



AN ACT CLARIFYING THAT CERTAIN CONFIDENTIAL OR PROPRIETARY INFORMATION SUBMITTED AS PART OF THE PUBLIC BIDDING OR PUBLIC CONTRACTING PROCESS FOR CERTAIN PUBLIC BUILDING AND PUBLIC HIGHWAY, ROAD, AND SIMILAR TRANSPORTATION PROJECTS IS NOT PUBLIC INFORMATION OPEN TO PUBLIC INSPECTION; AND AMENDING SECTIONS 18-2-503, 18-4-126, AND 60-2-137, MCA.

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

Section 1. Section 18-2-503, MCA, is amended to read:

"18-2-503. Alternative project delivery contract -- award criteria. (1) (a) Whenever a state agency or a governing body determines, pursuant to 18-2-502, that an alternative project delivery contract is justifiable, the state agency or the governing body shall publish a request for qualifications.

(b) After evaluating the responses to the request for qualifications, a request for proposals must be sent to each respondent that meets the qualification criteria specified in the request for qualifications. The request for proposals must clearly describe the project, the state agency's or the governing body's needs with respect to the project, the requirements for submitting a proposal, criteria that will be used to evaluate proposals, and any other factors, including any weighting, that will be used to award the alternative project delivery contract.

(2) The state agency's or the governing body's decision to award an alternative project delivery contract must be based, at a minimum, on:

(a) the applicant's:

(i) history and experience with projects similar to the project under consideration;

(ii) financial health;

(iii) staff or workforce that is proposed to be committed to the project;

(iv) approach to the project; and

(v) project costs; and

(b) any additional criteria or factors that reflect the project's characteristics, complexities, or goals.

(3) Under ~~any a~~ contract awarded pursuant to this part, architectural services must be performed by an architect, as defined in 37-65-102, and engineering services must be performed by a professional engineer, as defined in 37-67-101.

(4) At the conclusion of the selection process, the state agency or the governing body shall state and document in writing the reasons for selecting the contractor that was awarded the contract. ~~The~~ Except as provided in subsection (6), the documentation must be provided to all applicants and to anyone else, upon request.

(5) A state agency or the governing body may compensate unsuccessful applicants for costs incurred in developing and submitting a proposal, provided that all unsuccessful applicants are treated equitably.

(6) Information that is equivalent to procurement information as described in 18-4-126(4) and that is submitted as part of the alternative project delivery contract process is not a public writing and may not be made available to the public."

Section 2. Section 18-4-126, MCA, is amended to read:

"18-4-126. Public access to procurement information -- records -- retention. (1) ~~Procurement~~ Except as provided in subsection (4), procurement information is a public writing and must be available to the public as provided in 2-6-102, 18-4-303, and 18-4-304.

(2) All procurement records must be retained, managed, and disposed of in accordance with the state records management program, Title 2, chapter 6.

(3) Written determinations required by this chapter must be retained in the appropriate official contract file of the department or the purchasing agency administering the procurement in accordance with the state records management program.

(4) Procurement information that is identified as a trade secret, as defined in 30-14-402, or that is confidential or proprietary, including business plans, marketing plans or strategies, customer lists, contracts, sales data, revenue, or other financial information, is not a public writing and may not be made available to the public if the information:

(a) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) is identified by the person submitting the information as a trade secret or proprietary information."

Section 3. Department to provide information to assist contractors asserting confidentiality claims. The department or governmental body shall provide contractors and prospective contractors with information as to procedures the contractors may use to assert a claim of confidentiality with respect to protected information that must be submitted to the department or governmental body with regard to bids or contracts, such as trade secrets or proprietary information. The information provided by the department may include a model affidavit that can be adapted for use by the contractor or prospective contractor to meet the particular confidentiality claim being asserted.

Section 4. Section 60-2-137, MCA, is amended to read:

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

(1) ~~Once~~ Whenever 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 and price proposal to the department.

(b) A technical and price 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 and price proposal must also include the prospective design-build contractor's conceptual design and construction sequence and schedule and the lump-sum price to complete the project.

(4) The department shall evaluate the technical and price 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.

(6) Procurement information, as described in 18-4-126(4), that is submitted as part of the design-build contracting process is not a public writing and may not be made available to the public."

Section 5. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 18, chapter 4, part 1, and the provisions of Title 18, chapter 4, part 1, apply to [section 3].

- END -

I hereby certify that the within bill,
SB 0349, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2009.

Speaker of the House

Signed this _____ day
of _____, 2009.

SENATE BILL NO. 349
INTRODUCED BY TUTVEDT

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