



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

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

Section 1. Alternative project delivery. (1) The commission may use alternative project delivery methods for letting contracts.

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

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

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

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

Section 2. 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.

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

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

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

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

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

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

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

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

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

(4) Subject to 60-2-119, the commission may award alternative project delivery contracts in

accordance with Title 18, chapter 2, part 5, for projects that the department has determined are appropriate for those contracts. (Terminates ~~December 31, 2024~~ June 30, 2023 --sec. 6, Ch. 54, L. 2017.)

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

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

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

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

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

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

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

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting

services, administrative costs, and reasonable estimates of other costs attributable to the project.

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

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

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

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

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

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

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

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

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

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

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

(Terminates ~~December 31, 2024~~ June 30, 2023 -- ~~sec. 6, Ch. 54, L. 2017.~~)

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

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

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

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

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

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

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

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

(i) the equal and fair treatment of bids originating in the United States and in the foreign country,

or province or other political subdivision of that country;

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

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

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

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

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

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

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

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

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

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

(3)(4) "Design-build or alternative project delivery criteria package" means the document provided by

the department that contains the information necessary to guide a prospective design-build contractor in the preparation and submission of a proposal for a design-build or alternative project delivery project.

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

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

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

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

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."

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].

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

- END -

I hereby certify that the within bill,
SB 57, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2023.

Speaker of the House

Signed this _____ day
of _____, 2023.

SENATE BILL NO. 57

INTRODUCED BY T. MANZELLA

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

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