

## 2005 Montana Legislature

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SENATE BILL NO. 149

INTRODUCED BY LASLOVICH

A BILL FOR AN ACT ENTITLED: "AN ACT ENSURING THAT SERVICE CONTRACTS ENTERED INTO BY THE STATE OF MONTANA ARE PERFORMED ONLY BY CITIZENS OF THE UNITED STATES, LEGAL RESIDENT ALIENS, OR INDIVIDUALS WITH A VALID VISA; AMENDING ~~SECTIONS 18-1-101, 18-1-102, AND 18-7-107~~ SECTION 18-4-302, MCA; AND PROVIDING AN EFFECTIVE APPLICABILITY DATE."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

**Section 1.** Section 18-4-302, MCA, is amended to read:

**"18-4-302. Methods of source selection -- authorization for alternative procurement methods -- limitation on service contracts.** (1) Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by a source selection method provided for in this title. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

(2) When the department or another agency opens bids or proposals, if a supplier's current publicly advertised or established catalog price is received at or before the time that the bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or offeror or improves upon the conditions for the best proposal received using the same factors and weights included in the proposal, the department or agency may reject all bids and purchase the supply from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

(3) An office supply procured by the department's central stores program may be purchased by an agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established catalog price, or discount price offered to the agency is less than the price offered by the central stores program if the office supply conforms in all

material respects to the terms, conditions, and quality offered by the central stores program. A state office supply term contract must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection.

(4) (a) Under rules adopted by the department, an agency may request from the department authorization for an alternative procurement method.

(b) A request for authorization must specify:

(i) the problem to be solved;

(ii) the proposed alternative procurement method;

(iii) the reasons why the alternative procurement method may be more appropriate than a method authorized by law; and

(iv) how competition and fairness will be achieved by the alternative procurement method.

(c) Within 30 days after receiving the request, the department shall:

(i) evaluate the request;

(ii) approve or deny the request; and

(iii) issue a written statement providing the reasons for its decision.

(d) Whenever the department approves a request submitted under this section, the department:

(i) may authorize the alternative procurement method on a trial basis; and

(ii) if the alternative procurement method is employed, shall make a written determination as to the success of the method.

(e) If the department determines that the alternative procurement method is successful and should be an alternative that is generally available, it shall promulgate rules that establish the use of the alternative procurement method as an additional source selection method. The rules promulgated by the department under this subsection must reflect the purposes described in 18-4-122.

(5) (a) Except as provided in subsections (5)(b) through (5)(d), an agency may not enter into a contract for the purchase of services under this chapter unless the contract provides that only citizens of the United States, legal resident aliens, or individuals with a valid visa will perform the services under the contract or any subcontract under the contract.

(b) The provisions of subsection (5)(a) do not apply if expressly prohibited by the laws of the United States or by regulations or treaties adopted pursuant to federal law.

(c) The provisions of subsection (5)(a) do not apply if the department determines that there is no responsible vendor meeting the requirements of subsection (5)(a), that the cost of complying with subsection (5)(a) would create an economic hardship for the state, or that a contract in compliance with subsection (5)(a) would not be in the best interests of the state.

(d) The provisions of subsection (5)(a) do not apply to the board of investments provided for in 2-15-1808 or a university system unit as defined in 17-7-102. (Subsection (4) terminates June 30, 2005--sec. 29, Ch. 181, L. 2001.)"

**NEW SECTION. Section 2. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**NEW SECTION. Section 3. Applicability.** [This act] applies to solicitations issued on or after October 1, 2005.

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**Latest Version of SB 149 (SB0149.02)**

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New language in a bill appears underlined, deleted material appears stricken.