

SENATE BILL NO. 83  
INTRODUCED BY D. MCGEE  
BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO ESTABLISH A DESIGN-BUILD CONTRACTING PILOT PROGRAM; SETTING A CAP ON THE TOTAL COST OF PROJECTS THAT MAY BE AUTHORIZED UNDER THE PROGRAM; REQUIRING THE DEPARTMENT TO REPORT ON THE PROGRAM TO THE GOVERNOR AND THE 2009 LEGISLATURE; CREATING A DESIGN-BUILD CONTRACTING BOARD; PROVIDING THE PROCEDURE FOR PROSPECTIVE CONTRACTORS TO SUBMIT A PROPOSAL; AMENDING SECTIONS 18-8-204, 18-8-205, 60-2-111, AND 60-2-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, nationally, the concept of a single contract incorporating both the design and construction elements of highway construction has produced numerous examples of time savings in development of projects and delivery of completed projects without sacrificing quality; and

WHEREAS, the Legislature recognizes the impact that highway construction activities have on the state's economy and recognizes design-build contracting on a limited basis as a viable adjunct to, not a replacement for, the existing highway contracting process; and

WHEREAS, a pilot program to allow the Department of Transportation and the Transportation Commission the opportunity to use a design-build concept in highway contracting in select instances is an appropriate way to test the concept's efficiency in Montana.

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

NEW SECTION. **Section 1. Definitions.** For the purposes of 18-8-204, 18-8-205, 60-2-111, 60-2-112, and [sections 1 through 4], 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.

**NEW SECTION. Section 2. Design-build contracting authorized -- limit on projects -- reporting requirement.** (1) Beginning on [the effective date of this act] through December 31, 2008, the commission and the department are authorized to establish and implement a design-build contracting pilot program for highway construction.

(2) The total cost of projects that the commission and the department authorize under the design-build contracting pilot program may not exceed \$20 million.

(3) The department shall provide a report to the governor and the 61st legislature. The report must contain a benefit analysis of design-build contracting in comparison to the contracting process authorized in 60-2-111. The department shall also report to the governor and the revenue and transportation interim committee, upon request, to provide updates on the design-build contracting pilot program.

**NEW SECTION. Section 3. Design-build contracting board -- duties.** (1) The director shall appoint a design-build contracting board. The duties of the board include but are not limited to:

- (a) establishing the criteria by which eligible projects are selected for a design-build contract;
- (b) assisting the department in making recommendations to the commission regarding the terms, conditions, and processes by which a design-build contract is advertised, proposals are evaluated and selected, and contracts are entered into and executed; and

(c) providing a review of the costs and benefits of design-build contracting that will be included in a report to the 2009 legislature.

(2) The design-build contracting board consists of the following members:

- (a) two representatives of the highway construction industry in Montana;
- (b) two representatives of the highway design and engineering industry doing business in Montana;
- (c) a representative of the Montana office of the federal highway administration;
- (d) two representatives of the department;
- (e) a representative of the bonding and surety industry authorized to operate in Montana; and
- (f) the director, who serves as presiding officer of the board.

**NEW SECTION. Section 4. Design-build contracting process -- submission of proposals -- department's duties.** (1) In accordance with recommendations of the design-build contracting board, once the department has identified a project for which the design-build contracting process will be used, the department shall prepare and advertise a request for qualifications.

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

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

(b) A technical proposal submitted in response to a request for proposals must contain detailed descriptions of the prospective design-build contractor's approach to designing, constructing, and managing the project in accordance with the design-build criteria package. The technical proposal must also include the prospective design-build contractor's conceptual design and construction sequence and schedule.

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

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

**Section 5.** 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 [sections 2 through 4]."

**Section 6.** 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 ~~which~~ 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 ~~thereof~~ 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 [sections 2 through 4]."

**Section 7.** 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 ~~as~~ 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 [sections 2 through 4]."

**Section 8.** Section 60-2-112, MCA, is amended to read:

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

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

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

(4) The commission may delegate to the department the authority to enter, without competitive bidding,

agreed-upon price contracts for projects costing \$50,000 or less.

(5) The commission may award a design-build contract under the design-build contracting pilot program if the provisions of [sections 2 through 4] have been met.

~~(5)~~(6) The commission or the department may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

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

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

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

(ii) specific ownership requirements and tax policies in the United States and in the foreign country, or province or other political subdivision of that country, that may result in the unequal treatment of all bids received, 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.

~~(6)~~(7) For the purposes of subsection ~~(5)~~ (6), "construction" has the meaning provided in 18-2-101."

NEW SECTION. Section 9. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60, chapter 2, part 1, apply to [sections 1 through 4].

NEW SECTION. Section 10. Effective date. [This act] is effective on passage and approval.

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