

## SENATE BILL NO. 402

INTRODUCED BY D. SHEA, HARRINGTON, CYR

A BILL FOR AN ACT ENTITLED: "AN ACT ~~DEFINING A "RESPONSIBLE BIDDER"~~ REQUIRING THAT CERTAIN CONTRACTORS AND SUBCONTRACTORS FOR PURPOSES OF A STATE OR LOCAL GOVERNMENT CONTRACT FOR THE CONSTRUCTION, REPAIR, OR MAINTENANCE OF A BUILDING, ROAD, OR BRIDGE ~~AS A BIDDING ENTITY THAT HAS~~ HAVE A BONA FIDE HEALTH INSURANCE POLICY FOR THE EMPLOYEES OF THE ~~BIDDER~~ CONTRACTOR; AMENDING ~~SECTIONS 7-5-2301, 7-5-4302, 7-14-2401, 18-1-101, AND~~ SECTION 18-2-422, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

~~Section 1.~~ Section 7-5-2301, MCA, is amended to read:

~~"7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts -- definition.~~ (1) Except as provided in 7-5-2304, a contract must be entered into by a county for the purchase of any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies or the construction, repair, or maintenance of any building, road, or bridge in excess of \$50,000 and may not be entered into by a county governing body without first publishing a notice calling for bids.

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

~~(3) Subject to 7-5-2309, every contract subject to bidding must be let to the lowest and best responsible bidder.~~

~~(4) For purposes of a contract for the construction, repair, or maintenance of a building, road, or bridge, as used in 7-5-2309 and this section, "responsible bidder" means a bidding entity that has a bona fide health insurance policy for the employees of the bidder."~~

~~Section 2.~~ Section 7-5-4302, MCA, is amended to read:

~~"7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts -- definition.~~ (1) Except as provided in 7-5-4303 or 7-5-4310, all contracts for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, equipment, or materials or supplies of any kind in excess of \$20,000 or for construction, repair, or maintenance in excess of \$25,000 must be let to the lowest responsible bidder after advertisement for bids.

~~———— (2) The advertisement must be made in the official newspaper of the city or town if there is an official newspaper, and if not, it must be made in a daily newspaper of general circulation published in the city or town if there is a newspaper. If there is no newspaper, the advertisement must be made by posting in three of the most public places in the city or town. The advertisement, if by publication in a newspaper, must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before the consideration of bids. If the advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of the advertisement and the day set for considering bids.~~

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

~~———— (4) For purposes of a contract for the construction, repair, or maintenance of a building, road, or bridge, as used in this section, "responsible bidder" means a bidding entity that has a bona fide health insurance policy for the employees of the bidder."~~

~~———— **Section 3.** Section 7-14-2401, MCA, is amended to read:~~

~~———— **"7-14-2401. Authority to enter contracts -- definitions.** (1) Subject to the limitations and restrictions provided in the code for the letting of contracts, each board may let by contract the construction, maintenance, and improvement of county roads and the construction, maintenance, or repair of bridges when the amount of work to be done exceeds the sum of \$1,000.~~

~~———— (2) As used in this part, unless the context requires otherwise,:~~

~~———— (a) "board" means the board of county commissioners; and~~

~~———— (b) for purposes of a contract for the construction, repair, or maintenance of a building, road, or bridge, "responsible bidder" means a bidding entity that has a bona fide health insurance policy for the employees of the bidder."~~

~~———— **Section 4.** Section 18-1-101, MCA, is amended to read:~~

~~———— **"18-1-101. Definitions.** (1) Unless the context requires otherwise, in this title "department" means the department of administration provided for in Title 2, chapter 15, part 10.~~

~~———— (2) Unless the context requires otherwise, in this part, the following definitions apply:~~

~~———— (a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured products.~~

~~———— (b) "Montana-made" means manufactured or produced in this state and made with the:~~

~~———— (i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in this state;~~

or

~~— (ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401.~~

~~— (c) "Nonresident bidder" means a bidder whose residence is not in this state as determined under 18-1-103.~~

~~— (d) "Public agency" means a department, commission, council, board, bureau, committee, institution, agency, government corporation, or other entity, instrumentality, or official of the legislative, executive, or judicial branch of this state and its political subdivisions, including the board of regents and the Montana university system.~~

~~— (e) "Resident bidder" means a bidder whose residence is in this state as determined under 18-1-103.~~

~~— (f) For purposes of a contract for the construction, repair, or maintenance of a building, road, or bridge, "responsible bidder" means a bidding entity that has a bona fide health insurance policy for the employees of the bidder.~~

~~— (f)(g) "Written" means that whenever written or in-writing determinations or documents are required, the public agency responsible for the procurement may specify an appropriate visual medium, such as by computer transmission or by facsimile machine transmission, in the specifications, contract, or rules of the public agency."~~

**Section 1.** Section 18-2-422, MCA, is amended to read:

**"18-2-422. Bid specification and public works contract to contain standard prevailing wage rate AND HEALTH CARE PROVISIONS.** (1) All public works contracts and the bid specifications for those contracts must contain a provision:

~~(1)(A)~~ stating for each job classification the standard prevailing wage rate, including fringe benefits, that the contractors and subcontractors shall pay during construction of the project; and

~~(2)(B) requiring the contractors and subcontractors to have a bona fide health insurance policy for their employees~~ THAT A GENERAL CONTRACTOR PROVIDING CONSTRUCTION SERVICES AND HAVING MORE THAN THREE EMPLOYEES AT THE TIME THAT THE GENERAL CONTRACTOR SUBMITS A BID ON THE PUBLIC WORKS PROJECT, AS EVIDENCED BY THE MOST RECENT DEPARTMENT OF REVENUE QUARTERLY TAX REPORTS PERTAINING TO THE GENERAL CONTRACTOR, SHALL PROVIDE HEALTH INSURANCE OR CONTRIBUTIONS TOWARD HEALTH INSURANCE FOR EMPLOYEES OF THE GENERAL CONTRACTOR WORKING ON THE PUBLIC WORKS PROJECT; AND

~~(C) REQUIRING THAT A SUBCONTRACTOR, EMPLOYED BY THE GENERAL CONTRACTOR DESCRIBED IN SUBSECTION (1)(B), PROVIDING CONSTRUCTION SERVICES AND HAVING MORE THAN THREE EMPLOYEES AT THE TIME THAT THE GENERAL~~

CONTRACTOR SUBMITS A BID ON THE PUBLIC WORKS PROJECT, AS EVIDENCED BY THE MOST RECENT DEPARTMENT OF REVENUE QUARTERLY TAX REPORTS PERTAINING TO THE SUBCONTRACTOR, SHALL PROVIDE HEALTH INSURANCE OR CONTRIBUTIONS TOWARD HEALTH INSURANCE FOR EMPLOYEES OF THE SUBCONTRACTOR WORKING ON THE PUBLIC WORKS PROJECT.

(2) (A) A GENERAL CONTRACTOR DESCRIBED IN SUBSECTION (1)(B) SHALL ENSURE COMPLIANCE BY ANY SUBCONTRACTORS OF THE GENERAL CONTRACTOR THAT ARE SUBJECT TO THE PROVISIONS OF SUBSECTION (1)(C).

(B) A GENERAL CONTRACTOR MAY WITHHOLD PAYMENT TO A SUBCONTRACTOR THAT IS VIOLATING THE PROVISIONS OF SUBSECTION (1)(C) FOR AS LONG AS THE SUBCONTRACTOR VIOLATES THE PROVISIONS OF SUBSECTION (1)(C).

(3) AN EMPLOYEE'S SOLE CAUSE OF ACTION FOR A VIOLATION OF SUBSECTION (1)(B) OR (1)(C) IS AGAINST THE GENERAL CONTRACTOR OR SUBCONTRACTOR WHO EMPLOYS THE EMPLOYEE, AND A VIOLATION OF SUBSECTION (1)(B) OR (1)(C) DOES NOT CREATE A RIGHT TO DELAY THE PUBLIC WORKS PROJECT ON WHICH THE EMPLOYEE IS WORKING."

NEW SECTION. Section 2. Effective date. [This act] is effective July 1, 2001.

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