

HOUSE BILL NO. 699  
INTRODUCED BY M. LANGE

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 violations, any litigation or dispute resolution activities, and any labor disputes;

(B) quality workmanship;

- (C) ability to plan, organize, and manage subcontractors;
- (D) financial capacity, solvency, and success in meeting payment or bond claims;
- (ii) documentation of current workload and capacity for additional work; and
- (iii) experience history of key personnel, including the project manager;
- (c) develop fair, objective, and open evaluation methods, including the use of selection panels, to rank firms eligible to be on a short list to receive a request for proposals;
- (d) develop fair, objective, and open evaluation methods to rank proposals submitted under the alternate delivery contracting method criteria, including but not limited to the ability to:
  - (i) accomplish work within a budget and on schedule;
  - (ii) meet all state agency criteria, including the use of efficient, durable materials and systems; and
  - (iii) minimize state utility, operational, and maintenance costs; and
  - (e) make public the criteria used for the alternate delivery contracting method.

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

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

(1) "Alternate delivery contracting method" means a framework for awarding construction bids within a competitive bidding process that recognizes factors other than the lowest bid and may include:

(a) a design-build process in which a contractor agrees to perform both the design and construction of a project based upon criteria established by the owner;

(b) a construction manager at risk process in which a contractor performs all necessary services to design or construct a project for a negotiated fixed price or guaranteed maximum price; or

(c) a project labor or other agreement implemented by the owner that establishes conditions specific to performing work on a public works contract.

(2) "Best-value contract" means the most advantageous balance of price, quality, and performance achieved through competitive procurement methods in accordance with stated selection criteria.

~~(1)(3)~~ (a) "Building" "Building" includes a building, facility, or structure:

~~(a)~~ (i) constructed or purchased wholly or in part with state money;

~~(b)~~ (ii) at a state institution;

~~(c)~~ (iii) owned or to be owned by a state agency, including the department of transportation; or

~~(d)~~(iv) constructed for the use or benefit of the state with federal or private money as provided in 18-2-102(2)(d);<sub>2</sub>

~~(2)~~(b) "~~building~~" The term does not include a building, facility, or structure:

~~(a)~~(i) owned or to be owned by a county, city, town, school district, or special improvement district;

~~(b)~~(ii) used as a component part of an environmental remediation or abandoned mine land reclamation project, a highway, or a water conservation project, unless the building will require a continuing state general fund financial obligation after the environmental remediation or abandoned mine land reclamation project is completed;

or

~~(c)~~(iii) leased or to be leased by a state agency;<sub>2</sub>

~~(3)~~(4) "~~construction~~" "Construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling;<sub>2</sub>

~~(4)~~(5) "~~costs~~" "Costs" means those expenses defined in 17-5-401 and 17-5-801."

NEW SECTION. Section 4. Repealer. Section 18-2-425, MCA, is repealed.

NEW SECTION. Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified 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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