agreed to be paid for ~~such~~ the work or improvement
 9 and ~~shall~~ must be to the state of Montana, except in cases of cities and towns, in which case ~~such~~ the
 10 municipality may by general ordinance fix and determine the amount of ~~such bond~~ the security and ~~to~~
 11 ~~whom such bond shall run~~ the name of the secured party, provided that the ~~same shall~~ amount may not
 12 be for a less ~~amount~~ than 25% of the contract price of ~~any such~~ the improvement, and the security may
 13 designate that the ~~same shall be~~ amount is payable to ~~such~~ the city or town and not to the state of
 14 Montana."

15
 16 **Section 4.** Section 18-2-204, MCA, is amended to read:

17 **"18-2-204. Right of action on bond security -- notice.** (1) All ~~such~~ persons mentioned in 18-2-201
 18 ~~shall~~ have a right of action in ~~his or her or~~ their own name or names on any bond security furnished under
 19 the terms of this part for work done by ~~such~~ the laborers or mechanics and for provender, materials,
 20 supplies, provisions, or goods supplied and furnished in the ~~prosecution of such~~ work or the making of ~~such~~
 21 the improvements, ~~provided that such~~ The persons shall do not have any right of action on ~~such bond~~ for
 22 ~~any sum whatever~~ the security unless within 90 days ~~from and~~ after the completion of the contract with
 23 an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer,
 24 or body acting for the state, county, or municipality or other public body, city, town, or district, the laborer,
 25 mechanic or subcontractor, or materialman or person claiming to have supplied provender, materials,
 26 provisions, or goods for the prosecution of ~~such~~ the work or the making of ~~such~~ the improvement ~~shall~~
 27 ~~present~~ presents to and ~~file~~ files with ~~such~~ the board, council, commission, trustees, or body acting for the
 28 state, county, or municipality or other public body, city, town, or district a notice in writing in substance
 29 as follows:

30 "TO (here insert the name of the state, county, or municipality or other public body, city, town, or

1 district):

2 NOTICE IS HEREBY GIVEN that the undersigned (here insert the name of the laborer, mechanic or
3 subcontractor, or materialman or person claiming to have furnished labor, materials, or provisions for ~~or~~
4 ~~upon such~~ the contract or work) has a claim in the sum of dollars (here insert the amount) against the
5 ~~bond security~~ taken from (here insert the name of the principal and ~~surety or sureties upon such bond~~
6 name of the person providing the security) for the work of (here insert a brief mention or description
7 of the work concerning which ~~said bond~~ the security was taken).

8 (Here to be signed)"

9 (2) ~~Such~~ The notice ~~shall~~ must be signed by the person or corporation making the claim or giving
10 the notice, ~~and said notice, after.~~ After being presented and filed, ~~shall be~~ the notice is a public record
11 open to inspection by any person."

12

13 **Section 5.** Section 18-2-205, MCA, is amended to read:

14 "18-2-205. **Effect of dealing with subcontractor.** ~~Any~~ A corporation, ~~or~~ or person, ~~or persons~~
15 performing ~~such~~ services or furnishing ~~such~~ provender, provisions, supplies, or material to ~~any~~ a
16 subcontractor ~~shall have~~ has the same right under the provisions of ~~such bond~~ the security as if ~~such~~ the
17 work, services, provender, provisions, supplies, or material was furnished to the original contractor."

18

19 **Section 6.** Section 18-2-206, MCA, is amended to read:

20 "18-2-206. **Notice to contractor concerning subcontractor.** (1) ~~Every~~ A person, firm, or
21 corporation furnishing provender, provisions, materials, or supplies to be used in the construction,
22 performance, carrying on, prosecution, or doing of any work for the state or any county, city, town,
23 district, municipality, or other public body shall, not later than 30 days after the date of the first delivery
24 to ~~any~~ a subcontractor or agent of ~~any~~ a person, firm, or corporation having a subcontract for the
25 construction, performance, carrying on, prosecution, or doing of ~~such~~ the work, give a notice of a right of
26 action on the ~~bond~~ security.

27 (2) (a) The notice must be delivered personally or sent by certified mail to the contractor.

28 (b) The notice must be in writing and state:

29 (i) that it is a notice of a right of action on the ~~bond~~ security;

30 (ii) that the person, firm, or corporation giving the notice has commenced to deliver provender,

1 provisions, materials, or supplies;

2 (iii) the name of the subcontractor or agent who placed the order or to whom the provender,
3 provisions, materials, or supplies were delivered; and

4 (iv) that the contractor and ~~his bond~~ the contractor's security will be held for the unpaid price if the
5 supplier is not paid.

6 (3) To have a right of action against the contractor and ~~his bond~~ the security under this part, a
7 person, firm, or corporation ~~must~~ shall give the written notice required by this section in substantially ~~this~~
8 the form described in subsection (2). Any other type of actual or constructive notice is not sufficient.

9 (4) ~~No~~ A suit or action may ~~not~~ not be maintained in any court against the contractor or ~~his bond~~ the
10 security to recover for ~~such~~ the provender, provisions, ~~material~~ materials, or supplies or any part thereof
11 unless the provisions of this part have been complied with."

12

13 **Section 7.** Section 18-2-207, MCA, is amended to read:

14 "**18-2-207. Costs -- ~~attorneys' attorney fees~~.** In ~~any a~~ a suit or action brought against ~~such surety~~
15 ~~or sureties~~ the surety, payor, or other person liable on the security by ~~any such~~ a person or corporation to
16 recover for any of the items ~~hereinbefore~~ specified in this part, the prevailing party ~~shall be~~ is entitled to
17 recover, in addition to all other costs, ~~attorneys' attorney fees~~ attorneys' attorney fees in ~~such a~~ such a sum ~~as that~~ as that the court ~~shall~~ shall ~~adjudge~~
18 finds reasonable, ~~provided, however, that no attorneys' fees shall.~~ However, attorney fees may not be
19 allowed in ~~any a~~ a suit or action brought or instituted before the expiration of 30 days following the date of
20 filing of the notice ~~hereinbefore mentioned~~ required in 18-2-206."

21

22 **Section 8.** Section 18-2-208, MCA, is amended to read:

23 "**18-2-208. Exceptions.** (1) The provisions of this part ~~shall do~~ do not apply to ~~any~~ any money loaned
24 or advanced to ~~any such a~~ a contractor, subcontractor, or other person in the performance of ~~any such the~~ the
25 work.

26 (2) ~~Any A~~ A city or town may impose any other or further conditions and obligations in ~~such bond~~
27 ~~as may be deemed~~ the security that is considered necessary for its proper protection in the fulfillment of
28 the terms of the contract ~~secured thereby~~ and not in conflict ~~herewith~~ with this part.

29 (3) ~~Nothing herein referred to with reference to the giving of such~~ The notice required by 18-2-204
30 to be given within 90 days ~~from and~~ from and after completion of the contract and acceptance of the work ~~shall may~~

1 not be construed to prevent or delay the payment of ~~monies~~ money due the contractor under the terms
2 and conditions specified in ~~his~~ the contract."

3

4 **Section 9.** Section 18-2-302, MCA, is amended to read:

5 "**18-2-302. Bid security -- waiver.** (1) Except as provided in subsection (2), each bid must be
6 accompanied by bid security in the amount of 10% of the bid, ~~such.~~ The security ~~to~~ may consist of cash,
7 a cashier's check, a certified check, a bank money order, a certificate of deposit, a money market
8 certificate, or a bank draft, in any case. The security must be:

9 (a) ~~drawn and issued by a national banking association located in the state of Montana or by any~~
10 ~~banking corporation incorporated under the laws of the state of Montana~~ federally chartered or
11 state-chartered bank or savings and loan association that is insured by or for which insurance is
12 administered by the federal deposit insurance corporation;

13 (b) drawn and issued by a credit union insured by the national credit union share insurance fund;

14 or

15 (c) a bid bond or bonds executed by a surety ~~corporation~~ company authorized to do business in
16 the state of Montana.

17 (2) The state or other governmental entity may waive the requirements for bid security on building
18 or construction projects, as defined in 18-2-101, that cost less than \$5,000."

19

20 **Section 10.** Section 18-4-304, MCA, is amended to read:

21 "**18-4-304. Competitive sealed proposals.** (1) When, under rules adopted by the department, the
22 director, the head of a purchasing agency, or a designee of either officer above the level of the procurement
23 officer determines ~~in writing~~ that the use of competitive sealed bidding is either not practicable or not
24 advantageous to the state, a contract may be entered into by competitive sealed proposals. The
25 department may provide by rule that it is either not practicable or not advantageous to the state to procure
26 specified types of supplies and services by competitive sealed bidding.

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

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

30 (4) Proposals must be opened so as to avoid disclosure of contents to competing offerors during

1 the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by
2 the department and must be open for public inspection after contract award.

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

5 (6) As provided in the request for proposals and under rules adopted by the department,
6 discussions ~~may be conducted~~ with responsible offerors who submit apparently responsive proposals may
7 be conducted for the purpose of clarification, in order to assure full understanding of and responsiveness
8 to the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any
9 opportunity for discussion and revision of proposals, and ~~such~~ revisions may be permitted, after
10 submissions and prior to award, for the purpose of obtaining best and final offers. In conducting
11 discussions, there may not be ~~no~~ disclosure of any information derived from proposals submitted by
12 competing offerors. The department may require the submission of cost or pricing data in connection with
13 an award under this section.

14 (7) The award must be made to the responsible offeror whose proposal is determined in writing
15 to be the most advantageous to the state, taking into consideration price, including the preference in
16 18-1-102, and the evaluation factors set forth in the request for proposals. No other factors or criteria may
17 be used in the evaluation. The contract file ~~shall~~ must contain the basis on which the award is made."

18

19 **Section 11.** Section 18-4-312, MCA, is amended to read:

20 **"18-4-312. Bid and contract performance security.** (1) For state contracts for the procurement
21 of services in the amount of \$10,000 or less or of supplies, the department may in its discretion require
22 ~~the filing of:~~

23 (a) bid security;

24 (b) contract performance security to guarantee the faithful performance of the contract and the
25 payment of all laborers, suppliers, materialmen, mechanics, and subcontractors; or

26 (c) both bid and contract performance security.

27 (2) For state contracts for the procurement of services exceeding \$10,000, the department shall
28 require ~~bid security and~~ contract performance security, except for purchases described in 18-4-305 and
29 18-4-306, and may in its discretion require bid security.

30 (3) If security is required under subsection (1) or (2), the following types of security may be

1 required to be deposited with the state:

2 (a) a ~~good~~ and sufficient bond with a licensed surety company as surety;

3 (b) an irrevocable letter of credit not to exceed \$100,000 in accordance with the provisions of Title
4 30, chapter 5, part 1;

5 (c) ~~lawful~~ money of the United States;

6 (d) a cashier's check, certified check, bank money order, certificate of deposit, money market
7 certificate, or bank draft, that is drawn or issued by any banking corporation incorporated under the laws
8 of Montana or by a banking association located in Montana; or

9 ~~(e) certificates of deposit or money market certificates issued by any bank or savings and loan~~
10 ~~association licensed to do business in Montana~~ a federally chartered or state-chartered bank or savings and
11 loan association that is insured by or for which insurance is administered by the federal deposit insurance
12 corporation or that is drawn and issued by a credit union insured by the national credit union share
13 insurance fund.

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

28 (5) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract
29 or provide contract performance security, as required by the invitation for bid or request for proposal, after
30 notification of award, the department may, in its discretion, require the bidder to forfeit ~~his~~ the bid security

1 to the state and become immediately liable on the bid ~~bond~~ security, but not in excess of the sum stated
2 ~~therein~~ in the security. The liability of the bidder or offeror, the maker of the security or bid bond, or the
3 liability on the bid bond or other security shall may not exceed the amount specified in the invitation for
4 bid or request for proposal.

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

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

9
10 **Section 12.** Section 18-4-313, MCA, is amended to read:

11 "**18-4-313. Contracts -- terms, extensions, and time limits.** (1) Unless otherwise provided by law,
12 a contract, lease, or rental agreement for supplies or services may not be made for a ~~longer~~ period of more
13 than 7 years; however, the department may contract for the lease or purchase of telecommunications
14 equipment and systems, data processing equipment, the department of revenue liquor agencies, and the
15 department of social and rehabilitation services medicaid management information system (MMIS) for a
16 period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed,
17 ~~notwithstanding the time limits stated in this section,~~ if the terms of the extension or renewal, if any, are
18 included in the solicitation, and if funds are available for the first fiscal period at the time of the agreement,
19 and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and
20 performance obligations for succeeding fiscal periods are subject to the availability and appropriation of
21 funds for the fiscal periods.

22 (2) Prior to the issuance, extension, or renewal of a contract, it must be determined ~~in writing~~ that:

23 (a) estimated requirements cover the period of the contract and are reasonably firm and continuing;

24 and

25 (b) the contract will serve the best interests of the state by encouraging effective competition or
26 otherwise promoting economies in state procurement.

27 (3) When funds are not appropriated or otherwise made available to support continuation of
28 performance in a subsequent fiscal period, the contract must be canceled."

29
30 **NEW SECTION. Section 13. Effective date.** [This act] is effective on passage and approval.

-END-

- 9 -

House BILL NO. 1163

INTRODUCED BY

Deaton Harding

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE REQUIREMENTS FOR BID SECURITY AND CONTRACT PERFORMANCE SECURITY; REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION REQUIRE BID SECURITY IN CERTAIN CIRCUMSTANCES; CHANGING THE AMOUNT OF CONTRACT PERFORMANCE SECURITY REQUIRED; EXTENDING THE TERM OF CERTAIN CONTRACTS; AMENDING SECTIONS 18-2-201, 18-2-202, 18-2-203, 18-2-204, 18-2-205, 18-2-206, 18-2-207, 18-2-208, 18-2-302, 18-4-304, 18-4-312, AND 18-4-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 18-2-201, MCA, is amended to read:

"18-2-201. Bonding Security requirements. (1) Except as otherwise provided in 85-1-219 and subsections (4) through (6) of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or any public body contracts with ~~any~~ a person or corporation to do ~~any~~ work for the state, county, or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall require the corporation, person, or persons with whom the contract is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and sufficient bond with a licensed surety company as surety, conditioned that the corporation, person, or persons shall:

(a) faithfully perform all of the provisions of the contract;

(b) pay all laborers, mechanics, subcontractors, and material suppliers; and

(c) pay all persons who supply the corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for performing the work.

(2) A copy of the bond must be filed with the county clerk and recorder of the county in which the work is to be performed or the improvement is to be made or, if the work is to be performed or the improvement is to be made in more than one county, ~~then~~ with the county clerk of either county, except

1 in cases of cities and towns, in which case the bond must be filed with the city or town clerk.

2 (3) Notwithstanding the provisions of subsections (1) and (2), the state or other governmental
3 entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency
4 of the following securities in an amount at least equal to the contract sum to guarantee the faithful
5 performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and
6 subcontractors:

7 (a) lawful money of the United States; or

8 (b) a cashier's check, certified check, bank money order, certificate of deposit, money market
9 certificate, or bank draft, drawn or issued by:

10 (i) any banking corporation incorporated under the laws of the state of Montana or by a national
11 banking association located in Montana; or federally or state chartered bank or savings and loan association
12 that is insured by or for which insurance is administered by the federal deposit insurance corporation; or

13 (ii) a credit union insured by the national credit union share insurance fund.

14 ~~(c) certificates of deposit or money market certificates issued by any bank or savings and loan~~
15 ~~association licensed to do business in Montana.~~

16 (4) Notwithstanding the provisions of subsections (1) and (2), any board, council, commission,
17 trustee, or body acting for any county, municipality, or any public body other than the state may, in lieu
18 of a bond from a licensed surety company, accept a good and sufficient bond with two or more sureties
19 acceptable to the governmental body.

20 (5) Except as provided in subsection (6), the state or other governmental entity may waive the
21 requirements contained in subsections (1) through (4) for building or construction projects, as defined in
22 18-2-101, that cost less than \$5,000.

23 (6) A school district may waive the requirements contained in subsections (1) through (4) for
24 building or construction projects, as defined in 18-2-101, that cost less than \$7,500."

25

26 **Section 2. Section 18-2-202, MCA, is amended to read:**

27 **"18-2-202. Failure to require bond security -- waiver of bond.** If any board, council, commission,
28 trustee, or body acting for the state or any board of county commissioners or any mayor and common
29 council of any incorporated city or town or tribunal transacting the business of any such municipal
30 corporation waives or fails to take ~~such bond, cash, checks, drafts, money orders, or certificates of deposit~~

1 ~~as herein required~~ the security required or authorized by 18-2-201, the state or ~~such~~ the county,
 2 incorporated city or town, or other municipal corporation ~~shall be~~ is liable to the persons mentioned in
 3 18-2-201 to the full extent and for the full amount of all of ~~such~~ the contracted debts ~~so contracted~~ by any
 4 ~~such~~ subcontractor as well as ~~such~~ the contractor."

5
 6 **Section 3.** Section 18-2-203, MCA, is amended to read:

7 "18-2-203. **Amount and terms of bond security.** The bond security mentioned in 18-2-201 shall
 8 must be in an amount equal to the full contract price agreed to be paid for ~~such~~ the work or improvement
 9 and ~~shall~~ must be to the state of Montana, except in cases of cities and towns, in which case ~~such~~ the
 10 municipality may by general ordinance fix and determine the amount of ~~such bond~~ the security and ~~to~~
 11 ~~whom such bond shall run~~ the name of the secured party, provided that the ~~same shall~~ amount may not
 12 be for a less amount than 25% of the contract price of ~~any such~~ the improvement, and the security may
 13 designate that the ~~same shall be~~ amount is payable to ~~such~~ the city or town and not to the state of
 14 Montana."

15
 16 **Section 4.** Section 18-2-204, MCA, is amended to read:

17 "18-2-204. **Right of action on bond security -- notice.** (1) All ~~such~~ persons mentioned in 18-2-201
 18 shall have a right of action in ~~his or her or~~ their own name or names on any bond security furnished under
 19 the terms of this part for work done by ~~such~~ the laborers or mechanics and for provender, materials,
 20 supplies, provisions, or goods supplied and furnished in the ~~prosecution of such~~ work or the making of ~~such~~
 21 the improvements, ~~provided that such~~ The persons shall do not have any right of action on ~~such bond for~~
 22 ~~any sum whatever~~ the security unless within 90 days ~~from and~~ after the completion of the contract with
 23 an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer,
 24 or body acting for the state, county, or municipality or other public body, city, town, or district, the laborer,
 25 mechanic or subcontractor, or materialman or person claiming to have supplied provender, materials,
 26 provisions, or goods for the prosecution of ~~such~~ the work or the making of ~~such~~ the improvement shall
 27 ~~present presents~~ to and file files with ~~such~~ the board, council, commission, trustees, or body acting for the
 28 state, county, or municipality or other public body, city, town, or district a notice in writing in substance
 29 as follows:

30 "TO (here insert the name of the state, county, or municipality or other public body, city, town, or

1 district):

2 NOTICE IS HEREBY GIVEN that the undersigned (here insert the name of the laborer, mechanic or
3 subcontractor, or materialman or person claiming to have furnished labor, materials, or provisions for ~~ex~~
4 ~~upon such the~~ contract or work) has a claim in the sum of dollars (here insert the amount) against the
5 ~~bond security~~ taken from (here insert the name of the principal and ~~surety or sureties upon such bond~~
6 name of the person providing the security) for the work of (here insert a brief mention or description
7 of the work concerning which ~~said bond the security~~ was taken).

8 (Here to be signed)"

9 (2) ~~Such The~~ notice ~~shall~~ must be signed by the person or corporation making the claim or giving
10 the notice, ~~and said notice, after,~~ After being presented and filed, ~~shall be the notice is~~ a public record
11 open to inspection by any person."

12

13 **Section 5.** Section 18-2-205, MCA, is amended to read:

14 "18-2-205. **Effect of dealing with subcontractor.** ~~Any A~~ corporation, or person, ~~or persons~~
15 performing ~~such~~ services or furnishing ~~such~~ provender, provisions, supplies, or material to ~~any a~~
16 subcontractor ~~shall have~~ has the same right under the provisions of ~~such bond the security~~ as if ~~such the~~
17 work, services, provender, provisions, supplies, or material was furnished to the original contractor."

18

19 **Section 6.** Section 18-2-206, MCA, is amended to read:

20 "18-2-206. **Notice to contractor concerning subcontractor.** (1) ~~Every A~~ person, firm, or
21 corporation furnishing provender, provisions, materials, or supplies to be used in the construction,
22 performance, carrying on, prosecution, or doing of any work for the state or any county, city, town,
23 district, municipality, or other public body shall, not later than 30 days after the date of the first delivery
24 to ~~any a~~ subcontractor or agent of ~~any a~~ person, firm, or corporation having a subcontract for the
25 construction, performance, carrying on, prosecution, or doing of ~~such the~~ work, give a notice of a right of
26 action on the ~~bond security~~.

27 (2) (a) The notice must be delivered personally or sent by certified mail to the contractor.

28 (b) The notice must be in writing and state:

29 (i) that it is a notice of a right of action on the ~~bond security~~;

30 (ii) that the person, firm, or corporation giving the notice has commenced to deliver provender,

1 provisions, materials, or supplies;

2 (iii) the name of the subcontractor or agent who placed the order or to whom the provender,
3 provisions, materials, or supplies were delivered; and

4 (iv) that the contractor and ~~his bond~~ the contractor's security will be held for the unpaid price if the
5 supplier is not paid.

6 (3) To have a right of action against the contractor and ~~his bond~~ the security under this part, a
7 person, firm, or corporation ~~must~~ shall give the written notice required by this section in substantially ~~the~~
8 the form described in subsection (2). Any other type of actual or constructive notice is not sufficient.

9 (4) ~~No~~ A suit or action may not be maintained in any court against the contractor or ~~his bond~~ the
10 security to recover for ~~such~~ the provender, provisions, ~~material~~ materials, or supplies or any part thereof
11 unless the provisions of this part have been complied with."

12
13 **Section 7.** Section 18-2-207, MCA, is amended to read:

14 "**18-2-207. Costs -- ~~attorneys' attorney fees~~.** In ~~any~~ a suit or action brought against ~~such surety~~
15 ~~or surety~~ the surety, payor, or other person liable on the security by ~~any such~~ a person or corporation to
16 recover for any of the items ~~hereinbefore~~ specified in this part, the prevailing party ~~shall be~~ is entitled to
17 recover, in addition to all other costs, ~~attorneys' attorney fees~~ in ~~such~~ a sum ~~as~~ that the court ~~shall~~ adjudge
18 finds reasonable, ~~provided, however, that no attorneys' fees shall.~~ However, attorney fees may not be
19 allowed in ~~any~~ a suit or action brought or instituted before the expiration of 30 days following the date of
20 filing of the notice ~~hereinbefore mentioned~~ required in 18-2-206."

21
22 **Section 8.** Section 18-2-208, MCA, is amended to read:

23 "**18-2-208. Exceptions.** (1) The provisions of this part ~~shall~~ do not apply to ~~any~~ money loaned
24 or advanced to ~~any such~~ a contractor, subcontractor, or other person in the performance of ~~any such~~ the
25 work.

26 (2) ~~Any~~ A city or town may impose any other or further conditions and obligations in ~~such bond~~
27 ~~as may be deemed~~ the security that is considered necessary for its proper protection in the fulfillment of
28 the terms of the contract ~~secured thereby~~ and not in conflict ~~herewith~~ with this part.

29 (3) ~~Nothing herein referred to with reference to the giving of such~~ The notice required by 18-2-204
30 to be given within 90 days ~~from and~~ after completion of the contract and acceptance of the work ~~shall~~ may

1 not be construed to prevent or delay the payment of ~~monneys~~ money due the contractor under the terms
2 and conditions specified in ~~his~~ the contract."

3

4 **Section 9.** Section 18-2-302, MCA, is amended to read:

5 **"18-2-302. Bid security -- waiver.** (1) Except as provided in subsection (2), each bid must be
6 accompanied by bid security in the amount of 10% of the bid, ~~such.~~ The security ~~to~~ may consist of cash,
7 a cashier's check, a certified check, a bank money order, a certificate of deposit, a money market
8 certificate, or a bank draft, in any case. The security must be:

9 (a) drawn and issued by a national banking association located in the state of Montana or by any
10 banking corporation incorporated under the laws of the state of Montana federally chartered or
11 state-chartered bank or savings and loan association that is insured by or for which insurance is
12 administered by the federal deposit insurance corporation;

13 (b) drawn and issued by a credit union insured by the national credit union share insurance fund;

14 or

15 (c) a bid bond or bonds executed by a surety ~~corporation~~ company authorized to do business in
16 the state of Montana.

17 (2) The state or other governmental entity may waive the requirements for bid security on building
18 or construction projects, as defined in 18-2-101, that cost less than \$5,000."

19

20 **Section 10.** Section 18-4-304, MCA, is amended to read:

21 **"18-4-304. Competitive sealed proposals.** (1) When, under rules adopted by the department, the
22 director, the head of a purchasing agency, or a designee of either officer above the level of the procurement
23 officer determines ~~in writing~~ that the use of competitive sealed bidding is either not practicable or not
24 advantageous to the state, a contract may be entered into by competitive sealed proposals. The
25 department may provide by rule that it is either not practicable or not advantageous to the state to procure
26 specified types of supplies and services by competitive sealed bidding.

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

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

30 (4) Proposals must be opened so as to avoid disclosure of contents to competing offerors during

1 the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by
2 the department and must be open for public inspection after contract award.

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

5 (6) As provided in the request for proposals and under rules adopted by the department,
6 discussions ~~may be conducted~~ with responsible offerors who submit apparently responsive proposals may
7 be conducted for the purpose of clarification, in order to assure full understanding of and responsiveness
8 to the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any
9 opportunity for discussion and revision of proposals, and ~~such~~ revisions may be permitted, after
10 submissions and prior to award, for the purpose of obtaining best and final offers. In conducting
11 discussions, there may not be ~~no~~ disclosure of any information derived from proposals submitted by
12 competing offerors. The department may require the submission of cost or pricing data in connection with
13 an award under this section.

14 (7) The award must be made to the responsible offeror whose proposal is determined in writing
15 to be the most advantageous to the state, taking into consideration price, including the preference in
16 18-1-102, and the evaluation factors set forth in the request for proposals. No other factors or criteria may
17 be used in the evaluation. The contract file ~~shall~~ must contain the basis on which the award is made."
18

19 **Section 11. Section 18-4-312, MCA, is amended to read:**

20 **"18-4-312. Bid and contract performance security. (1) For state contracts for the procurement**
21 **of services in the amount of \$10,000 or less or of supplies, the department may in its discretion require**
22 **the filing of:**

23 (a) bid security;

24 (b) contract performance security to guarantee the faithful performance of the contract and the
25 payment of all laborers, suppliers, materialmen, mechanics, and subcontractors; or

26 (c) both bid and contract performance security.

27 (2) For state contracts for the procurement of services exceeding \$10,000, the department shall
28 require ~~bid security and contract performance security~~, except for purchases described in 18-4-305 and
29 18-4-306, and may in its discretion require bid security.

30 (3) If security is required under subsection (1) or (2), the following types of security may be

1 required to be deposited with the state:

2 (a) a ~~good and~~ sufficient bond with a licensed surety company as surety;

3 (b) an irrevocable letter of credit not to exceed \$100,000 in accordance with the provisions of Title
4 30, chapter 5, part 1;

5 (c) ~~lawful~~ money of the United States;

6 (d) a cashier's check, certified check, bank money order, certificate of deposit, money market
7 certificate, or bank draft, that is drawn or issued by any banking corporation incorporated under the laws
8 of Montana or by a banking association located in Montana; or

9 ~~(e) certificates of deposit or money market certificates issued by any bank or savings and loan~~
10 ~~association licensed to do business in Montana~~ a federally chartered or state-chartered bank or savings and
11 loan association that is insured by or for which insurance is administered by the federal deposit insurance
12 corporation or that is drawn and issued by a credit union insured by the national credit union share
13 insurance fund.

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

28 (5) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract
29 or provide contract performance security, as required by the invitation for bid or request for proposal, after
30 notification of award, the department may, in its discretion, require the bidder to forfeit ~~his~~ the bid security

1 to the state and become immediately liable on the bid ~~bond~~ security, but not in excess of the sum stated
 2 ~~therein in the security~~. The liability of the bidder or offeror, the maker of the security or bid bond, or the
 3 liability on the bid bond or other security shall may not exceed the amount specified in the invitation for
 4 bid or request for proposal.

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

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

9
 10 **Section 12.** Section 18-4-313, MCA, is amended to read:

11 **"18-4-313. Contracts -- terms, extensions, and time limits.** (1) Unless otherwise provided by law,
 12 a contract, lease, or rental agreement for supplies or services may not be made for a ~~longer~~ period of more
 13 than 3 1/2 years; however, the department may contract for the lease or purchase of telecommunications
 14 equipment and systems, data processing equipment, the department of revenue liquor agencies, and the
 15 department of social and rehabilitation services medicaid management information system (MMIS) for a
 16 period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed,
 17 ~~notwithstanding the time limits stated in this section,~~ if the terms of the extension or renewal, if any, are
 18 included in the solicitation, and if funds are available for the first fiscal period at the time of the agreement,
 19 and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and
 20 performance obligations for succeeding fiscal periods are subject to the availability and appropriation of
 21 funds for the fiscal periods.

22 (2) Prior to the issuance, extension, or renewal of a contract, it must be determined ~~in writing~~ that:

23 (a) estimated requirements cover the period of the contract and are reasonably firm and continuing;

24 and

25 (b) the contract will serve the best interests of the state by encouraging effective competition or
 26 otherwise promoting economies in state procurement.

27 (3) When funds are not appropriated or otherwise made available to support continuation of
 28 performance in a subsequent fiscal period, the contract must be canceled."

29
 30 **NEW SECTION. Section 13. Effective date.** [This act] is effective on passage and approval.

-END-

1

House BILL NO. 1163

2

INTRODUCED BY

Dexter Harding

3

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

4

5

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE REQUIREMENTS FOR BID SECURITY

6

AND CONTRACT PERFORMANCE SECURITY; REMOVING THE REQUIREMENT THAT THE DEPARTMENT

7

OF ADMINISTRATION REQUIRE BID SECURITY IN CERTAIN CIRCUMSTANCES; CHANGING THE AMOUNT

8

OF CONTRACT PERFORMANCE SECURITY REQUIRED; EXTENDING THE TERM OF CERTAIN CONTRACTS;

9

AMENDING SECTIONS 18-2-201, 18-2-202, 18-2-203, 18-2-204, 18-2-205, 18-2-206, 18-2-207,

10

18-2-208, 18-2-302, 18-4-304, 18-4-312, AND 18-4-313, MCA; AND PROVIDING AN IMMEDIATE

11

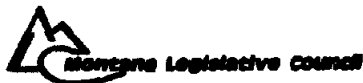
EFFECTIVE DATE."

12

13

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

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.



HB163

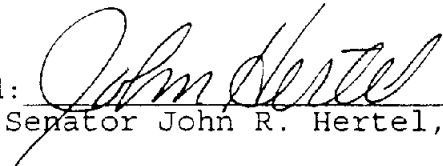
THIRD READING
SECOND PRINTING

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 8, 1995

MR. PRESIDENT:

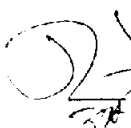
We, your committee on Business and Industry having had under consideration HB 163 (third reading copy -- blue), respectfully report that HB 163 be amended as follows and as so amended be concurred in.

Signed: 
Senator John R. Hertel, Chair

That such amendments read:

1. Title, line 7.
Following: "SECURITY"
Insert: "AND CONTRACT PERFORMANCE SECURITY"
2. Title, lines 7 and 8.
Strike: "CHANGING" on line 7 through "REQUIRED" on line 8
3. Page 7, line 21.
Following: "services"
Strike: "in the amount of \$10,000 or less"
4. Page 7, lines 27 through 29.
Strike: subsection (2) in its entirety
Re-number: subsequent subsections
5. Page 7, line 30.
Strike: "or (2)"
6. Page 8, line 14.
Strike: "contract performance"
7. Page 8, lines 15 through 18.
Strike: ", except" on line 15 through "less" on line 18

-END-


Amd. Coord.
31 Sec. of Senate


Senator Miller
Senator Carrying Bill

HB 163
SENATE
331328SC.SRF

1 HOUSE BILL NO. 163

2 INTRODUCED BY KASTEN, HARDING

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE REQUIREMENTS FOR BID SECURITY
6 AND CONTRACT PERFORMANCE SECURITY; REMOVING THE REQUIREMENT THAT THE DEPARTMENT
7 OF ADMINISTRATION REQUIRE BID SECURITY AND CONTRACT PERFORMANCE SECURITY IN CERTAIN
8 CIRCUMSTANCES; ~~CHANGING THE AMOUNT OF CONTRACT PERFORMANCE SECURITY REQUIRED;~~
9 EXTENDING THE TERM OF CERTAIN CONTRACTS; AMENDING SECTIONS 18-2-201, 18-2-202, 18-2-203,
10 18-2-204, 18-2-205, 18-2-206, 18-2-207, 18-2-208, 18-2-302, 18-4-304, 18-4-312, AND 18-4-313,
11 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
1415 **Section 1.** Section 18-2-201, MCA, is amended to read:

16 **"18-2-201. Bonding Security requirements.** (1) Except as otherwise provided in 85-1-219 and
17 subsections (4) through (6) of this section, whenever any board, council, commission, trustees, or body
18 acting for the state or any county, municipality, or any public body contracts with ~~any~~ a person or
19 corporation to do ~~any~~ work for the state, county, or municipality or other public body, city, town, or
20 district, the board, council, commission, trustees, or body shall require the corporation, person, or persons
21 with whom the contract is made to make, execute, and deliver to the board, council, commission, trustees,
22 or body a good and sufficient bond with a licensed surety company as surety, conditioned that the
23 corporation, person, or persons shall:

- 24 (a) faithfully perform all of the provisions of the contract;
25 (b) pay all laborers, mechanics, subcontractors, and material suppliers; and
26 (c) pay all persons who supply the corporation, person or persons, or subcontractors with
27 provisions, provender, material, or supplies for performing the work.

28 (2) A copy of the bond must be filed with the county clerk and recorder of the county in which the
29 work is to be performed or the improvement is to be made or, if the work is to be performed or the
30 improvement is to be made in more than one county, ~~then~~ with the county clerk of either county, except

1 in cases of cities and towns, in which case the bond must be filed with the city or town clerk.

2 (3) Notwithstanding the provisions of subsections (1) and (2), the state or other governmental
3 entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency
4 of the following securities in an amount at least equal to the contract sum to guarantee the faithful
5 performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and
6 subcontractors:

7 (a) lawful money of the United States; or

8 (b) a cashier's check, certified check, bank money order, certificate of deposit, money market
9 certificate, or bank draft, drawn or issued by:

10 (i) ~~any banking corporation incorporated under the laws of the state of Montana or by a national~~
11 ~~banking association located in Montana; or~~ federally or state chartered bank or savings and loan association
12 that is insured by or for which insurance is administered by the federal deposit insurance corporation; or

13 (ii) a credit union insured by the national credit union share insurance fund.

14 ~~(c) certificates of deposit or money market certificates issued by any bank or savings and loan~~
15 ~~association licensed to do business in Montana.~~

16 (4) Notwithstanding the provisions of subsections (1) and (2), any board, council, commission,
17 trustee, or body acting for any county, municipality, or any public body other than the state may, in lieu
18 of a bond from a licensed surety company, accept a good and sufficient bond with two or more sureties
19 acceptable to the governmental body.

20 (5) Except as provided in subsection (6), the state or other governmental entity may waive the
21 requirements contained in subsections (1) through (4) for building or construction projects, as defined in
22 18-2-101, that cost less than \$5,000.

23 (6) A school district may waive the requirements contained in subsections (1) through (4) for
24 building or construction projects, as defined in 18-2-101, that cost less than \$7,500."

25
26 **Section 2.** Section 18-2-202, MCA, is amended to read:

27 **"18-2-202. Failure to require bond security -- waiver of bond.** If any board, council, commission,
28 trustee, or body acting for the state or any board of county commissioners or any mayor and common
29 council of any incorporated city or town or tribunal transacting the business of any such municipal
30 corporation waives or fails to take ~~such bond, cash, checks, drafts, money orders, or certificates of deposit~~

1 ~~as herein required~~ the security required or authorized by 18-2-201, the state or ~~such~~ the county,
 2 incorporated city or town, or other municipal corporation ~~shall be~~ is liable to the persons mentioned in
 3 18-2-201 to the full extent and for the full amount of all of ~~such~~ the contracted debts ~~so contracted~~ by any
 4 ~~such~~ subcontractor as well as ~~such~~ the contractor."

5

6 **Section 3.** Section 18-2-203, MCA, is amended to read:

7 "18-2-203. **Amount and terms of bond security.** The ~~bond~~ security mentioned in 18-2-201 ~~shall~~
 8 must be in an amount equal to the full contract price agreed to be paid for ~~such~~ the work or improvement
 9 and ~~shall~~ must be to the state of Montana, except in cases of cities and towns, in which case ~~such~~ the
 10 municipality may by general ordinance fix and determine the amount of ~~such bond~~ the security and ~~to~~
 11 ~~whom such bond shall run~~ the name of the secured party, provided that the ~~same shall~~ amount may not
 12 be for a less ~~amount~~ than 25% of the contract price of ~~any such~~ the improvement, and the security may
 13 designate that the ~~same shall be~~ amount is payable to ~~such~~ the city or town and not to the state of
 14 Montana."

15

16 **Section 4.** Section 18-2-204, MCA, is amended to read:

17 "18-2-204. **Right of action on bond security -- notice.** (1) All ~~such~~ persons mentioned in 18-2-201
 18 ~~shall~~ have a right of action in ~~his or her or~~ their own name or names on any ~~bond~~ security furnished under
 19 the terms of this part for work done by ~~such~~ the laborers or mechanics and for provender, materials,
 20 supplies, provisions, or goods supplied and furnished in the ~~prosecution of such~~ work or the making of ~~such~~
 21 the improvements, ~~provided that such~~ The persons ~~shall do~~ not have any right of action on ~~such bond~~ for
 22 ~~any sum whatever~~ the security unless within 90 days ~~from and~~ after the completion of the contract with
 23 an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer,
 24 or body acting for the state, county, or municipality or other public body, city, town, or district, the laborer,
 25 mechanic or subcontractor, or materialman or person claiming to have supplied provender, materials,
 26 provisions, or goods for the prosecution of ~~such~~ the work or the making of ~~such~~ the improvement ~~shall~~
 27 ~~present~~ presents to and ~~file~~ files with ~~such~~ the board, council, commission, trustees, or body acting for the
 28 state, county, or municipality or other public body, city, town, or district a notice in writing in substance
 29 as follows:

30 "TO (here insert the name of the state, county, or municipality or other public body, city, town, or

1 district):

2 NOTICE IS HEREBY GIVEN that the undersigned (here insert the name of the laborer, mechanic or
3 subcontractor, or materialman or person claiming to have furnished labor, materials, or provisions for ~~or~~
4 ~~upon such the~~ contract or work) has a claim in the sum of dollars (here insert the amount) against the
5 ~~bond security~~ taken from (here insert the name of the principal and ~~surety or sureties upon such bond~~
6 name of the person providing the security) for the work of (here insert a brief mention or description
7 of the work concerning which ~~said bond~~ the security was taken).

8 (Here to be signed)"

9 (2) ~~Such~~ The notice ~~shall~~ must be signed by the person or corporation making the claim or giving
10 the notice, ~~and said notice, after.~~ After being presented and filed, ~~shall be~~ the notice is a public record
11 open to inspection by any person."

12

13 **Section 5.** Section 18-2-205, MCA, is amended to read:

14 "**18-2-205. Effect of dealing with subcontractor.** ~~Any~~ A corporation, ~~or~~ person, ~~or persons~~
15 performing ~~such~~ services or furnishing ~~such~~ provender, provisions, supplies, or material to ~~any~~ a
16 subcontractor ~~shall have~~ has the same right under the provisions of ~~such bond~~ the security as if ~~such the~~
17 work, services, provender, provisions, supplies, or material was furnished to the original contractor."

18

19 **Section 6.** Section 18-2-206, MCA, is amended to read:

20 "**18-2-206. Notice to contractor concerning subcontractor.** (1) ~~Every~~ A person, firm, or
21 corporation furnishing provender, provisions, materials, or supplies to be used in the construction,
22 performance, carrying on, prosecution, or doing of any work for the state or any county, city, town,
23 district, municipality, or other public body shall, not later than 30 days after the date of the first delivery
24 to ~~any~~ a subcontractor or agent of ~~any~~ a person, firm, or corporation having a subcontract for the
25 construction, performance, carrying on, prosecution, or doing of ~~such the~~ work, give a notice of a right of
26 action on the ~~bond~~ security.

27 (2) (a) The notice must be delivered personally or sent by certified mail to the contractor.

28 (b) The notice must be in writing and state:

29 (i) that it is a notice of a right of action on the ~~bond~~ security;

30 (ii) that the person, firm, or corporation giving the notice has commenced to deliver provender,

1 provisions, materials, or supplies;

2 (iii) the name of the subcontractor or agent who placed the order or to whom the provender,
3 provisions, materials, or supplies were delivered; and

4 (iv) that the contractor and ~~his bond~~ the contractor's security will be held for the unpaid price if the
5 supplier is not paid.

6 (3) To have a right of action against the contractor and ~~his bond~~ the security under this part, a
7 person, firm, or corporation ~~must~~ shall give the written notice required by this section in substantially ~~this~~
8 the form described in subsection (2). Any other type of actual or constructive notice is not sufficient.

9 (4) ~~No~~ A suit or action may not be maintained in any court against the contractor or ~~his bond~~ the
10 security to recover for ~~such~~ the provender, provisions, ~~material~~ materials, or supplies or any part thereof
11 unless the provisions of this part have been complied with."

12

13 **Section 7.** Section 18-2-207, MCA, is amended to read:

14 "**18-2-207. Costs -- ~~attorneys' attorney fees~~.** In ~~any~~ a suit or action brought against ~~such surety~~
15 ~~or sureties~~ the surety, payor, or other person liable on the security by ~~any such~~ a person or corporation to
16 recover for any of the items ~~hereinbefore~~ specified in this part, the prevailing party ~~shall be~~ is entitled to
17 recover, in addition to all other costs, ~~attorneys' attorney fees~~ in such a sum as that the court shall adjudge
18 finds reasonable, provided, however, that no attorneys' fees shall. However, attorney fees may not be
19 allowed in any a suit or action brought or instituted before the expiration of 30 days following the date of
20 filing of the notice ~~hereinbefore mentioned~~ required in 18-2-206."

21

22 **Section 8.** Section 18-2-208, MCA, is amended to read:

23 "**18-2-208. Exceptions.** (1) The provisions of this part ~~shall do~~ do not apply to ~~any~~ money loaned
24 or advanced to ~~any such~~ a contractor, subcontractor, or other person in the performance of ~~any such~~ the
25 work.

26 (2) ~~Any~~ A city or town may impose any other or further conditions and obligations in ~~such bond~~
27 ~~as may be deemed~~ the security that is considered necessary for its proper protection in the fulfillment of
28 the terms of the contract ~~secured thereby~~ and not in conflict ~~herewith~~ with this part.

29 (3) ~~Nothing herein referred to with reference to the giving of such~~ The notice required by 18-2-204
30 to be given within 90 days ~~from and~~ after completion of the contract and acceptance of the work ~~shall~~ may

1 not be construed to prevent or delay the payment of ~~monneys~~ money due the contractor under the terms
2 and conditions specified in ~~his~~ the contract."

3

4 **Section 9.** Section 18-2-302, MCA, is amended to read:

5 "**18-2-302. Bid security -- waiver.** (1) Except as provided in subsection (2), each bid must be
6 accompanied by bid security in the amount of 10% of the bid, ~~such.~~ The security ~~to~~ may consist of cash,
7 a cashier's check, a certified check, a bank money order, a certificate of deposit, a money market
8 certificate, or a bank draft, in any case. The security must be:

9 (a) drawn and issued by a ~~national banking association located in the state of Montana or by any~~
10 ~~banking corporation incorporated under the laws of the state of Montana~~ federally chartered or
11 state-chartered bank or savings and loan association that is insured by or for which insurance is
12 administered by the federal deposit insurance corporation;

13 (b) drawn and issued by a credit union insured by the national credit union share insurance fund;

14 or

15 (c) a bid bond or bonds executed by a surety ~~corporation~~ company authorized to do business in
16 the state of Montana.

17 (2) The state or other governmental entity may waive the requirements for bid security on building
18 or construction projects, as defined in 18-2-101, that cost less than \$5,000."

19

20 **Section 10.** Section 18-4-304, MCA, is amended to read:

21 "**18-4-304. Competitive sealed proposals.** (1) When, under rules adopted by the department, the
22 director, the head of a purchasing agency, or a designee of either officer above the level of the procurement
23 officer determines ~~in writing~~ that the use of competitive sealed bidding is either not practicable or not
24 advantageous to the state, a contract may be entered into by competitive sealed proposals. The
25 department may provide by rule that it is either not practicable or not advantageous to the state to procure
26 specified types of supplies and services by competitive sealed bidding.

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

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

30 (4) Proposals must be opened so as to avoid disclosure of contents to competing offerors during

1 the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by
2 the department and must be open for public inspection after contract award.

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

5 (6) As provided in the request for proposals and under rules adopted by the department,
6 discussions ~~may be conducted~~ with responsible offerors who submit apparently responsive proposals may
7 be conducted for the purpose of clarification, in order to assure full understanding of and responsiveness
8 to the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any
9 opportunity for discussion and revision of proposals, and ~~such~~ revisions may be permitted, after
10 submissions and prior to award, for the purpose of obtaining best and final offers. In conducting
11 discussions, there may not be ~~no~~ disclosure of any information derived from proposals submitted by
12 competing offerors. The department may require the submission of cost or pricing data in connection with
13 an award under this section.

14 (7) The award must be made to the responsible offeror whose proposal is determined in writing
15 to be the most advantageous to the state, taking into consideration price, including the preference in
16 18-1-102, and the evaluation factors set forth in the request for proposals. No other factors or criteria may
17 be used in the evaluation. The contract file ~~shall~~ must contain the basis on which the award is made."
18

19 **Section 11.** Section 18-4-312, MCA, is amended to read:

20 "**18-4-312. Bid and contract performance security.** (1) For state contracts for the procurement
21 of services ~~in the amount of \$10,000 or less~~ or of supplies, the department may in its discretion require
22 ~~the filing of:~~

- 23 (a) bid security;
- 24 (b) contract performance security to guarantee the faithful performance of the contract and the
25 payment of all laborers, suppliers, materialmen, mechanics, and subcontractors; or
- 26 (c) both bid and contract performance security.

27 ~~(2) For state contracts for the procurement of services exceeding \$10,000, the department shall~~
28 ~~require bid security and contract performance security, except for purchases described in 18-4-305 and~~
29 ~~18-4-306, and may in its discretion require bid security.~~

30 ~~(3)~~(2) If security is required under subsection (1) ~~or (2)~~, the following types of security may be

1 required to be deposited with the state:

2 (a) a ~~good~~ and sufficient bond with a licensed surety company as surety;

3 (b) an irrevocable letter of credit not to exceed \$100,000 in accordance with the provisions of Title
4 30, chapter 5, part 1;

5 (c) ~~lawful~~ money of the United States;

6 (d) a cashier's check, certified check, bank money order, certificate of deposit, money market
7 certificate, or bank draft; that is drawn or issued by any banking corporation incorporated under the laws
8 of Montana or by a banking association located in Montana; or

9 ~~(e) certificates of deposit or money market certificates issued by any bank or savings and loan~~
10 ~~association licensed to do business in Montana~~ a federally chartered or state-chartered bank or savings and
11 loan association that is insured by or for which insurance is administered by the federal deposit insurance
12 corporation or that is drawn and issued by a credit union insured by the national credit union share
13 insurance fund.

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

28 ~~(5)(4)~~ If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract
29 or provide contract performance security, as required by the invitation for bid or request for proposal, after
30 notification of award, the department may, in its discretion, require the bidder to forfeit ~~his~~ the bid security

1 to the state and become immediately liable on the bid ~~bond~~ security, but not in excess of the sum stated
2 ~~therein in the security~~. The liability of the bidder or offeror, the maker of the security or bid bond, or the
3 liability on the bid bond or other security shall may not exceed the amount specified in the invitation for
4 bid or request for proposal.

5 ~~(6)~~(5) Negotiable instruments provided as bid security must be refunded to those bidders or offerors
6 whose bids or proposals are not accepted.

7 ~~(7)~~(6) The provisions of Title 18, chapter 1, part 2, and Title 18, chapter 2, parts 2 and 3, do not
8 apply to procurements under this chapter."
9

10 **Section 12.** Section 18-4-313, MCA, is amended to read:

11 **"18-4-313. Contracts -- terms, extensions, and time limits.** (1) Unless otherwise provided by law,
12 a contract, lease, or rental agreement for supplies or services may not be made for a ~~longer~~ period of more
13 than 7 years; however, the department may contract for the lease or purchase of telecommunications
14 equipment and systems, data processing equipment, the department of revenue liquor agencies, and the
15 department of social and rehabilitation services medicaid management information system (MMIS) for a
16 period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed,
17 ~~notwithstanding the time limits stated in this section,~~ if the terms of the extension or renewal, if any, are
18 included in the solicitation, and if funds are available for the first fiscal period at the time of the agreement,
19 and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and
20 performance obligations for succeeding fiscal periods are subject to the availability and appropriation of
21 funds for the fiscal periods.

22 (2) Prior to the issuance, extension, or renewal of a contract, it must be determined ~~in writing~~ that:

23 (a) estimated requirements cover the period of the contract and are reasonably firm and continuing;
24 and

25 (b) the contract will serve the best interests of the state by encouraging effective competition or
26 otherwise promoting economies in state procurement.

27 (3) When funds are not appropriated or otherwise made available to support continuation of
28 performance in a subsequent fiscal period, the contract must be canceled."
29

30 **NEW SECTION. Section 13. Effective date.** [This act] is effective on passage and approval.

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