

STATE CONSTRUCTION CONTRACTING REQUIREMENTS (LOW-BID)

(As of July 1, 2023 – conclusion of the 68th Legislative Session, modified May 2023)

Contract Amount	Contractor Register	1% Gross Receipts Tax	Bid Security	Perform & Payment Security	Prevailing Wage Rates	Montana Labor Preference	Posting & Bidding Requirements	Workers Comp Coverage	Commercial General Liability	All-Risk (Property)
1	2	3	4	5	6	7	8	9	10	11
\$50,000 and less	Required if over \$2,500	Not Required	Not Required	Not Required	Required if over \$25,000	Required if over \$25,000	Bids not required	Required	\$1M aggregate limit	Value of Work: discretion on use allowable
\$50,000 to \$150,000	Required	Required if over \$80,000	Not Required	Not Required	Required	Required	Three Informal Bids, if Available	Required	\$1 mil per Occurrence \$2M aggregate limit	Value of Completed Work
\$150,000 and over	Required	Required	10% of Bid Amount	100% of Contract Amount for Each	Required	Required	Two Formal Bids, Two Attempts Required Electronic Public Notice	Required	\$1M per Occurrence \$2M aggregate limit	Value of Completed Work

Per MCA 18-2-103 Projects with construction activities costing < \$300,000 do not require delegation.

- 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. 18-2-403 MCA
- 6. 18-2-409 MCA
- 7. 18-2-103, 18-2-301 MCA
- 8. 39-71-116, 39-71-117 MCA

- 9. 18-2-201 MCA
- 10. Per RMTD recommendations

OTHER ESSENTIAL PUBLIC CONTRACT REQUIREMENTS

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MCA Reference	Statutory Requirements
18-1-102	To lowest responsible bidder with a reciprocal preference. Wyoming, New Mexico, Alaska & 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 \$150K, electronic 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 18-2-103	Agencies limited to projects under \$300,000 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).
18-2-103	Two formal bids if reasonably available for projects >\$150,000.
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 15% of the total project cost (not just construction cost).
18-2-106	Pecuniary interest limited to director of admin, state architect and employees directly responsible for procurement unless bid.
18-2-111	A&E Division may not prepare working drawings for construction activities w/ exception of repair/maintenance projects when cost >\$150,000
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 \$50,000.
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.
18-2-201	Waive bond requirements for projects < \$150,000.
18-2-204	Contracting entity to be notified when action is being taken on a performance or payment security.
18-2-206	Subcontractors and suppliers to provide contractor with notice of right to lien with 90 days of providing supplies/services.
18-2-301	Provide public notice for projects \$150,000 or greater for 3 weeks. Public notice includes electronic notifications such as A&E or Agency web site & Plans Exchanges.
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 \$150,000.
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, 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.
18-2-417	Contracts more than 30 months must include a provisions to adjust prevailing wage rates
18-2-418	Contracting agency shall determine classification of project as highway, heavy or building construction.
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.
15-50-101	Contract value that requires 1% GRT increased from \$5,000 to \$80,000.