

STATE CONTRACT REQUIREMENTS (LOW-BID PROCESS)

(as of July 1, 2011 – conclusion of the 62st Legislative Session)

Contract Amount	Contractor Register	1% Gross Receipts Tax	Bid Security	Perform & Payment Security	Prevailing Wage Rates	Montana Labor Preference	Advertise & Bidding Requirements	Workers Comp Coverage	Comrc'l General Liability	All-Risk (Prop'rty)
1	2	3	4	5	6	7	8	9	10	11
\$25,000 and less	Required if over \$2,500	Required if over \$5,000	Not Required	Not Required	Not Required	Required	Single Informal Bid	Required	\$1 mil aggregate limit	Value of Completed Work
\$25,000 to \$75,000	Required	Required	10% of Bid Amount	Required if over \$50,000. 100% of Contract Amount for Each	Required	Required	Three Informal Bids if Available	Required	\$1 mil per Occrrnce \$2 mil aggregate limit	Value of Completed Work
\$75,000 and over	Required	Required	10% of Bid Amount	100% of Contract Amount for Each	Required	Required	Two Formal Bids, Two Attempts Required	Required	\$1 mil per Occrrnce \$2 mil aggregate limit	Value of Completed Work

1. 18-2-103 MCA

2. 39-9-201, 39-9-211, 39-9-401 MCA

3. 15-50-101, 15-50-206 MCA

4. 18-2-302 MCA

5. 18-2-201 MCA

6. 18-2-403 MCA

7. 18-2-403 MCA

8. 18-2-103, 18-2-301 MCA

9. 39-71-116, 39-71-117 MCA

10. Per RMTD recommendations

11. Per RMTD recommendations

OTHER ESSENTIAL PUBLIC CONTRACT REQUIREMENTS

(as of July 1, 2011 – conclusion of the 62st Legislative Session)

MCA Reference	Statutory Requirements
18-1-102	To lowest responsible bidder with a reciprocal preference. Wyoming, New Mexico and Hawaii are only states with a preference (WY is 5%).
18-1-110	Hiring preference for Indian reservations to be included in contract documents.
18-1-118	Records access provision to be included in contract documents.
18-1, Part 2 See 18-2-302, 303	Bid security at 10% of bid over \$25K, advertisement for bid to include security requirement, form of security limited.
18-1, Part 3	Contractors able to deposit obligations/security in lieu of retainage, Agency may enter into agreement with financial institution.
18-1-301	ALL public entities are required to accept securities in lieu of retainage must be equal to the retainage amount.
18-1-301	Contractors are required to extend opportunity to subs on a pro rata basis when contractor provides security in lieu of retainage
18-2-102	Agencies limited to projects under \$150,000 with money appropriated to them. All other projects (regardless of funding source) go through A&E Division. Regents, with consent of Governor, may authorize building with wholly federal or private funds (A&E Division has jurisdiction). Military Affairs, with consent of Governor, may authorize building with wholly federal or private funds on federal lands (A&E has jurisdiction on state land).
18-2-104	A&E Division responsible for state's Long Range Building Program.
18-2-105	A&E Division may charge any and all projects for the cost of supervision.
18-2-105	Deductive changes may be negotiated up to 7% of the total project cost (not just construction cost).
18-2-106	Pecuniary interest revised and limited to director of admin, state architect and employees directly responsible for procurement unless bid.
18-2-112	A&E Division is responsible for appointment of all architects/engineers for ALL agencies for building projects when design fee is over \$20,000.
18-2-123	Contractor payment processes for State contracts are subject to the requirements of Title 28, Chapter 2, Part 21
18-2-124	All entities to a contract are required to assume their own negligence. Both limited and broad form of indemnification language in a contract is void.
18-2-204	Contracting entity to be notified when action is being taken on a performance or payment security.
18-2-206	Subcontractors and supplies to provide contractor with notice of right to lien.
18-2-301	Projects \$75,000 and greater must be advertised in at least 2 newspapers for 3 weeks. One paper must be the seat of government and the other in the county where the work is to be performed.
18-2-302, 303	Bid security must be signed by individual authorized to submit same by company submitting bid & must comply with bid specification requirements or bid is non-responsive and must be rejected. Agency may wave bid security requirement on projects less than \$25,000.
18-2-303	Bids with unit prices and extended unit prices must be filled in or bid in non-responsive and must be rejected. Unit prices defined.
18-2, 306	Decide within 10 days of contractor notice to accept/reject final acceptance. Make payment within 30 days after final acceptance.
18-3-314	Cost-plus contracts are invalid and void.
18-3-316	Retainage on public construction is limited to 5% unless contractor is not performing. Contractor retainage on subs capped at owner %.
18-2-401	Revises prevailing wage requirements to resolve (hopefully) recent AG opinion regarding project location and materials supplied for it.
18-2, Part 4	Project labor agreements prohibited with all parties involved in state construction contracts.
18-2-403	All contracts greater than \$25,000 must contain provision for paying prevailing wages. Wages established at time of advertising apply.
18-2-409	All contracts greater than \$25,000 must contain provision for 50% Montana labor.
18-2-422	All bid documents greater than \$25,000 must contain the Department of Labor & Industry's published prevailing wage rates. All specifications shall contain a provision requiring all contractors to post a statement of all wages and fringe benefits in compliance with 18-2-423.

ARM

24.17.161 DIVIDING PROJECTS PROHIBITED

(1) Public contracting agencies shall not divide a public works project into more than one contract for the purpose of avoiding compliance.

(2) When making a determination of whether the public agency divided a contract to avoid compliance, the commissioner shall consider the facts and circumstances in any given situation including, but not limited to, the following matters:

(a) the physical separation of project structures;

(b) whether a single public works project includes several types of improvements or structures;

(c) the anticipated outcome of the particular improvements or structures the agency plans to fund;

(d) whether the structures or improvements are similar to one another and combine to form a single, logical entity having one overall purpose or function;

(e) whether the work on the project is performed in one time period or in several phases as components of a larger entity;

(f) whether a contractor, subcontractor or employer and their employees are the same or substantially the same throughout the particular project;

(g) the manner in which the public contracting agency and the contractors, subcontractors or employers administer and implement the project; and

(h) other relevant matters as may arise in any particular case.

(3) When the commissioner determines that a public contracting agency has divided a public works project to avoid compliance, the commissioner shall issue an order compelling compliance. The order shall be written and shall offer the public contracting agency the opportunity to contest the order.

History: [18-2-431](#), MCA; [IMP](#), [18-2-401](#), [18-2-402](#), [18-2-403](#), MCA; [NEW](#), 2002 MAR p. 2446, Eff. 9/13/02.

18-2-422. Bid specification and public works contract to contain standard prevailing wage rate and payroll record notification. All public works contracts and the bid specifications for those contracts must contain:

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

(2) a provision requiring each contractor and employer to maintain payroll records in a manner readily capable of being certified for submission under [18-2-423](#), for not less than 3 years after the contractor's or employer's completion of work on the project; and

(3) a provision requiring each contractor to post a statement of all wages and fringe benefits in compliance with [18-2-423](#).