

**Amendment - 1st Reading-white - Requested by: Andrea Olsen - (S) Highways and Transportation**

68th Legislature

Drafter: Joe Carroll, 406-444-3804

SB0057.001.003

1 SENATE BILL NO. 57  
2 INTRODUCED BY T. MANZELLA  
3 BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DEPARTMENT OF TRANSPORTATION  
6 CONTRACTING; PROVIDING FOR ALTERNATIVE PROJECT DELIVERY METHODS; REVISING  
7 TERMINATION DATES REGARDING ALTERNATIVE PROJECT DELIVERY; AMENDING SECTIONS 18-8-  
8 204, 18-8-205, 60-2-111, 60-2-112, AND 60-2-134, MCA; AMENDING SECTION 6, CHAPTER 54, LAWS OF  
9 2017, AND SECTION 9, CHAPTER 111, LAWS OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE  
10 DATE."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
13

14 NEW SECTION. Section 1. Alternative project delivery. (1) The Subject to the provisions of 18-2-  
15 502, the commission may use alternative project delivery methods for letting contracts.

16 (2) Once the commission, acting on a recommendation of the department, identifies a project for  
17 which an alternative project delivery method will be used and approves selection criteria proposed by the  
18 department, the department shall prepare and advertise a request for qualifications.

19 (3) From the responders, the department shall prepare a short list of the highest scoring  
20 responders, not to exceed five responders on any single project.

21 (4) The department shall announce the short list and issue a request for proposals inviting each  
22 responder on the short list to submit a technical and price proposal to the department.

23 (5) The department shall evaluate the technical and price proposals and present to the  
24 commission the department's written recommendation to award the contract.

25 (6) The commission shall award alternative project delivery contracts in substantial compliance  
26 with 18-2-503.  
27

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1           **Section 2.** Section 18-8-204, MCA, is amended to read:

2           **"18-8-204. Procedures for selection.** (1) In the procurement of architectural, engineering, and land  
3 surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit  
4 annually or biennially a statement of qualifications and performance data. The agency shall evaluate current  
5 statements of qualifications and performance data on file with the agency, together with those that may be  
6 submitted by other firms regarding the proposed project, and conduct discussions with one or more firms  
7 regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the  
8 required services.

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

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

14           (i)     the qualifications of professional personnel to be assigned to the project;

15           (ii)    capability to meet time and project budget requirements;

16           (iii)   location;

17           (iv)    present and projected workloads;

18           (v)     related experience on similar projects; and

19           (vi)    recent and current work for the agency.

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

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

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1 (4) The provisions of this section do not apply to procurement of architectural, engineering, and  
2 land surveying services for projects that the transportation commission has approved pursuant to an alternative  
3 project delivery method under [section 1] or as part of the design-build contracting program authorized in 60-2-  
4 137.

5 ~~(5) The definitions in 60-2-134 apply to this section.~~

6  
7 **Section 3.** Section 18-8-205, MCA, is amended to read:

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

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

17 (3) The provisions of this section do not apply to the negotiation of contracts for projects that the  
18 transportation commission has approved pursuant to an alternative project delivery method under [section 1] or  
19 as part of the design-build contracting program authorized in 60-2-137.

20 ~~(4) The definitions in 60-2-134 apply to this section.~~

21  
22 **Section 4.** Section 60-2-111, MCA, is amended to read:

23 **"60-2-111. (Temporary) Letting of contracts on state highways and commission-designated**  
24 **highway systems.** (1) Except as provided in subsection (2), all contracts for the construction or reconstruction  
25 of the highways located on commission-designated highway systems and state highways, including portions in  
26 cities and towns, and all contracts entered into under 7-14-4108 must be let by the commission. Except as  
27 otherwise specifically provided, the commission may enter the types of contracts and upon terms that it may

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1 decide. All contracts must meet the requirements of Title 18, chapter 2, part 4. When there is no prevailing rate  
2 of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the  
3 contract.

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

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

8 (4) Subject to 60-2-119, the commission may award alternative project delivery contracts in  
9 accordance with Title 18, chapter 2, part 5, for projects that the department has determined are appropriate for  
10 those contracts. (~~Terminates December 31, 2024~~ June 30, 2023—sec. 6, Ch. 54, L. 2017.)

11 **60-2-111. (Effective January 1, 2025 July 1, 2023) Letting of contracts on state highways and**  
12 **commission-designated highway systems.** (1) Except as provided in subsection (2), all contracts for the  
13 construction or reconstruction of the highways located on commission-designated highway systems and state  
14 highways, including portions in cities and towns, and all contracts entered into under 7-14-4108 must be let by  
15 the commission. Except as otherwise specifically provided, the commission may enter the types of contracts  
16 and upon terms that it may decide. All contracts must meet the requirements of Title 18, chapter 2, part 4.  
17 When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the  
18 prevailing rate to be stated in the contract.

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

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

23 (4) The commission may award contracts using alternative project delivery methods in accordance  
24 with [section 1]."

25

26 **Section 5.** Section 60-2-112, MCA, is amended to read:

27 **"60-2-112. (Temporary) Competitive bidding -- reciprocity.** (1) Except as provided in subsections

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1 (2) through (6), if the estimated cost of any work exceeds \$50,000, the commission shall award the contract by  
2 competitive bidding to the lowest responsible and responsive bidder. The award must be made upon the notice  
3 and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the  
4 commission shall make awards and contracts in accordance with 18-1-102.

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

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

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

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

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

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

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

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

26 (ii) specific ownership requirements and tax policies in the United States and in the foreign  
27 country, or province or other political subdivision of that country, that may result in the unequal treatment of all

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1 bids received, regardless of their origin;

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

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

9 (7) Subject to 60-2-119, the commission may award general contractor construction management  
10 contracts in accordance with Title 18, chapter 2, part 5, if the provisions of 60-2-145 have been met.

11 (8) For the purposes of subsection (6), "construction" has the meaning provided in 18-2-101.  
12 (Terminates ~~December 31, 2024~~ June 30, 2023 --sec. 6, Ch. 54, L. 2017.)

13 **60-2-112. (Effective ~~January 1, 2025~~ July 1, 2023) Competitive bidding -- reciprocity.** (1) Except  
14 as provided in subsections (2) through (6), if the estimated cost of any work exceeds \$50,000, the commission  
15 shall award the contract by competitive bidding to the lowest responsible and responsive bidder. The award  
16 must be made upon the notice and terms that the commission prescribes by its rules. However, except when  
17 prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102.

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

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

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

26 (5) The commission may award a design-build contract under the design-build contracting program  
27 if the provisions of 60-2-137 have been met. The commission may also award a contract using an alternative

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1 project delivery method under [section 1].

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

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

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

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

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

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

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

23 (7) For the purposes of subsection (6), "construction" has the meaning provided in 18-2-101."  
24

25 **Section 6.** Section 60-2-134, MCA, is amended to read:

26 **"60-2-134. Definitions.** For the purposes of 18-8-204, 18-8-205, 60-2-111, 60-2-112, 60-2-137,  
27 [section 1], and this section, the following definitions apply:

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1 (1) (a) "Alternative project delivery method" means a process approved by the commission and  
2 recognized by the U.S. department of transportation, federal highway administration, for federal participation  
3 under the United States Code and federal regulations.

4 (b) The term does not include a design-build contract awarded by the commission under 60-2-  
5 111(3).

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

9 (2)(3) "Design-build contractor" means an individual, partnership, corporation, joint venture, or other  
10 legally recognized entity that is appropriately licensed in Montana and that provides the necessary design and  
11 construction services, including contract administration.

12 (3)(4) "Design-build or alternative project delivery criteria package" means the document provided by  
13 the department that contains the information necessary to guide a prospective design-build contractor in the  
14 preparation and submission of a proposal for a design-build or alternative project delivery project.

15 (4)(5) "Request for proposals" means a part of the design-build or alternative project delivery criteria  
16 package that contains a detailed scope of work, including design concepts, technical requirements and  
17 specifications, the time allowed for design and construction, the department's estimated cost of the project, the  
18 deadline for submitting a proposal, the selection criteria, and a copy of the contract.

19 (5)(6) "Request for qualifications" means a part of the design-build or alternative project delivery  
20 criteria package that contains the desired minimum qualifications of the design-build or alternative project  
21 delivery contractor, a scope of work statement, the project requirements, the amount of reimbursement that the  
22 commission has determined will be paid to prospective ~~design-build~~ contractors who qualify for the short list but  
23 are not awarded a contract, if applicable, and the selection criteria that the department will use in compiling the  
24 short list of prospective design-build contractors to consider."

25

26 **Section 7.** Section 6, Chapter 54, Laws of 2017, is amended to read:

27 **"Section 6. Termination.** [This act] terminates ~~December 31, 2024.~~ June 30, 2023."



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**Section 8.** Section 9, Chapter 111, Laws of 2021, is amended to read:

**"Section 9. Termination.** [Section 1] terminates ~~December 31, 2024.~~ June 30, 2023."

NEW SECTION. Section 9. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60, chapter 2, part 1, apply to [section 1].

NEW SECTION. Section 10. Effective date. [This act] is effective on passage and approval.

- END -

AMENDED