

A BILL FOR AN ACT

To establish a procedure for competitive bidding on public contracts of the Federated States of Micronesia National Government generally, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1       Section 1. Short title. This act is known and may be cited  
2 as the "Public Contracts Act."

3       Section 2. Contracts for which competitive bidding required  
4 generally. All contracts of whatever nature for labor, services,  
5 or work, or for the purchase or lease of materials, equipment,  
6 supplies, or other personal property, involving \$1,000 or more  
7 made on behalf of any Federated States of Micronesia branch of  
8 government, department, board, bureau, commission, committee,  
9 institution, corporation, authority, or office shall, except as  
10 otherwise provided in this act, be let by free and open competitive  
11 bidding, on sealed bids, to the lowest responsible bidder.

12       Section 3. Lowest responsible bidder. For purposes of this  
13 act, lowest responsible bidder means the lowest bidder whose offer  
14 best responds in quality, fitness, and capacity to the particular  
15 requirements of the proposed work.

16       Section 4. Contracts for which competitive bidding not required  
17 generally. The competitive bidding requirements of this act shall  
18 not apply to:

19               (1) Contracts of employment as described within the  
20 National Public Service System Act;

21               (2) Purchases of manuscripts, maps, books, pamphlets, or  
22 periodicals purchased for the use of any library supported in whole  
23 or in part by National funds;

24               (3) Contractual services and purchases of commodities  
25 for which there is only one vendor or supplier;

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1 (4) Contractual services and purchases of personal  
2 property which by their very nature are impossible to award by  
3 public bidding; or

4 (5) Contractual services and purchases of commodities  
5 when no tender is received in response to an advertisement.

6 Section 5. Exception for emergencies. In case of emergency  
7 affecting public health, safety, or convenience, so declared in  
8 writing by the President, upon application by any of the heads  
9 of any National Government department, board, bureau, commission,  
10 committee, institution, corporation, authority, or office, setting  
11 forth the nature of the danger to the public health, safety, or  
12 convenience involved in delay, contracts may be let to the extent  
13 necessary to meet the emergency without public advertisement. Such  
14 action and the reasons therefor shall immediately be made public by  
15 the awarding authority.

16 Section 6. Qualifications of bidders. Before any prospective  
17 bidder shall be entitled to submit any bid for the performance of  
18 any contract with the Federated States of Micronesia National Govern-  
19 ment, for the construction of any public building or other public  
20 work, he shall, not less than six calendar days prior to the date des-  
21 ignated for opening bids, give written notice to the officer charged  
22 with letting such contract of his intention to bid, and such officer  
23 shall satisfy himself of the prospective bidder's financial ability  
24 to perform the work intended and of his experience and competence in  
25 performing similar work. Whenever it appears to the officer that the

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1 prospective bidder is not fully qualified and able to perform the  
2 intended work, the officer shall refuse to receive or consider any  
3 bid offered by the prospective bidder. A prospective bidder who is  
4 determined not to be fully qualified may appeal this determina-  
5 tion or request judicial review thereof in accordance with the  
6 Administrative Procedure Act.

7 Section 7. Advertisement for bids. Publication of a call for  
8 sealed bids shall include posting of notice in a prominent public  
9 place in each State in the Federated States of Micronesia, the use  
10 of radio and newspaper media when appropriate, and such other means  
11 as may be determined to be feasible. The notice shall state in  
12 clear terms the project that is to be bidden upon.

13 Section 8. Bids, opening, rejection. The time of opening of  
14 such sealed bids shall not be less than 10 days after the last publica-  
15 tion. All bids shall be sealed and delivered to the officer adver-  
16 tising therefor and shall be opened by him at the hour and place  
17 as stated in the advertisement in the presence of all bidders who  
18 attend and may be inspected by any bidder. All bids which do not  
19 comply with the requirements of the advertisement shall be rejected.  
20 If two or more bids are the same and the lowest, the officer may  
21 accept the one he chooses. If no bids are received, the officer may  
22 have the project done without further compliance with this act.

23 Section 9. Bids to include certain information. All bids on  
24 public works construction contracts shall include the name of each  
25 person or firm to be engaged by the bidder as a joint contractor or

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1 subcontractor in the performance of the public works construction  
2 contract. The bid shall also indicate the nature and scope of the  
3 work to be performed by such joint contractor or subcontractor.

4 Section 10. Deposits of legal tender to accompany bid. All  
5 bids on public works construction contracts shall be accompanied by  
6 a deposit of legal tender or by a certificate of deposit, cashier's  
7 check, or certified check on a bank that is insured by the Federal  
8 Deposit Insurance Corporation in a sum not less than 5 percent of  
9 the amount bid, payable at sight to the officer advertising for bids;  
10 PROVIDED, that when the amount of the bid exceeds \$50,000, the legal  
11 tender, certificate of deposit, cashier's check, or certified check  
12 shall be in a sum not less than \$2,500 plus 2 percent of the amount  
13 in excess of \$50,000. Deposits made by unsuccessful bidders shall  
14 be returned to them after the contract is entered into, or if the  
15 contract is not awarded or entered into, after the officer's deter-  
16 mination to publish another advertisement for bids.

17 Section 11. Bond may be substituted for deposits. In lieu of  
18 the deposit of legal tender, certificate of deposit, cashier's check,  
19 or certified check, a bid may be accompanied by a surety bond executed  
20 to the officer calling for bids by the bidder as principal, and by any  
21 corporation organized for the purpose of becoming a surety on bonds.

22 Section 12. Written contract awarded to lowest responsible bidder  
23 All contracts shall be in writing and shall be executed by such entity  
24 which is authorized to let contracts in its own name and shall be made  
25 with the lowest responsible bidder, if the bidder qualifies by

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1 providing the surety as provided by section 10 or 11 of this act.  
2 If the lowest bid is rejected, or if the bidder to whom the contract  
3 was awarded fails to enter into the contract and furnish satisfactory  
4 security, the officer may, at his discretion, award the contract to  
5 the lowest remaining responsible bidder or advertise anew for bids  
6 pursuant to section 7 of this act. In each instance the officer, at  
7 his discretion, after determining the lowest responsible bidder,  
8 may negotiate with such bidder, and only that bidder, to reduce the  
9 scope of work and to award the contract at a price which reflects the  
10 reduction in the scope of work.

11 Section 13. Effect of restraint of competition. Any agreement  
12 or collusion among bidders or prospective bidders in restraint of  
13 freedom of competition by agreement to bid at a fixed price or to  
14 refrain from bidding shall render the bids of such bidders void.  
15 Each bidder shall accompany his bid with a sworn statement that he  
16 has not been a party to such an agreement.

17 Section 14. Effect of advance disclosure of terms of bid.  
18 Any disclosure in advance of the terms of a bid submitted in response  
19 to an advertisement for bids shall render the proceedings void and  
20 require advertisement and award anew.

21 Section 15. Assignment of contracts. No contracts awarded  
22 to the lowest responsible bidder shall be assignable by the successful  
23 bidder without written consent of the awarding authority.

24 Section 16. Institution of legal actions. Any taxpayer in the  
25 Federated States of Micronesia and any bona fide unsuccessful bidder

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6           Section 18. Effective date. This act shall become law upon  
7 approval by the President of the Federated States of Micronesia or  
8 upon its becoming law without such approval.

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Introduced by:

Peter M. Christian

such approval.

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*M. H. Hagan*  
*B. S. S. S. S.*  
*W. H. Hagan*