

SENATE BILL NO. 307

INTRODUCED BY J. WELBORN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALTERNATIVE PROJECT DELIVERY
5 LAWS; REVISING AND PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS FOR AWARDING A
6 COMPREHENSIVE AGREEMENT; PROVIDING STIPENDS TO QUALIFIED UNSUCCESSFUL RESPONDENTS
7 TO A REQUEST FOR PROPOSAL; SETTING BASIC MINIMUM REQUIREMENTS FOR A SOLICITED
8 PROPOSAL UNDER AN INNOVATIVE FINANCING DELIVERY OPTION; PROVIDING ADDITIONAL CRITERIA
9 FOR SELECTING AND AWARDING INNOVATIVE FINANCING DELIVERY OPTIONS; PROVIDING FOR
10 OTHER RESTRICTIONS ON COMPREHENSIVE AGREEMENTS; AMENDING SECTIONS 18-2-501, 18-2-502,
11 AND 18-2-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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15 **Section 1.** Section 18-2-501, MCA, is amended to read:

16 **"18-2-501. (Temporary) Definitions.** As used in this part, unless the context clearly requires otherwise,
17 the following definitions apply:

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

20 (b) The term does not include a design-build contract awarded by the transportation commission under
21 60-2-111(3).

22 (2) "Best value" means a procurement in which the decision is based on the primary objective of meeting
23 the specific goals and best interests of the public owner, including but not limited to qualifications, technical,
24 design, pricing, financing viability, and schedule. This selection must be based on criteria that have been
25 communicated to the proposers in the final request for proposals.

26 (3) "Comprehensive agreement" means an agreement setting forth the firm fixed price, duration, risk
27 transfer, and all other commercial and technical terms to be adhered to with respect to an awarded eligible project
28 utilizing innovative financing delivery with a private party.

29 ~~(2)~~(4) "Construction management contract" means a contract in which the contractor acts as the public
30 owner's construction manager and provides leadership and administration for the project, from planning and

1 design, in cooperation with the designers and the project owners, to project startup and construction completion.

2 ~~(3)~~(5) "Contractor" has the meaning provided in 18-4-123.

3 ~~(4)~~(6) "Design-build contract" means a contract in which the designer-builder assumes the responsibility
4 and the risk for architectural or engineering design and construction delivery under a single contract with the
5 owner.

6 (7) "Eligible project" means any asset owned by a governing body, including a state agency, except for
7 toll roads, toll bridges, and any broadband infrastructure projects.

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

12 ~~(6)~~(9) "Governing body" means:

13 (a) the legislative authority of:

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

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

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

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

19 (c) the trustees of a fire district established pursuant to Title 7, chapter 33, or the county commissioners
20 or trustees of a fire service area established pursuant to 7-33-2401.

21 (10) "Innovative financing delivery" means a project delivery method whereby a state agency or a
22 governing body procures an eligible project that includes private financing and any combination of design, build,
23 operate, or maintain with a private party. In doing so, the state agency or governing body may pay for the
24 development of the eligible project with public funds appropriated to that eligible project, including fees to
25 compensate the private entity for the operation and maintenance of the project for the defined term.

26 ~~(7)~~(11) "Project" means any construction or any improvement of the land, a building, or another
27 improvement that is suitable for use as a state or local governmental facility.

28 ~~(8)~~(12) "Publish" means publication of notice as provided for in 7-1-2121, 7-1-4127, 18-2-301, and
29 20-9-204.

30 (13) "Request for proposals" means the final solicitation document requesting detailed proposals from

1 short-listed, qualified proposers for evaluation and selection.

2 ~~(9)(14)~~ "State agency" has the meaning provided in 2-2-102. (Terminates December 31, 2024--sec. 6,
3 Ch. 54, L. 2017.)

4 **18-2-501. (Effective January 1, 2025) Definitions.** As used in this part, unless the context clearly
5 requires otherwise, the following definitions apply:

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

8 (2) "Best value" means a procurement in which the decision is based on the primary objective of meeting
9 the specific goals and best interests of the public owner, including but not limited to qualifications, technical,
10 design, pricing, financing viability, and schedule. This selection must be based on criteria that have been
11 communicated to the proposers in the final request for proposals.

12 (3) "Comprehensive agreement" means an agreement setting forth the firm fixed price, duration, risk
13 transfer, and all other commercial and technical terms to be adhered to with respect to an awarded eligible project
14 utilizing innovative financing delivery with a private party.

15 ~~(2)(4)~~ "Construction management contract" means a contract in which the contractor acts as the public
16 owner's construction manager and provides leadership and administration for the project, from planning and
17 design, in cooperation with the designers and the project owners, to project startup and construction completion.

18 ~~(3)(5)~~ "Contractor" has the meaning provided in 18-4-123.

19 ~~(4)(6)~~ "Design-build contract" means a contract in which the designer-builder assumes the responsibility
20 and the risk for architectural or engineering design and construction delivery under a single contract with the
21 owner.

22 (7) "Eligible project" means any asset owned by a governing body, including a state agency, except for
23 toll roads, toll bridges, and any broadband infrastructure projects.

24 ~~(5)(8)~~ "General contractor construction management contract" means a contract in which the general
25 contractor, in addition to providing the preconstruction, budgeting, and scheduling services, procures necessary
26 construction services, equipment, supplies, and materials through competitive bidding contracts with
27 subcontractors and suppliers to construct the project.

28 ~~(6)(9)~~ "Governing body" means:

29 (a) the legislative authority of:

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

- 1 (ii) a school district established pursuant to Title 20; or
 2 (iii) an airport authority established pursuant to Title 67, chapter 11;
 3 (b) the board of directors of a county water or sewer district established pursuant to Title 7, chapter 13,
 4 parts 22 and 23; or
 5 (c) the trustees of a fire district established pursuant to Title 7, chapter 33, or the county commissioners
 6 or trustees of a fire service area established pursuant to 7-33-2401.

7 (10) "Innovative financing delivery" means a project delivery method whereby a state agency or a
 8 governing body procures an eligible project that includes private financing and any combination of design, build,
 9 operate, or maintain with a private party. In doing so, the state agency or governing body may pay for the
 10 development of the eligible project with public funds appropriated to that eligible project, including fees to
 11 compensate the private entity for the operation and maintenance of the project for the defined term.

12 ~~(7)~~(11) "Project" means any construction or any improvement of the land, a building, or another
 13 improvement that is suitable for use as a state or local governmental facility.

14 ~~(8)~~(12) "Publish" means publication of notice as provided for in 7-1-2121, 7-1-4127, 18-2-301, and
 15 20-9-204.

16 (13) "Request for proposals" means the final solicitation document requesting detailed proposals from
 17 short-listed, qualified proposers for evaluation and selection.

18 ~~(9)~~(14) "State agency" has the meaning provided in 2-2-102, except that the department of
 19 transportation, provided for in 2-15-2501, is not considered a state agency."
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21 **Section 2.** Section 18-2-502, MCA, is amended to read:

22 **"18-2-502. Alternative project delivery contract -- authority -- criteria.** (1) Subject to the provisions
 23 of this part, a state agency or a governing body may use an alternative project delivery contract. A state agency
 24 or governing body that uses an alternative project delivery contract shall:

25 (a) demonstrate that the state agency or the governing body has or will have knowledgeable staff or
 26 consultants who have the capacity to manage an alternative project delivery contract;

27 (b) clearly describe the manner in which:

28 (i) the alternative project delivery contract award process will be conducted; and

29 (ii) subcontractors and suppliers will be selected.

30 (2) Prior to awarding an alternative project delivery contract, the state agency or the governing body shall

1 determine that the proposal meets at least two of the sets of criteria described in subsections (2)(a) through (2)(c)
 2 and the provisions of subsection (3). To make the determination, the state agency or the governing body shall
 3 make a detailed written finding that:

4 (a) the project has significant schedule ramifications and using the alternative project delivery contract
 5 is necessary to meet critical deadlines by shortening the duration of construction. Factors that the state agency
 6 or the governing body may consider in making its findings include, but are not limited to:

7 (i) operational and financial data that show significant savings or increased opportunities for generating
 8 revenue as a result of early project completion;

9 (ii) demonstrable public benefits that result from less time for construction; or

10 (iii) less or a shorter duration of disruption to the public facility.

11 (b) by using an alternative project delivery contract, the design process will contribute to significant cost
 12 savings. Significant cost savings that may justify an alternative project delivery contract may derive from but are
 13 not limited to value engineering, building systems analysis, life cycle analysis, and construction planning.

14 (c) the project presents significant technical complexities that necessitate the use of an alternative
 15 delivery project contract.

16 (3) The state agency or the governing body shall make a detailed written finding that using an alternative
 17 project delivery contract will not:

18 (a) encourage favoritism or bias in awarding the contract; or

19 (b) substantially diminish competition for the contract.

20 (4) In addition to meeting the criteria set forth in subsections (1) through (3), a state agency or governing
 21 body that utilizes a comprehensive agreement must, for each project:

22 (a) demonstrate a public purpose; and

23 (b) demonstrate that the innovative financing delivery favors the innovative financing contract method
 24 over other available procurement and alternative project delivery methods."

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26 **Section 3.** Section 18-2-503, MCA, is amended to read:

27 **"18-2-503. Alternative project delivery contract -- award criteria.** (1) (a) Whenever a state agency
 28 or a governing body determines, pursuant to 18-2-502, that an alternative project delivery contract is justifiable,
 29 the state agency or the governing body shall publish a request for qualifications.

30 (b) After evaluating the responses to the request for qualifications, a request for proposals must be sent

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

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

7 (a) the applicant's:

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

9 (ii) financial health;

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

11 (iv) approach to the project; and

12 (v) project costs; and

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

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

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

20 (5) A state agency or the governing body may compensate qualified unsuccessful ~~applicants~~
21 respondents to the request for proposal with a designated stipend for the ownership of the work product in the
22 unsuccessful proposal and partial reimbursement for costs incurred in developing and submitting a proposal,
23 provided that all unsuccessful applicants are treated equitably.

24 (6) When utilizing an innovative financing delivery option under this part, a state agency or the governing
25 body shall follow the applicable procurement guidelines, including all applicable rules and law regarding
26 competitive public procurement required under Montana law.

27 (7) When utilizing an innovative financing delivery option under this part, a state agency or the governing
28 body shall, prior to evaluation and selection of proposals, establish an evaluation and selection process, including
29 identifying the individuals who will perform the evaluation and selection. The state agency or governing body shall
30 endeavor to utilize individuals in the evaluation and selection process who have expertise in the subject matter.

- 1 (8) Awarding of a comprehensive agreement must be based on a best value analysis.
- 2 (9) At a minimum, a solicited proposal under an innovative financing delivery option must include the
3 following:
 - 4 (a) an analysis of the costs, benefits, and risk transfers resulting from the innovative financing delivery;
 - 5 (b) a fixed fee price for the entirety of the comprehensive agreement, inclusive of design, construction,
6 financing, operation, or maintenance, as applicable, and reflecting all risk transfer set forth in the terms of the final
7 request for proposals;
 - 8 (c) a detailed schedule and construction plans;
 - 9 (d) a detailed financing plan and financial model for the lifetime of the comprehensive agreement,
10 including any public funding or milestone payments during construction;
 - 11 (e) a list of known utilities and rights-of-way that will be impacted by the project;
 - 12 (f) a list of permits and governmental approvals required for the project; and
 - 13 (g) a plan for utility relocation and right-of-way acquisition to the extent required by the final request for
14 proposals.
- 15 (10) In addition to the provisions set forth in this part, comprehensive agreements may not:
 - 16 (a) violate public construction contract provisions provided for in Title 18, chapter 2, part 4; or
 - 17 (b) transfer ownership of a public asset to a private entity."

19 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

20 - END -