

HOUSE BILL NO. 699

INTRODUCED BY M. LANGE

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A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE BAN ON PROJECT LABOR AGREEMENTS; PROVIDING A PURPOSE AND CONDITIONS FOR USING ALTERNATE DELIVERY METHODS FOR PUBLIC WORKS PROJECTS; PROVIDING DEFINITIONS AND CRITERIA FOR BEST-VALUE CONTRACTS; AMENDING SECTION 18-2-101, MCA; AND REPEALING SECTION 18-2-425, MCA."

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

NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 and 2] is to ensure that the state can cost-effectively deliver construction projects by using various alternate delivery contracting methods, including a low-bid design-bid-build methodology or a design-build methodology awarded according to specified criteria that recognize prior evidence of quality performance at the most appropriate cost within an established budget.

NEW SECTION. **Section 2. Alternate delivery contracting method -- criteria.** (1) Except as otherwise provided in this chapter, a state agency, as described in 18-2-303(4)(c), may specify use of an alternate delivery contracting method, including a project labor agreement, for certain public construction projects.

(2) Use of an alternate delivery contracting method as provided in subsection (1) is appropriate when a state agency determines that an alternate delivery contracting method is necessary to ensure that the state agency signs a best-value contract, as defined in 18-2-101, to provide the most cost-effective project possible.

(3) For any alternate delivery contracting method used pursuant to this section, the state agency shall:

(a) implement, when possible, a predesign phase that includes an analysis of the project's costs over its total life cycle, excluding personnel costs but including operations and maintenance;

(b) include a requirement for contract bidders to provide:

(i) documentation in the form of a request for qualifications of past performance indicators from similar projects, including:

(A) history of past project completions and related cost components, including delays, time extensions, change orders, cost overruns, successful time and budget management, safety records, environmental

- 1 violations, any litigation or dispute resolution activities, and any labor disputes;
- 2 (B) quality workmanship;
- 3 (C) ability to plan, organize, and manage subcontractors;
- 4 (D) financial capacity, solvency, and success in meeting payment or bond claims;
- 5 (ii) documentation of current workload and capacity for additional work; and
- 6 (iii) experience history of key personnel, including the project manager;
- 7 (c) develop fair, objective, and open evaluation methods, including the use of selection panels, to rank
- 8 firms eligible to be on a short list to receive a request for proposals;
- 9 (d) develop fair, objective, and open evaluation methods to rank proposals submitted under the
- 10 alternate delivery contracting method criteria, including but not limited to the ability to:
- 11 (i) accomplish work within a budget and on schedule;
- 12 (ii) meet all state agency criteria, including the use of efficient, durable materials and systems; and
- 13 (iii) minimize state utility, operational, and maintenance costs; and
- 14 (e) make public the criteria used for the alternate delivery contracting method.

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16 **Section 3.** Section 18-2-101, MCA, is amended to read:

17 **"18-2-101. Definitions of building, costs, and construction.** In part 1 of this chapter As used in this

18 part, with the exception of 18-2-104, 18-2-107, 18-2-113, 18-2-114, 18-2-122, and 18-2-123, the following

19 definitions apply:

20 (1) "Alternate delivery contracting method" means a framework for awarding construction bids within

21 a competitive bidding process that recognizes factors other than the lowest bid and may include:

22 (a) a design-build process in which a contractor agrees to perform both the design and construction of

23 a project based upon criteria established by the owner;

24 (b) a construction manager at risk process in which a contractor performs all necessary services to

25 design or construct a project for a negotiated fixed price or guaranteed maximum price; or

26 (c) a project labor or other agreement implemented by the owner that establishes conditions specific

27 to performing work on a public works contract.

28 (2) "Best-value contract" means the most advantageous balance of price, quality, and performance

29 achieved through competitive procurement methods in accordance with stated selection criteria.

30 (+)(3) (a) "building" "Building" includes a building, facility, or structure:

1 ~~(a)~~(i) constructed or purchased wholly or in part with state money;
 2 ~~(b)~~(ii) at a state institution;
 3 ~~(c)~~(iii) owned or to be owned by a state agency, including the department of transportation; or
 4 ~~(d)~~(iv) constructed for the use or benefit of the state with federal or private money as provided in
 5 18-2-102(2)(d);;

6 ~~(2)~~(b) "~~building~~" The term does not include a building, facility, or structure:
 7 ~~(a)~~(i) owned or to be owned by a county, city, town, school district, or special improvement district;
 8 ~~(b)~~(ii) used as a component part of an environmental remediation or abandoned mine land reclamation
 9 project, a highway, or a water conservation project, unless the building will require a continuing state general
 10 fund financial obligation after the environmental remediation or abandoned mine land reclamation project is
 11 completed; or

12 ~~(c)~~(iii) leased or to be leased by a state agency;;
 13 ~~(3)~~(4) "~~construction~~" "Construction" includes the construction, alteration, repair, maintenance, and
 14 remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair,
 15 maintenance, and remodeling;;

16 ~~(4)~~(5) "~~costs~~" "Costs" means those expenses defined in 17-5-401 and 17-5-801."
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18 NEW SECTION. Section 4. Repealer. Section 18-2-425, MCA, is repealed.
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20 NEW SECTION. Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified
 21 as an integral part of Title 18, chapter 2, and the provisions of Title 18, chapter 2, apply to [sections 1 and 2].
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