



Montana Contractors' Association
PO Box 4519
Helena, MT 59604
Ph: 406.442.4162
F: 406.449.3199

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The Honorable Max Baucus
511 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Jon Tester
Senate Dirksen Building
Rm. B40E
Washington, D.C. 20510

Congressman Dennis Rehberg
516 Cannon House Office Building
Washington, D.C. 20515

Dear Senator Baucus, Senator Tester and Congressman Rehberg,

The Board of Directors of the Montana Contractors' Association has asked that I jointly contact each of you regarding an issue of critical importance to the members of the MCA. This is an urgent non-partisan issue which needs to be addressed by the Montana delegation as a whole. The shrouded and subjective federal construction contract award process continues to affect the survival of Montana companies and their ability to employ workers. Construction is vital to the Montana economy, and the impact of qualified Montana contractors unfairly losing federal projects is devastating.

Montana contractors and their employees have watched one federal construction project after another awarded to large out-of-state firms, often at a significantly higher cost than Montana companies had proposed. We have recently learned of two more federal projects that will be constructed by out-of-state firms selected through subjective procedures that favor large companies with a long history of conducting business with the government.

One project, proposal # W9128F-10-R-0031, "Yellowstone Diversion Dam, Main Canal Intake Diversion Fish Protection," administered by the Army Corps of Engineers, was awarded to a Colorado firm at a price that was \$1.5 million higher than the price quoted by a Montana company. To add insult to injury, the award price to the Colorado firm exceeded the government estimate by over \$1 million. The Montana firm has vast experience building bridges and facilities in and over Montana rivers, and is well

acquainted with the environmental and technical challenges involved in this project. In a written debriefing, the Army Corps of Engineers advised the Montana firm that its proposal was “technically acceptable” but chose the firm that bid \$1.5 million more. How can the federal agency be allowed to ignore this savings to the taxpayers?

A second project, administered by the General Services Administration, “Bozeman Building Improvements,” will be awarded to one of five out-of-state contractors that were preselected to compete under ongoing contracts with the GSA. No Montana firms were even considered to compete for this project involving the federal courthouse/post office in Bozeman.

These projects fall on the heels of the Billings Federal Courthouse, several border stations, a housing project at Malmstrom Air Force Base, and the Going-to-the-Sun Highway in Glacier National Park, all awarded to out-of-state firms using selection processes that either exclude local firms altogether, or favor large companies that enjoy cozy relationships with federal agencies.

So far, all attempts to address this issue have resulted in little or no progress. Despite communications from each of your offices on a case-by-case basis, subsequent projects have been awarded using the same subjective or non-competitive procedures. The economy is slow, with construction opportunities extremely limited, making the availability of these federal projects even more critical. Continuation of the same selection processes by federal agencies is unacceptable to the members of the MCA.

The issue is not one of a preference to Montana contractors. It’s an issue of a level playing field. Under the current “best value” award process used by federal agencies, the award process has become largely subjective, and is done behind closed doors. There is no transparency, and little accountability. There is no consistency agency-to-agency or region-to-region.

In an era where the federal deficit is at record levels and money for public infrastructure is scarce, it is dumbfounding to us that federal agencies routinely spend millions more on projects than they need to, and that they limit competition to exclude the local companies, which undoubtedly leads to higher costs. If our experience in Montana is any indication, the federal government is spending hundreds of millions more than is necessary on construction of public infrastructure.

If there is a level playing field, with open and consistent selection criteria, Montana’s contracting community can easily compete. It’s time this process be refined to a two-step procedure. We suggest a widely adopted model in which the project owner (federal agency) implements a process to technically prequalify interested contractors for a specific project. In many cases, the number of prequalified contractors is limited by an open, objective and patent ranking system. Once prequalified, those contractors then compete on an equal footing based on price.

It is time for the federal construction procurement system to change. Nothing will occur at the lower agency levels unless the Congress mandates specific measures.

On a final note, if the State of Montana administered federal funds the way federal agencies do, they would be reprimanded and likely barred from receiving future funding or grants. If the Montana Department of Transportation awarded federally funded projects using a subjective “best value” selection process, or if it signed open-ended long term contracts involving negotiated costs, federal oversight agencies would shut them down in a heartbeat. Why are federal agencies allowed to operate in this unaccountable fashion?

On behalf of our individual members and our board of directors, The Montana Contractors’ Association is requesting a meeting with all three of you, involving all interested members of the MCA. We are requesting your collective personal attendance rather than attendance by staff. We would like to set this meeting as quickly as possible during the August recess. Again, we are asking for unified assistance in resolving this critical issue.

We stand ready, willing and able to participate in any process necessary to assure a timely resolution to this problem. It needs to start with an open workshop with our Congressional Delegation.

We will call each of your offices to discuss schedules. Thank you for your attention to this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Cary Hegreberg". The signature is written in a cursive, flowing style.

Cary Hegreberg
Executive Director