

## HOUSE BILL NO. 334

INTRODUCED BY B. MCCHESENEY

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE TIME RESTRICTIONS ON THE DESIGN-BUILD HIGHWAY CONTRACT PROCESS FOR HIGHWAY CONSTRUCTION PROJECTS; AMENDING SECTIONS 18-8-204, 18-8-205, 60-2-111, 60-2-112, 60-2-134, AND 60-2-137, MCA; REPEALING SECTIONS 60-2-135 AND 60-2-136, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 18-8-204, MCA, is amended to read:

**"18-8-204. Procedures for selection.** (1) In the procurement of architectural, engineering, and land surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) (a) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project.

(b) The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:

(i) the qualifications of professional personnel to be assigned to the project;

(ii) capability to meet time and project budget requirements;

(iii) location;

(iv) present and projected workloads;

(v) related experience on similar projects; and

(vi) recent and current work for the agency.

(c) The agency shall follow the minimum criteria of this part if no other agency procedures are specifically adopted.

(3) The provisions of this section do not apply to procurement of architectural, engineering, and land surveying services for projects that the department of transportation has determined are part of the design-build contracting pilot program authorized in ~~60-2-135 through 60-2-137.~~"

**Section 2.** Section 18-8-205, MCA, is amended to read:

**"18-8-205. Negotiation of contract for services.** (1) The agency shall negotiate a contract with the most qualified firm for architectural, engineering, and land surveying services at a price that the agency determines to be fair and reasonable. In making its determination, the agency shall take into account the estimated value of the services to be rendered, as well as the scope, complexity, and professional nature of the services.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm must be formally terminated and the agency shall select other firms in accordance with 18-8-204 and continue as directed in this section until an agreement is reached or the process is terminated.

(3) The provisions of this section do not apply to the negotiation of contracts for projects that the department of transportation has determined are part of the design-build contracting pilot program authorized in ~~60-2-135 through 60-2-137.~~"

**Section 3.** Section 60-2-111, MCA, is amended to read:

**"60-2-111. Letting of contracts on state and federal-aid highways.** (1) Except as provided in subsection (2), all contracts for the construction or reconstruction of the highways and streets located on highway systems and state highways as defined in 60-2-125, including portions in cities and towns, and all contracts entered into under 7-14-4108 must be let by the commission. Except as otherwise specifically provided, the commission may enter the types of contracts and upon terms that it may decide. All contracts must meet the requirements of Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

(2) The commission may delegate the authority, with all applicable statutory restrictions, to award any contract covered by this section to the department or to a unit of local government.

(3) The commission may award contracts for projects that the department has determined are part of the design-build contracting pilot program authorized in ~~60-2-135 through 60-2-137.~~"

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2           **Section 4.** Section 60-2-112, MCA, is amended to read:

3           **"60-2-112. Competitive bidding -- reciprocity.** (1) Except as provided in subsections (2) through (6),  
4 if the estimated cost of any work exceeds \$50,000, the commission shall award the contract by competitive  
5 bidding to the lowest responsible and responsive bidder. The award must be made upon the notice and terms  
6 that the commission prescribes by its rules. However, except when prohibited by federal law, the commission  
7 shall make awards and contracts in accordance with 18-1-102.

8           (2) The commission may award a contract by means other than competitive bidding if it determines that  
9 special circumstances so require. The commission shall specify the special circumstances in writing.

10           (3) The commission may enter into contracts with units of local government for the construction of  
11 projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including  
12 total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting  
13 services, administrative costs, and reasonable estimates of other costs attributable to the project.

14           (4) The commission may delegate to the department the authority to enter, without competitive bidding,  
15 agreed-upon price contracts for projects costing \$50,000 or less.

16           (5) The commission may award a design-build contract under the design-build contracting ~~pilot~~ program  
17 if the provisions of ~~60-2-135 through~~ 60-2-137 have been met.

18           (6) The commission or the department may not enter into a contract for a state-funded highway project  
19 or a construction project with a bidder whose operations are not headquartered in the United States unless:

20           (a) the foreign country, or province or other political subdivision of that country, in which the bidder is  
21 headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding  
22 on highway projects and construction projects located in the foreign country, or province or other political  
23 subdivision of that country; and

24           (b) the department has entered into a reciprocity agreement with or has exchanged letters of information  
25 with the foreign country, or province or other political subdivision of that country, that addresses:

26           (i) the equal and fair treatment of bids originating in the United States and in the foreign country, or  
27 province or other political subdivision of that country;

28           (ii) specific ownership requirements and tax policies in the United States and in the foreign country, or  
29 province or other political subdivision of that country, that may result in the unequal treatment of all bids received,  
30 regardless of their origin;

(iii) the means by which contractors from both the United States and the foreign country, or province or other political subdivision of that country, are notified of highway projects and construction projects available for bid; and

(iv) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country, or province or other political subdivision of that country, for projects located in either the United States or the foreign country, or province or other political subdivision of that country.

(7) For the purposes of subsection (6), "construction" has the meaning provided in 18-2-101."

**Section 5.** Section 60-2-134, MCA, is amended to read:

**"60-2-134. Definitions.** For the purposes of 18-8-204, 18-8-205, 60-2-111, 60-2-112, ~~60-2-135 through~~ 60-2-137, and this section, the following definitions apply:

(1) "Design-build contracting" means the process of entering into a single contract between the commission and a design-build contractor in which the design-build contractor agrees to design and build a highway, structure, or facility or any other items required in a request for proposals.

(2) "Design-build contractor" means an individual, partnership, corporation, joint venture, or other legally recognized entity that is appropriately licensed in Montana and that provides the necessary design and construction services, including contract administration.

(3) "Design-build criteria package" means the document provided by the department that contains the information necessary to guide a prospective design-build contractor in the preparation and submission of a proposal for a design-build project.

(4) "Request for proposals" means a part of the design-build criteria package that contains a detailed scope of work, including design concepts, technical requirements and specifications, the time allowed for design and construction, the department's estimated cost of the project, the deadline for submitting a proposal, the selection criteria, and a copy of the contract.

(5) "Request for qualifications" means a part of the design-build criteria package that contains the desired minimum qualifications of the design-build contractor, a scope of work statement, the project requirements, the amount of reimbursement that the commission has determined will be paid to prospective design-build contractors who qualify for the short list but are not awarded a contract, and the selection criteria that the department will use in compiling the short list of prospective design-build contractors to consider."

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2       **Section 6.** Section 60-2-137, MCA, is amended to read:

3       **"60-2-137. Design-build contracting process -- submission of proposals -- department's duties.**

4       (1) ~~In accordance with recommendations of the design-build contracting board, once~~ Once the department has  
5 identified a project for which the design-build contracting process will be used, the department shall prepare and  
6 advertise a request for qualifications.

7       (2) From the responders to the request for qualifications, the department shall prepare a short list of the  
8 responders that it believes are most qualified, not to exceed five responders on any single project.

9       (3) (a) The department shall announce the short list and issue a request for proposals to each of the  
10 prospective design-build contractors on the short list, who may then submit a technical AND PRICE proposal to the  
11 department.

12       (b) A technical AND PRICE proposal submitted in response to a request for proposals must contain  
13 detailed descriptions of the prospective design-build contractor's approach to designing, constructing, and  
14 managing the project in accordance with the design-build criteria package. The technical AND PRICE proposal must  
15 also include the prospective design-build contractor's conceptual design and construction sequence and schedule  
16 AND THE LUMP-SUM PRICE TO COMPLETE THE PROJECT.

17       (4) The department shall evaluate the technical AND PRICE proposals and make a written  
18 recommendation to the commission regarding the department's selection of the design-build contractor to be  
19 awarded the contract.

20       (5) The prospective design-build contractors who appeared on the department's short list but are not  
21 awarded the contract may be paid a stipend, in an amount determined by the commission, for costs incurred in  
22 submitting the response to the department's request for proposals."

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24       NEW SECTION. **Section 7. Repealer.** Sections 60-2-135 and 60-2-136, MCA, are repealed.

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26       NEW SECTION. **Section 8. Effective date.** [This act] is effective July 1, 2007.

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