

1 HOUSE BILL NO. 130

2 INTRODUCED BY D. BEDEY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALTERNATIVE PROJECT DELIVERY
 5 AND DESIGN-BUILD CONTRACTING LAWS; PROVIDING FOR A CONSTRUCTION MANAGER GENERAL
 6 CONTRACTOR CONTRACTING PROCESS; REVISING DEFINITIONS; AMENDING SECTIONS 18-2-501,
 7 18-8-204, 18-8-205, 60-2-112, 60-2-134, AND 60-2-137, MCA; AND PROVIDING A TERMINATION DATE."

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

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11 NEW SECTION. Section 1. ~~Alternative project delivery process~~ CONSTRUCTION MANAGER
 12 GENERAL CONTRACTOR CONTRACTING PROCESS -- submission of proposals -- duties. (1) After the commission,
 13 acting on the recommendation of the department, has identified a project for which the ~~alternative project~~
 14 ~~delivery~~ CONSTRUCTION MANAGER GENERAL CONTRACTOR CONTRACTING process will be used, and the commission
 15 has approved the selection criteria proposed by the department, the department shall prepare and advertise a
 16 request for qualifications.

17 (2) From the responders to the request for qualifications, the department shall prepare a short list of
 18 the responders that it believes are most qualified, not to exceed five responders on any single project.

19 (3) (a) The department shall announce the short list and issue a request for proposals to each of the
 20 prospective ~~alternative project delivery~~ contractors on the short list, ~~who may then submit a technical and price~~
 21 ~~proposal to the department.~~

22 (b) A technical and price proposal submitted in response to a request for proposals must contain
 23 detailed descriptions of the prospective ~~alternative project delivery~~ contractor's approach to ~~designing,~~
 24 ~~constructing, and managing the project~~ PERFORMING CONSTRUCTION MANAGEMENT DURING THE PRECONSTRUCTION
 25 PHASE AND THE CONSTRUCTION PHASE in accordance with the ~~alternative project delivery~~ criteria package.

26 (4) (A) The department shall evaluate the technical and price proposals and make a written
 27 recommendation to the commission regarding the department's selection of the ~~alternative project delivery~~
 28 contractor to be awarded the PRECONSTRUCTION PHASE contract.

1 (B) AFTER COMPLETION OF THE PRECONSTRUCTION SERVICES CONTRACT, THE DEPARTMENT SHALL MAKE A
 2 WRITTEN RECOMMENDATION TO THE COMMISSION REGARDING AWARD OF THE CONSTRUCTION CONTRACT.

3 ~~(5) The prospective alternative project delivery contractors who appear on the department's short list~~
 4 ~~but are not awarded the contract may be paid a stipend, in an amount determined by the commission, for costs~~
 5 ~~incurred in submitting the response to the department's request for proposals.~~

6

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

8 **"18-2-501. (Temporary) Definitions.** As used in this part, unless the context clearly requires
 9 otherwise, the following definitions apply:

10 (1) (a) "Alternative project delivery contract" means a construction management contract, a ~~general~~
 11 ~~contractor construction management~~ CONSTRUCTION MANAGER GENERAL CONTRACTOR contract, or a design-build
 12 contract.

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

15 (2) "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
 18 completion.

19 (3) "CONSTRUCTION MANAGER GENERAL CONTRACTOR CONTRACT" MEANS A CONTRACT IN WHICH THE
 20 GENERAL CONTRACTOR, IN ADDITION TO PROVIDING THE PRECONSTRUCTION, BUDGETING, AND SCHEDULING SERVICES,
 21 PROCURES NECESSARY CONSTRUCTION SERVICES, EQUIPMENT, SUPPLIES, AND MATERIALS THROUGH COMPETITIVE
 22 BIDDING CONTRACTS WITH SUBCONTRACTORS AND SUPPLIERS TO CONSTRUCT THE PROJECT.

23 ~~(3)~~ (4) "Contractor" has the meaning provided in 18-4-123.

24 ~~(4)~~ (5) "Design-build contract" means a contract in which the designer-builder assumes the
 25 responsibility and the risk for architectural or engineering design and construction delivery under a single
 26 contract with the owner.

27 ~~(5) "General contractor construction management contract" means a contract in which the general~~
 28 ~~contractor, in addition to providing the preconstruction, budgeting, and scheduling services, procures necessary~~

1 ~~construction services, equipment, supplies, and materials through competitive bidding contracts with~~
 2 ~~subcontractors and suppliers to construct the project.~~

3 (6) "Governing body" means:

4 (a) the legislative authority of:

5 (i) a municipality, county, or consolidated city-county established pursuant to Title 7, chapter 1, 2, or
 6 3;

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

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

9 (b) the board of directors of a county water or sewer district established pursuant to Title 7, chapter
 10 13, parts 22 and 23; ~~or~~

11 (c) the trustees of a fire district established pursuant to Title 7, chapter 33, or the county
 12 commissioners or trustees of a fire service area established pursuant to 7-33-2401; ~~or~~

13 (d) the transportation commission established in 2-15-2502.

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

16 (8) "Publish" means publication of notice as provided for in 7-1-2121, 7-1-4127, 18-2-301, and 20-9-
 17 204.

18 (9) "State agency" has the meaning provided in 2-2-102. This definition does not include the
 19 department of transportation. (Terminates December 31, 2024--sec. 6, Ch. 54, L. 2017.)

20 **18-2-501. (Effective January 1, 2025) Definitions.** As used in this part, unless the context clearly
 21 requires otherwise, the following definitions apply:

22 (1) "Alternative project delivery contract" means a construction management contract, a ~~general~~
 23 ~~contractor construction management~~ CONSTRUCTION MANAGER GENERAL CONTRACTOR contract, or a design-build
 24 contract.

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

1 (3) "CONSTRUCTION MANAGER GENERAL CONTRACTOR CONTRACT" MEANS A CONTRACT IN WHICH THE
 2 GENERAL CONTRACTOR, IN ADDITION TO PROVIDING THE PRECONSTRUCTION, BUDGETING, AND SCHEDULING SERVICES,
 3 PROCURES NECESSARY CONSTRUCTION SERVICES, EQUIPMENT, SUPPLIES, AND MATERIALS THROUGH COMPETITIVE
 4 BIDDING CONTRACTS WITH SUBCONTRACTORS AND SUPPLIERS TO CONSTRUCT THE PROJECT.

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

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

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

13 (6) "Governing body" means:

14 (a) the legislative authority of:

15 (i) a municipality, county, or consolidated city-county established pursuant to Title 7, chapter 1, 2, or
 16 3;

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

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

19 (b) the board of directors of a county water or sewer district established pursuant to Title 7, chapter
 20 13, parts 22 and 23; or

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

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

25 (8) "Publish" means publication of notice as provided for in 7-1-2121, 7-1-4127, 18-2-301, and 20-9-
 26 204.

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

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Section 3. Section 18-8-204, MCA, is amended to read:

"18-8-204. Procedures for selection. (1) In the procurement of architectural, engineering, and land surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit annually or biennially a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) (a) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project.

(b) The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:

- (i) the qualifications of professional personnel to be assigned to the project;
- (ii) capability to meet time and project budget requirements;
- (iii) location;
- (iv) present and projected workloads;
- (v) related experience on similar projects; and
- (vi) recent and current work for the agency.

(c) The agency shall follow the minimum criteria of this part if no other agency procedures are specifically adopted.

(3) After conducting an evaluation of firms pursuant to subsections (1) and (2)(b), a local agency may enter into a contract with one or more of those firms to provide architectural, engineering, or land surveying services on an as-needed basis for one or more projects and for a term to be mutually agreed to by the parties. Nothing in this subsection prevents a local agency from following the procurement procedures in this part for professional services for a particular project, unless a contract made pursuant to this subsection provides otherwise.

1 (4) The provisions of this section do not apply to procurement of architectural, engineering, and land
 2 surveying services for projects that the ~~department of transportation has determined are~~ transportation
 3 commission has approved as part of the design-build contracting program authorized in 60-2-137."
 4

5 **Section 4.** Section 18-8-205, MCA, is amended to read:

6 **"18-8-205. Negotiation of contract for services.** (1) The agency shall negotiate a contract with the
 7 most qualified firm for architectural, engineering, and land surveying services at a price that the agency
 8 determines to be fair and reasonable. In making its determination, the agency shall take into account the
 9 estimated value of the services to be rendered, as well as the scope, complexity, and professional nature of the
 10 services.

11 (2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the
 12 agency determines to be fair and reasonable, negotiations with that firm must be formally terminated and the
 13 agency shall select other firms in accordance with 18-8-204 and continue as directed in this section until an
 14 agreement is reached or the process is terminated.

15 (3) The provisions of this section do not apply to the negotiation of contracts for projects that the
 16 ~~department of transportation has determined are~~ transportation commission has approved as part of the
 17 design-build contracting program authorized in 60-2-137."
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19 **Section 5.** Section 60-2-112, MCA, is amended to read:

20 **"60-2-112. (Temporary) Competitive bidding -- reciprocity.** (1) Except as provided in subsections
 21 (2) through (6), if the estimated cost of any work exceeds \$50,000, the commission shall award the contract by
 22 competitive bidding to the lowest responsible and responsive bidder. The award must be made upon the notice
 23 and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the
 24 commission shall make awards and contracts in accordance with 18-1-102.

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

27 (3) The commission may enter into contracts with units of local government for the construction of
 28 projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including

1 total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting
2 services, administrative costs, and reasonable estimates of other costs attributable to the project.

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

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

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

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

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

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

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

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

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

28 (7) Subject to 60-2-119, the commission may award ~~alternative project delivery~~ CONSTRUCTION

1 MANAGER GENERAL CONTRACTOR contracts in accordance with Title 18, chapter 2, part 5, ~~for projects that the~~
 2 ~~department has determined are appropriate for those contracts.~~ if the provisions of [section 1] have been met.

3 (8) For the purposes of subsection (6), "construction" has the meaning provided in 18-2-101.
 4 (Terminates December 31, 2024--sec. 6, Ch. 54, L. 2017.)

5 **60-2-112. (Effective January 1, 2025) Competitive bidding -- reciprocity.** (1) Except as provided in
 6 subsections (2) through (6), if the estimated cost of any work exceeds \$50,000, the commission shall award the
 7 contract by competitive bidding to the lowest responsible and responsive bidder. The award must be made
 8 upon the notice and terms that the commission prescribes by its rules. However, except when prohibited by
 9 federal law, the commission shall make awards and contracts in accordance with 18-1-102.

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

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

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

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

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

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

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

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

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

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

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

13 (7) For the purposes of subsection (6), "construction" has the meaning provided in 18-2-101."
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15 **Section 6.** Section 60-2-134, MCA, is amended to read:

16 **"60-2-134. Definitions.** For the purposes of 18-8-204, 18-8-205, 60-2-111, 60-2-112, 60-2-137, and
17 this section, the following definitions apply:

18 (1) "Design-build contracting" means the process of entering into a single contract between the
19 commission and a design-build contractor in which the design-build contractor agrees to design and build a
20 highway, structure, or facility or any other items required in a request for proposals.

21 (2) "Design-build contractor" means an individual, partnership, corporation, joint venture, or other
22 legally recognized entity that is appropriately licensed in Montana and that provides the necessary design and
23 construction services, including contract administration.

24 (3) "Design-build criteria package" means the document provided by the department that contains the
25 information necessary to guide a prospective design-build contractor in the preparation and submission of a
26 proposal for a design-build project.

27 (4) "Request for proposals" means a part of the design-build or alternative project delivery criteria
28 package that contains a detailed scope of work, including design concepts, technical requirements and

1 specifications, the time allowed for design and construction, the department's estimated cost of the project, the
2 deadline for submitting a proposal, the selection criteria, and a copy of the contract.

3 (5) "Request for qualifications" means a part of the design-build or alternative project delivery criteria
4 package that contains the desired minimum qualifications of the design-build contractor, a scope of work
5 statement, the project requirements, the amount of reimbursement that the commission has determined will be
6 paid to prospective design-build contractors who qualify for the short list but are not awarded a contract, and
7 the selection criteria that the department will use in compiling the short list of prospective design-build
8 contractors to consider."

9

10 **Section 7.** Section 60-2-137, MCA, is amended to read:

11 **"60-2-137. Design-build contracting process -- submission of proposals -- department's duties.**

12 (1) Once the commission, acting on a recommendation of the department, has identified a project for which the
13 design-build contracting process will be used, and the commission has approved selection criteria proposed by
14 the department, the department shall prepare and advertise a request for qualifications.

15 (2) From the responders to the request for qualifications, the department shall prepare a short list of
16 the responders that it believes are most qualified, not to exceed five responders on any single project.

17 (3) (a) The department shall announce the short list and issue a request for proposals to each of the
18 prospective design-build contractors on the short list, who may then submit a technical and price proposal to
19 the department.

20 (b) A technical and price proposal submitted in response to a request for proposals must contain
21 detailed descriptions of the prospective design-build contractor's approach to designing, constructing, and
22 managing the project in accordance with the design-build criteria package. The technical and price proposal
23 must also include the prospective design-build contractor's conceptual design and construction sequence and
24 schedule and the lump-sum price to complete the project.

25 (4) The department shall evaluate the technical and price proposals and make a written
26 recommendation to the commission regarding the department's selection of the design-build contractor to be
27 awarded the contract.

28 (5) The prospective design-build contractors who appeared on the department's short list but are not

1 awarded the contract may be paid a stipend, in an amount determined by the commission, for costs incurred in
2 submitting the response to the department's request for proposals."

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4 **NEW SECTION. Section 8. Codification instruction.** [Section 1] is intended to be codified as an
5 integral part of Title 60, chapter 2, part 1, and the provisions of Title 60, chapter 2, part 1, apply to [section 1].

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7 **NEW SECTION. Section 9. Termination.** [Section 1] terminates December 31, 2024.

8 - END -