

HOUSE BILL NO. 92

INTRODUCED BY F. GARNER

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE TRANSPORTATION COMMISSION TO AWARD ALTERNATIVE PROJECT DELIVERY CONTRACTS; LIMITING THE NUMBER OF PROJECTS AUTHORIZED; REQUIRING A REPORT; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 18-2-501, 60-2-111, AND 60-2-112, MCA; AND PROVIDING A TERMINATION DATE."

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

NEW SECTION. SECTION 1. LIMIT ON PROJECTS -- REPORTING REQUIREMENT. (1) THE COMMISSION MAY AWARD ALTERNATIVE PROJECT DELIVERY CONTRACTS FOR NO MORE THAN FOUR PROJECTS BY DECEMBER 31, 2024.

(2) A PROJECT AWARDED BUT NOT COMPLETED BY DECEMBER 31, 2024, IS AUTHORIZED TO PROCEED UNTIL FINAL COMPLETION OF THE PROJECT.

(3) (A) THE DEPARTMENT SHALL PROVIDE AN ANNUAL REPORT TO THE GOVERNOR AND TO THE REVENUE AND TRANSPORTATION COMMITTEE, AS PROVIDED FOR IN 5-5-227. THE REPORT MUST CONTAIN A BENEFIT ANALYSIS OF ALTERNATIVE PROJECT DELIVERY CONTRACTING IN COMPARISON TO OTHER CONTRACTING PROCESSES AUTHORIZED IN 60-2-111.

(B) THE DEPARTMENT SHALL REPORT TO THE GOVERNOR AND THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE UPON REQUEST TO PROVIDE INFORMATION ABOUT ALTERNATIVE PROJECT DELIVERY CONTRACTING.

Section 2. Section 18-2-501, MCA, is amended to read:

"18-2-501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) (a) "Alternative project delivery contract" means a construction management contract, a general contractor construction management contract, or a design-build contract.

(b) The term does not include a design-build contract awarded by the transportation commission under 60-2-111(3).

(2) "Construction management contract" means a contract in which the contractor acts as the public

1 owner's construction manager and provides leadership and administration for the project, from planning and
2 design, in cooperation with the designers and the project owners, to project startup and construction completion.

3 (3) "Contractor" has the meaning provided in 18-4-123.

4 (4) "Design-build contract" means a contract in which the designer-builder assumes the responsibility
5 and the risk for architectural or engineering design and construction delivery under a single contract with the
6 owner.

7 (5) "General contractor construction management contract" means a contract in which the general
8 contractor, in addition to providing the preconstruction, budgeting, and scheduling services, procures necessary
9 construction services, equipment, supplies, and materials through competitive bidding contracts with
10 subcontractors and suppliers to construct the project.

11 (6) "Governing body" means:

12 (a) the legislative authority of:

13 (i) a municipality, county, or consolidated city-county established pursuant to Title 7, chapter 1, 2, or 3;

14 (ii) a school district established pursuant to Title 20; or

15 (iii) an airport authority established pursuant to Title 67, chapter 11; or

16 (b) the board of directors of a county water or sewer district established pursuant to Title 7, chapter 13,
17 parts 22 and 23.

18 (7) "Project" means any construction or any improvement of the land, a building, or another improvement
19 that is suitable for use as a state or local governmental facility.

20 (8) "Publish" means publication of notice as provided for in 7-1-2121, 7-1-4127, 18-2-301, and 20-9-204.

21 (9) "State agency" has the meaning provided in 2-2-102, ~~except that the department of transportation,~~
22 ~~provided for in 2-15-2501, is not considered a state agency."~~

23

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

25 **"60-2-111. Letting of contracts on state and federal-aid highways.** (1) Except as provided in
26 subsection (2), all contracts for the construction or reconstruction of the highways and streets located on highway
27 systems and state highways as defined in 60-2-125, including portions in cities and towns, and all contracts
28 entered into under 7-14-4108 must be let by the commission. Except as otherwise specifically provided, the
29 commission may enter the types of contracts and upon terms that it may decide. All contracts must meet the
30 requirements of Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining,

1 the commission shall determine the prevailing rate to be stated in the contract.

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

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

6 (4) The SUBJECT TO [SECTION 1], THE commission may award alternative project delivery contracts in
7 accordance with Title 18, chapter 2, part 5, for projects that the department has determined are appropriate for
8 those contracts."

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

11 **"60-2-112. Competitive bidding -- reciprocity.** (1) Except as provided in subsections (2) through (6),
12 if the estimated cost of any work exceeds \$50,000, the commission shall award the contract by competitive
13 bidding to the lowest responsible and responsive bidder. The award must be made upon the notice and terms
14 that the commission prescribes by its rules. However, except when prohibited by federal law, the commission
15 shall make awards and contracts in accordance with 18-1-102.

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

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

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

24 (5) The commission may award a design-build contract under the design-build contracting program if
25 the provisions of 60-2-137 have been met.

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

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

1 subdivision of that country; and

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

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

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

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

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

16 (7) The SUBJECT TO [SECTION 1], THE commission may award alternative project delivery contracts in
17 accordance with Title 18, chapter 2, part 5, for projects that the department has determined are appropriate for
18 those contracts.

19 ~~(7)~~(8) For the purposes of subsection (6), "construction" has the meaning provided in 18-2-101."
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21 NEW SECTION. SECTION 5. CODIFICATION INSTRUCTION. [SECTION 1] IS INTENDED TO BE CODIFIED AS AN
22 INTEGRAL PART OF TITLE 60, CHAPTER 2, PART 1, AND THE PROVISIONS OF TITLE 60, CHAPTER 2, PART 1, APPLY TO
23 [SECTION 1].

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25 NEW SECTION. SECTION 6. TERMINATION. [This act] terminates December 31, 2024.

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