

1 HOUSE BILL NO. 151

2 INTRODUCED BY M. HOPKINS

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE BUILDING CONSTRUCTION
6 PROCUREMENT LAWS; RAISING THE COST THRESHOLD OF CONSTRUCTION ACTIVITIES THAT
7 REQUIRE LEGISLATIVE APPROVAL; RAISING CERTAIN COST THRESHOLDS FOR SUPERVISION
8 REQUIREMENTS OF BUILDING CONSTRUCTION; PROVIDING FOR INFLATIONARY ADJUSTMENT OF
9 CERTAIN COST THRESHOLDS THROUGH RULEMAKING; AUTHORIZING THE DEPARTMENT OF
10 ADMINISTRATION TO NEGOTIATE A CONTRACT WITHOUT COMPETITIVE BIDDING IF AN EMERGENCY
11 OR PUBLIC EXIGENCY EXISTS AND TO NEGOTIATE DEDUCTIVE CHANGES OF A GREATER
12 PERCENTAGE OF THE TOTAL COST OF THE PROJECT WHEN BIDS RECEIVED EXCEED THE
13 APPROPRIATION; RAISING THE COST THRESHOLD UNDER WHICH THE DEPARTMENT OF
14 ADMINISTRATION MAY PREPARE WORKING DRAWINGS FOR BUILDING CONSTRUCTION; RAISING
15 THE COST THRESHOLD FOR WAIVING CERTAIN SECURITY REQUIREMENTS; ALLOWING FOR PUBLIC
16 NOTICE THROUGH ELECTRONIC MEANS FOR COMPETITIVE BIDDING ON CERTAIN PROJECTS;
17 ALLOWING BUILDING CONSTRUCTION BIDS TO BE SECURED BY AN IRREVOCABLE LETTER OF
18 CREDIT; PROVIDING RULEMAKING AUTHORITY; ESTABLISHING REPORTING REQUIREMENTS;
19 AMENDING SECTIONS 18-2-102, 18-2-103, 18-2-105, 18-2-111, 18-2-201, 18-2-301, 18-2-302, AND 18-2-
20 501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
23

24 **Section 1.** Section 18-2-102, MCA, is amended to read:

25 **"18-2-102. Authority to construct buildings -- REPORTING REQUIREMENT.** (1) Except as provided in
26 22-3-1003 and subsection (2) of this section, ~~a building costing more than \$150,000 may not be constructed~~
27 ~~without~~ construction activities costing more than \$300,000 require the consent of the legislature. Legislative
28 approval of repair and maintenance costs as part of an agency's operating budget constitutes the legislature's

1 consent. When a building costing more than ~~\$150,000~~ \$300,000 is to be financed in a manner that does not
2 require legislative appropriation of money, the consent may be in the form of a joint resolution.

3 (2) (a) The governor may authorize the emergency repair or alteration of a building and is
4 authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made
5 from the funds for an uncompleted capital project unless the project is under the supervision of the same
6 agency.

7 (b) The regents of the Montana university system may authorize the construction of revenue-
8 producing facilities referred to in 20-25-302 if they are to be financed wholly from the revenue from the facility.

9 (c) The regents of the Montana university system, with the consent of the governor, may authorize
10 the construction of a building that is financed wholly with federal or private money if the construction of the
11 building will not result in any new programs.

12 (d) The regents of the Montana university system may authorize the construction of facilities as
13 provided in 20-25-309.

14 (e) The department of military affairs, with the consent of the governor, may authorize the
15 construction of a building that is financed wholly with federal or private money on federal land for the use or
16 benefit of the state.

17 (F) EACH YEAR BY AUGUST 1, THE DEPARTMENT OF ADMINISTRATION SHALL REPORT, IN ACCORDANCE
18 WITH 5-11-210, TO THE LONG-RANGE PLANNING BUDGET COMMITTEE PROVIDED FOR IN 5-12-501 ON ALL BUILDINGS
19 CONSTRUCTED WITHOUT LEGISLATIVE APPROVAL THAT COST BETWEEN \$150,000 AND \$300,000 DURING THE PREVIOUS
20 FISCAL YEAR."

21

22 **Section 2.** Section 18-2-103, MCA, is amended to read:

23 **"18-2-103. Supervision of construction of buildings.** (1) For the construction of a building ~~activities~~
24 costing more than ~~\$150,000~~ \$300,000, the department shall:

25 (a) review and accept all plans, specifications, and cost estimates prepared by architects or
26 consulting engineers;

27 (b) approve all bond issues or other financial arrangements and supervise and approve the
28 expenditure of all money;

1 (c) solicit, accept, and reject bids and, except as provided in Title 18, chapter 2, part 5, award all
 2 contracts to the lowest qualified bidder considering conformity with specifications and terms and
 3 reasonableness of the bid amount;

4 (d) review and approve all change orders; and

5 (e) accept the building when completed according to accepted plans and specifications.

6 (2) The department may delegate on a project-by-project basis any powers and duties under
 7 subsection (1) to other state agencies, including units of the Montana university system, upon terms and
 8 conditions specified by the department.

9 (3) Before a contract under subsection (1) is awarded, two formal bids must have been received, if
 10 reasonably available.

11 (4) (a) The department need not require the provisions of Montana law relating to advertising,
 12 bidding, or supervision when proposed construction costs are ~~\$75,000~~ \$150,000 or less. However, with respect
 13 to a project having a proposed cost of ~~\$75,000~~ \$150,000 or less but more than ~~\$25,000~~ \$50,000, the agency
 14 awarding the contract shall procure at least three informal bids from contractors registered in Montana, if
 15 reasonably available.

16 (b) Starting on July 1, 2028, and every 5 years after that, the department shall adjust the limits in
 17 subsection (4)(a) for inflation. The inflation adjustment is found by dividing the consumer price index for June of
 18 the previous tax year by the consumer price index for June 2023. The newly adjusted limits must be rounded to
 19 the nearest \$1,000 and adopted by rule.

20 (5) The department may negotiate a contract, without competitive bidding, with a contractor
 21 qualified to do business in Montana if:

22 (a) an emergency as defined in 10-3-103 exists; or

23 (b) a public exigency as defined in 2-17-101 exists.

24 ~~(5)(6)~~ For the construction of buildings owned or to be owned by a school district, the department
 25 shall, upon request, provide inspection to ensure compliance with the plans and specifications for the
 26 construction of the buildings. ~~Construction-~~ The term "construction" includes construction, repair, alteration,
 27 equipping, and furnishing during construction, repair, or alteration. These services must be provided at a cost to
 28 be contracted for between the department and the school district, with the receipts to be deposited in the

1 department's construction regulation account in a state special revenue fund.

2 ~~(6)~~(7) It is the intent of the legislature that student housing and other facilities constructed under the
3 authority of the regents of the university system are subject to the provisions of subsections (1) through (3).

4 ~~(7)~~(8) The department of military affairs may act as the contracting agency for buildings constructed
5 under the authority of 18-2-102(2)(e). However, the department of administration may agree to act as the
6 contracting agency on behalf of the department of military affairs. Montana law applies to any controversy
7 involving a contract."

8

9 **Section 3.** Section 18-2-105, MCA, is amended to read:

10 **"18-2-105. General powers and duties of department of administration.** In carrying out powers
11 relating to the construction of buildings, the department of administration may:

12 (1) inspect buildings not under construction;

13 (2) contract with the federal government for advance planning funds;

14 (3) transfer funds and authority to agencies and accept funds and authority from agencies;

15 (4) subject to 2-17-135, purchase, lease, and acquire by exchange or otherwise, land and
16 buildings in Lewis and Clark County and equipment and furnishings for the buildings;

17 (5) issue and sell bonds and other securities;

18 (6) maintain an inventory of all buildings;

19 (7) appoint a project representative to supervise architects' and consulting engineers' inspection of
20 construction of buildings to ensure that all construction is in accordance with the contracts, plans, and
21 specifications. The cost of supervision may be charged against money available for construction.

22 (8) negotiate deductive changes, not to exceed ~~7%~~ 15% of the total cost of a project, with the
23 lowest responsible bidder when the lowest responsible bid causes the project cost to exceed the appropriation
24 or with the lowest responsible bidders, if multiple contracts will be awarded on the project, when the total of the
25 lowest responsible bids causes the project cost to exceed the appropriation. A bidder is not required to
26 negotiate a bid but is required to honor the bid for the time specified in the bidding documents. The department
27 may terminate negotiations at any time."

28

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

2 **"18-2-111. Policy regarding practice of architecture or engineering -- preparation of working**
 3 **drawings by department limited.** (1) It is the policy of the state not to engage in the practice of architecture or
 4 engineering. However, this policy may not be construed as prohibiting the department of administration from:

5 (a) engaging in preplanning functions necessary to prepare a building program for presentation to
 6 the legislature;

7 (b) supervising construction as provided in 18-2-105(7); or

8 (c) preparing working drawings for minor projects.

9 (2) The department of administration may not prepare working drawings for ~~the construction of a~~
 10 ~~building~~ construction activities, with the exception of repair or maintenance projects, when the total cost of the
 11 construction will exceed ~~\$75,000~~ \$150,000.

12 (3) This policy may not be construed to grant the department an exception from the licensing
 13 requirements of Title 67, chapter 65 or 67, or the seal requirements provided in 18-2-114 and 18-2-122."

14

15 **Section 5.** Section 18-2-201, MCA, is amended to read:

16 **"18-2-201. Security requirements.** (1) (a) Except as otherwise provided in 85-1-219 and subsections
 17 (3) through (5) of this section, whenever any board, council, commission, trustees, or body acting for the state
 18 or any county, municipality, or public body contracts with a person or corporation to do work for the state,
 19 county, or municipality or other public body, city, town, or district, the board, council, commission, trustees, or
 20 body shall require the person or corporation with whom the contract is made to make, execute, and deliver to
 21 the board, council, commission, trustees, or body a good and sufficient bond with a surety company, licensed in
 22 this state, as surety, conditioned that the person or corporation shall:

23 (i) faithfully perform all ~~of the~~ provisions of the contract;

24 (ii) pay all laborers, mechanics, subcontractors, and material suppliers; and

25 (iii) pay all persons who supply the person, corporation, or subcontractors with provisions,
 26 provender, material, or supplies for performing the work.

27 (b) The state or other governmental entity listed in subsection (1)(a) may not require that any bond
 28 required by subsection (1)(a) be furnished by a particular surety company or by a particular insurance producer

1 for a surety company.

2 (2) The state or other governmental entity listed in subsection (1)(a) may, in lieu of a surety bond,
3 permit the deposit with the contracting governmental entity or agency of the following securities in an amount at
4 least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all
5 laborers, suppliers, material suppliers, mechanics, and subcontractors:

6 (a) lawful money of the United States; or

7 (b) a cashier's check, certified check, bank money order, certificate of deposit, money market
8 certificate, bank draft, or irrevocable letter of credit, drawn or issued by:

9 (i) any federally or state-chartered bank or savings and loan association that is insured by or for
10 which insurance is administered by the federal deposit insurance corporation; or

11 (ii) a credit union insured by the national credit union share insurance fund.

12 (3) Any board, council, commission, trustee, or body acting for any county, municipality, or public
13 body other than the state may, subject to the provisions of subsection (1)(b), in lieu of a bond from a licensed
14 surety company, accept good and sufficient bond with two or more sureties acceptable to the governmental
15 entity.

16 (4) Except as provided in subsection (5), the state or other governmental entity may waive the
17 requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-
18 101, that cost less than ~~\$50,000~~ \$150,000.

19 (5) A school district may waive the requirements contained in subsections (1) through (3) for
20 building or construction projects, as defined in 18-2-101, that cost less than \$7,500."

21

22 **Section 6.** Section 18-2-301, MCA, is amended to read:

23 "**18-2-301. Bids required -- ~~advertising public notice.~~** (1) ~~(a) It is unlawful for any offices~~ Offices,
24 departments, or institutions, or any agent of the state of Montana acting for or ~~in~~ on behalf of the state, ~~to may~~
25 not do, ~~to~~ cause to be done, or ~~to~~ let any contract for the construction of buildings or the alteration and
26 improvement of buildings and adjacent grounds on behalf of and for the benefit of the state when the amount
27 involved is ~~\$75,000~~ \$150,000 or more without first ~~advertising in at least one issue each week~~ providing public
28 notice for 3 consecutive weeks ~~in two newspapers published in the state, one of which must be published at the~~

1 ~~seat of government and the other in the county where the work is to be performed, IN TWO NEWSPAPERS~~
 2 ~~PUBLISHED IN THE STATE, ONE OF WHICH MUST BE PUBLISHED AT THE SEAT OF GOVERNMENT AND THE OTHER IN THE~~
 3 ~~COUNTY NEAREST TO WHERE THE WORK IS TO BE PERFORMED,~~ calling for sealed bids to perform the work and
 4 stating the time and place bids will be considered. Notice may include electronic notification, publication in
 5 newspapers of general circulation, or other appropriate means.

6 (b) Starting July 1, 2028, and every 5 years after that, the department shall adjust the limits in
 7 subsection (1)(a) for inflation. The inflation adjustment is determined by dividing the consumer price index for
 8 June of the previous tax year by the consumer price index for June 2023. The newly adjusted limits must be
 9 rounded to the nearest \$1,000 and adopted by rule.

10 (2) All work may be done, caused to be done, or contracted for only after competitive bidding.

11 (3) If responsible bids are not received after two attempts, the department or agency may contract
 12 for the work in a manner determined to be cost-effective for the state.

13 (4) This section does not apply to work done by inmates at an institution in the department of
 14 corrections.

15 (5) (a) The provisions of Montana law governing advertising and competitive bidding do not apply
 16 when the department of fish, wildlife, and parks is preserving or restoring the historic buildings and resources
 17 that it owns at Bannack if:

18 (i) the options listed in subsection (5)(b) are determined to be more cost-effective for the state;
 19 and

20 (ii) the implementation of the options listed in subsection (5)(b) is necessary to save historic
 21 buildings and resources from degradation and loss.

22 (b) For the preservation or restoration of historic buildings and resources at Bannack when the
 23 conditions listed in subsection (5)(a) are met, the department of fish, wildlife, and parks may accomplish the
 24 preservation or restoration through:

25 (i) a memorandum of understanding with a local, state, or federal entity or nonprofit organization
 26 when the entity or organization demonstrates the competence, knowledge, and qualifications to preserve or
 27 restore historic resources;

28 (ii) the use of qualified and trained department of fish, wildlife, and parks employees and

- 1 volunteers;
- 2 (iii) a training program in historic preservation and restoration conducted by a qualified local, state,
- 3 or federal entity or a qualified nonprofit organization; or
- 4 (iv) any combination of the options described in subsection (5)(b)."

5

6 **Section 7.** Section 18-2-302, MCA, is amended to read:

7 **"18-2-302. Bid security -- waiver -- authority to submit.** (1) (a) Except as provided in subsection

8 (2), each bid must be accompanied by bid security in the amount of 10% of the bid. The security may consist of

9 cash, a cashier's check, a certified check, a bank money order, a certificate of deposit, a money market

10 certificate, an irrevocable letter of credit, or a bank draft. The security must be:

11 (i) drawn and issued by a federally chartered or state-chartered bank or savings and loan

12 association that is insured by or for which insurance is administered by the federal deposit insurance

13 corporation;

14 (ii) drawn and issued by a credit union insured by the national credit union share insurance fund;

15 or

16 (iii) a bid bond or bonds executed by a surety company authorized to do business in the state of

17 Montana.

18 (b) The state or other governmental entity may not require that a bid bond or bond provided for in

19 subsection (1)(a)(iii) be furnished by a particular surety company or by a particular insurance producer for a

20 surety company.

21 (2) The state or other governmental entity may waive the requirements for bid security on building

22 or construction projects, as defined in 18-2-101, that cost less than ~~\$25,000~~ \$150,000.

23 (3) The bid security must be signed by an individual authorized to submit the security by the

24 corporation or other business entity on whose behalf the security is submitted. If the request for bid or other

25 specifications provided by the state or other governmental entity specify the form or content of the bid security,

26 the security submitted must comply with the requirements of that specification."

27

28 **Section 8.** Section 18-2-501, MCA, is amended to read:

1 **"18-2-501. (Temporary) Definitions.** As used in this part, unless the context clearly requires
2 otherwise, the following definitions apply:

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

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

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

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

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

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

19 (6) "Governing body" means:

20 (a) the legislative authority of:

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

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

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

25 (b) the board of directors of a county water or sewer district established pursuant to Title 7, chapter
26 13, parts 22 and 23;

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

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

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

4 (8) "Publish" means publication of notice as provided for in 7-1-2121, 7-1-4127, ~~18-2-301~~, and 20-
5 9-204 or the provision of public notice pursuant to 18-2-301.

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

8 **18-2-501. (Effective January 1, 2025) Definitions.** As used in this part, unless the context clearly
9 requires otherwise, the following definitions apply:

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

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

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

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

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

24 (6) "Governing body" means:

25 (a) the legislative authority of:

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

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

- 1 (iii) an airport authority established pursuant to Title 67, chapter 11;
- 2 (b) the board of directors of a county water or sewer district established pursuant to Title 7, chapter
3 13, parts 22 and 23; or
- 4 (c) the trustees of a fire district established pursuant to Title 7, chapter 33, or the county
5 commissioners or trustees of a fire service area established pursuant to 7-33-2401.
- 6 (7) "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) "Publish" means publication of notice as provided for in 7-1-2121, 7-1-4127, ~~48-2-304~~, and 20-
9 9-204 or the provision of public notice pursuant to 18-2-301.
- 10 (9) "State agency" has the meaning provided in 2-2-102, except that the department of
11 transportation, provided for in 2-15-2501, is not considered a state agency."

12

13 COORDINATION SECTION. SECTION 9. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 110 IS NOT
14 PASSED AND APPROVED, THEN THE REFERENCE TO THE LONG-RANGE PLANNING BUDGET COMMITTEE IN [SECTION
15 1(2)(F) OF THIS ACT], AMENDING 18-2-102, MUST BE CHANGED TO REFER TO THE LEGISLATIVE FINANCE COMMITTEE.

16

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

18 - END -