

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 commission may use alternative
 15 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
 26 **Section 2.** Section 18-8-204, MCA, is amended to read:

27 "**18-8-204. Procedures for selection.** (1) In the procurement of architectural, engineering, and land
 28 surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit

1 annually or biennially a statement of qualifications and performance data. The agency shall evaluate current
2 statements of qualifications and performance data on file with the agency, together with those that may be
3 submitted by other firms regarding the proposed project, and conduct discussions with one or more firms
4 regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the
5 required services.

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

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

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

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

13 (iii) location;

14 (iv) present and projected workloads;

15 (v) related experience on similar projects; and

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

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

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

25 (4) The provisions of this section do not apply to procurement of architectural, engineering, and
26 land surveying services for projects that the transportation commission has approved pursuant to an alternative
27 project delivery method under [section 1] or as part of the design-build contracting program authorized in 60-2-
28 137.

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

2

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

4 **"18-8-205. Negotiation of contract for services.** (1) The agency shall negotiate a contract with the
5 most qualified firm for architectural, engineering, and land surveying services at a price that the agency
6 determines to be fair and reasonable. In making its determination, the agency shall take into account the
7 estimated value of the services to be rendered, as well as the scope, complexity, and professional nature of the
8 services.

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

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

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

17

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

19 **"60-2-111. (Temporary) Letting of contracts on state highways and commission-designated**
20 **highway systems.** (1) Except as provided in subsection (2), all contracts for the construction or reconstruction
21 of the highways located on commission-designated highway systems and state highways, including portions in
22 cities and towns, and all contracts entered into under 7-14-4108 must be let by the commission. Except as
23 otherwise specifically provided, the commission may enter the types of contracts and upon terms that it may
24 decide. All contracts must meet the requirements of Title 18, chapter 2, part 4. When there is no prevailing rate
25 of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the
26 contract.

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

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

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

6 **60-2-111. (Effective ~~January 1, 2025~~ July 1, 2023) Letting of contracts on state highways and**
7 **commission-designated highway systems.** (1) Except as provided in subsection (2), all contracts for the
8 construction or reconstruction of the highways located on commission-designated highway systems and state
9 highways, including portions in cities and towns, and all contracts entered into under 7-14-4108 must be let by
10 the commission. Except as otherwise specifically provided, the commission may enter the types of contracts
11 and upon terms that it may decide. All contracts must meet the requirements of Title 18, chapter 2, part 4.
12 When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the
13 prevailing rate to be stated in the contract.

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

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

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

20

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

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

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

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

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

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

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

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

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

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

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

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

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

1 subdivision of that country.

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

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

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

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

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

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

19 (5) The commission may award a design-build contract under the design-build contracting program
20 if the provisions of 60-2-137 have been met. The commission may also award a contract using an alternative
21 project delivery method under [section 1].

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

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

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

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

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

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

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

15 (7) For the purposes of subsection (6), "construction" has the meaning provided in 18-2-101."
16

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

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

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

23 (b) The term does not include a design-build contract awarded by the commission under 60-2-
24 111(3).

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

28 ~~(2)(3)~~ "Design-build contractor" means an individual, partnership, corporation, joint venture, or other

1 legally recognized entity that is appropriately licensed in Montana and that provides the necessary design and
 2 construction services, including contract administration.

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

6 ~~(4)~~(5) "Request for proposals" means a part of the design-build or alternative project delivery criteria
 7 package that contains a detailed scope of work, including design concepts, technical requirements and
 8 specifications, the time allowed for design and construction, the department's estimated cost of the project, the
 9 deadline for submitting a proposal, the selection criteria, and a copy of the contract.

10 ~~(5)~~(6) "Request for qualifications" means a part of the design-build or alternative project delivery
 11 criteria package that contains the desired minimum qualifications of the design-build or alternative project
 12 delivery contractor, a scope of work statement, the project requirements, the amount of reimbursement that the
 13 commission has determined will be paid to prospective ~~design-build~~ contractors who qualify for the short list but
 14 are not awarded a contract, if applicable, and the selection criteria that the department will use in compiling the
 15 short list of prospective design-build contractors to consider."

16

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

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

19

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

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

22

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

25

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

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