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SENATE BILL NO. 483
INTRODUCED BY C. POPE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALTERNATIVE PROJECT DELIVERY LAWS; REVISING AND PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS FOR AWARDING A COMPREHENSIVE AGREEMENT; PROVIDING STIPENDS TO QUALIFIED UNSUCCESSFUL RESPONDENTS TO A REQUEST FOR PROPOSAL; SETTING BASIC MINIMUM REQUIREMENTS FOR A SOLICITED PROPOSAL UNDER AN INNOVATIVE FINANCING DELIVERY OPTION; PROVIDING ADDITIONAL CRITERIA FOR SELECTING AND AWARDING INNOVATIVE FINANCING DELIVERY OPTIONS; PROVIDING FOR OTHER RESTRICTIONS ON COMPREHENSIVE AGREEMENTS; EXEMPTING COMPREHENSIVE AGREEMENTS FROM PROCUREMENT TIME LIMITS; AMENDING SECTIONS 18-2-501, 18-2-502, 18-2-503, AND 18-4-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

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

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

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

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

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

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

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

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

8 ~~(3)~~(5) "Contractor" has the meaning provided in 18-4-123.

9 ~~(4)~~(6) "Design-build contract" means a contract in which the designer-builder assumes the
10 responsibility and the risk for architectural or engineering design and construction delivery under a single
11 contract with the owner.

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

14 ~~(5)~~(8) "General contractor construction management contract" means a contract in which the general
15 contractor, in addition to providing the preconstruction, budgeting, and scheduling services, procures necessary
16 construction services, equipment, supplies, and materials through competitive bidding contracts with
17 subcontractors and suppliers to construct the project.

18 ~~(6)~~(9) "Governing body" means:

19 (a) the legislative authority of:

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

21 or 3;

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

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

24 (b) the board of directors of a county water or sewer district established pursuant to Title 7, chapter
25 13, parts 22 and 23;

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

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

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

6 ~~(7)~~(11) "Project" means any construction or any improvement of the land, a building, or another
 7 improvement that is suitable for use as a state or local governmental facility.

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

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

12 ~~(9)~~(14) "State agency" has the meaning provided in 2-2-102. This definition does not include the
 13 department of transportation. (Terminates December 31, 2024--sec. 6, Ch. 54, L. 2017.)

14 **18-2-501. (Effective January 1, 2025) Definitions.** As used in this part, unless the context clearly
 15 requires otherwise, the following definitions apply:

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

18 (2) "Best value" means a procurement in which the decision is based on the primary objective of
 19 meeting the specific goals and best interests of the state agency or governing body, including but not limited to
 20 qualifications, technical, design, pricing, financing viability, and schedule. This selection must be based on
 21 criteria that have been communicated to the proposers in the final request for proposals.

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

25 ~~(2)~~(4) "Construction management contract" means a contract in which the contractor acts as the
 26 public owner's construction manager and provides leadership and administration for the project, from planning
 27 and design, in cooperation with the designers and the project owners, to project startup and construction
 28 completion.

1 ~~(3)~~(5) "Contractor" has the meaning provided in 18-4-123.

2 ~~(4)~~(6) "Design-build contract" means a contract in which the designer-builder assumes the
3 responsibility and the risk for architectural or engineering design and construction delivery under a single
4 contract with the owner.

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

7 ~~(5)~~(8) "General contractor construction management contract" means a contract in which the general
8 contractor, in addition to providing the preconstruction, budgeting, and scheduling services, procures necessary
9 construction services, equipment, supplies, and materials through competitive bidding contracts with
10 subcontractors and suppliers to construct the project.

11 ~~(6)~~(9) "Governing body" means:

12 (a) the legislative authority of:

13 (i) a municipality, county, or consolidated city-county established pursuant to Title 7, chapter 1, 2,
14 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
18 13, parts 22 and 23; or

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

1 9-204.

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

4 ~~(9)(14)~~ "State agency" has the meaning provided in 2-2-102, except that the department of
 5 transportation, provided for in 2-15-2501, is not considered a state agency."

6

7 **Section 2.** Section 18-2-502, MCA, is amended to read:

8 **"18-2-502. Alternative project delivery contract -- authority -- criteria.** (1) Subject to the provisions
 9 of this part, a state agency or a governing body may use an alternative project delivery contract. A state agency
 10 or governing body that uses an alternative project delivery contract shall:

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

13 (b) clearly describe the manner in which:

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

15 (ii) subcontractors and suppliers will be selected.

16 (2) Prior to awarding an alternative project delivery contract, the state agency or the governing
 17 body shall determine that the proposal meets at least two of the sets of criteria described in subsections (2)(a)
 18 through (2)(c) and the provisions of subsection (3). To make the determination, the state agency or the
 19 governing body shall make a detailed written finding that:

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

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

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

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

27 (b) by using an alternative project delivery contract, the design process will contribute to significant
 28 cost savings. Significant cost savings that may justify an alternative project delivery contract may derive from

1 but are not limited to value engineering, building systems analysis, life cycle analysis, and construction
2 planning.

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

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

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

8 (b) substantially diminish competition for the contract.

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

11 (a) demonstrate a public purpose; and

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

14

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

16 **"18-2-503. Alternative project delivery contract -- award criteria.** (1) (a) Whenever a state agency
17 or a governing body determines, pursuant to 18-2-502, that an alternative project delivery contract is justifiable,
18 the state agency or the governing body shall publish a request for qualifications.

19 (b) After evaluating the responses to the request for qualifications, a request for proposals must be
20 sent to each respondent that meets the qualification criteria specified in the request for qualifications. The
21 request for proposals must clearly describe the project, the state agency's or the governing body's needs with
22 respect to the project, the requirements for submitting a proposal, criteria that will be used to evaluate
23 proposals, and any other factors, including any weighting, that will be used to award the alternative project
24 delivery contract.

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

27 (a) the applicant's:

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

- 1 (ii) financial health;
- 2 (iii) staff or workforce that is proposed to be committed to the project;
- 3 (iv) approach to the project; and
- 4 (v) project costs; and

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

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

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

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

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

19 (7) When utilizing an innovative financing delivery option under this part, a state agency or the
20 governing body shall, prior to issuing a request for proposals, establish an evaluation and selection process,
21 including identifying the individuals who will perform the evaluation and selection. The state agency or the
22 governing body shall endeavor to utilize individuals in the evaluation and selection process who have expertise
23 in the subject matter.

24 (8) Awarding of a comprehensive agreement must be based on a best value analysis.

25 (9) At a minimum, a solicited proposal under an innovative financing delivery option must include
26 the following:

27 (a) an analysis of the costs, benefits, and risk transfers resulting from the innovative financing
28 delivery;

1 **(b) a fixed fee price for the entirety of the comprehensive agreement, inclusive of design,**
2 **construction, financing, operation, or maintenance, as applicable, and reflecting all risk transfer set forth in the**
3 **terms of the final request for proposals;**

4 **(c) a detailed schedule and construction plans;**

5 **(d) a detailed financing plan and financial model for the lifetime of the comprehensive agreement,**
6 **including any public funding or milestone payments during construction;**

7 **(e) a list of known utilities and rights-of-way that will be impacted by the project;**

8 **(f) a list of permits and governmental approvals required for the project; and**

9 **(g) a plan for utility relocation and right-of-way acquisition to the extent required by the final**
10 **request for proposals.**

11 **(10) In addition to the provisions set forth in this part, comprehensive agreements may not:**

12 **(a) violate public construction contract provisions provided for in Title 18, chapter 2, part 4; or**

13 **(b) transfer ownership of a public asset to a private party.**

14 **(11) If operation and maintenance of an existing facility subject to an innovative financing delivery**
15 **contract under this section is performed by employees covered by a collective bargaining agreement prior to**
16 **becoming an eligible project for innovative financing delivery, the employees performing operation and**
17 **maintenance of the completed facility must also be covered by a collective bargaining agreement."**

18

19 **Section 4.** Section 18-4-313, MCA, is amended to read:

20 **"18-4-313. Contracts -- terms, extensions, and time limits.** (1) Except as provided in subsection (2)
21 or unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be
22 made for a period of more than 7 years. A contract, lease, or rental agreement may be extended or renewed if
23 the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first
24 fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal,
25 does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the
26 availability and appropriation of funds for the fiscal periods.

27 (2) The contract term limit specified in subsection (1) does not apply to:

28 (a) a contract for hardware, software, or other information technology resources, which may be

1 made for a period not to exceed 10 years;

2 (b) a department of revenue liquor store contract governed by the term specified in 16-2-101;

3 (c) a department of corrections contract governed by the term specified in 53-1-203, 53-30-505, or
4 53-30-608;

5 (d) the department of administration state employee group benefit plans contracts governed by the
6 term specified in 2-18-811, including group benefit plan contracts made in partnership with the Montana
7 university system group benefit plan; and

8 (e) a contract for concessions or visitor services for a state park, state recreational area, state
9 monument, or state historic site established under Title 23, chapter 1, part 1, that, with the consent of the state
10 parks and recreation board, may be made for a period of not more than 20 years if a capital improvement is
11 made, subject to subsection (5); or

12 (f) a comprehensive agreement that uses an innovative financing delivery option as provided in
13 18-2-501 through 18-2-503.

14 (3) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

15 (a) estimated requirements cover the period of the contract and are reasonably firm and
16 continuing; and

17 (b) the contract will serve the best interests of the state by encouraging effective competition or
18 otherwise promoting economies in state procurement.

19 (4) If funds are not appropriated or otherwise made available to support continuation of
20 performance in a subsequent fiscal period, the contract must be canceled.

21 (5) A contract under subsection (2)(e) must require the concessionaire to provide a business plan
22 offering a reasonable estimation that the cost of any capital improvement by the concessionaire will be repaid
23 within the life of the contract or that where a proprietary interest is held, the concessionaire's interest in any
24 capital improvement may be sold at appraised value to a subsequent concessionaire when the contract
25 concludes."

26

27 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

28

