

## CONSTRUCTION CONTRACT BIDDING

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**House Bill 4328 as introduced**  
**Sponsor: Rep. Gary R. Eisen**  
**Committee: Transportation**  
**Complete to 3-15-21**

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

House Bill 4328 would amend 1951 PA 51 (“Act 51”), the act that governs the distribution of funding for state and local road and bridge programs. Specifically, the bill would amend section 11c of the act, which prescribes construction contract bidding requirements for Michigan Department of Transportation (MDOT) and local road agency projects.

Section 11c currently requires that MDOT construction or preservation projects whose cost exceeds \$100,000 be performed by contract awarded by competitive bidding “unless the department affirmatively finds that under the circumstances relating to those projects, some other method is in the public interest.”

The bill would also exempt from these competitive bidding requirements projects “for the installation or upgrading of advanced traffic operations centers and traffic signal utilities.”

Section 11c also currently requires that all construction projects of a local road agency, whose cost exceeds \$100,000, for construction or preservation, excluding maintenance, be performed by contract awarded by competitive bidding “unless the local road agency affirmatively finds that under the circumstances relating to those projects, some other method is in the public interest.”

The bill would amend this bidding requirement to require that construction projects of a local road agency “where the individual project and any contiguous project costs exceed \$300,000” for construction or preservation, excluding *routine* maintenance, be performed by contract awarded by competitive bidding unless the local road agency affirmatively finds that, under the circumstances relating to those projects, some other method is in the public interest.

The bill would also exempt from these competitive bidding requirements projects “for the installation or upgrading of advanced traffic operations centers and traffic signal utilities.”

The bill is similar in some respects to HB 4476 of the 2019-20 legislative session.<sup>1</sup>

MCL 247.661c

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<sup>1</sup> <http://legislature.mi.gov/doc.aspx?2019-HB-4476>

## **BACKGROUND:**

With certain exceptions, section 11c of Act 51 currently requires that all MDOT construction projects concerning highways, streets, roads, and bridges whose cost exceeds \$100,000 for construction or preservation as defined in section 10c be performed by contract awarded by competitive bidding “unless the department affirmatively finds that under the circumstances relating to those projects, some other method is in the public interest.”

Section 11c also directs the director of the department to “report his or her findings to the state transportation commission 90 days before work is commenced and promptly in writing to the appropriations committees of the senate and house of representatives.” If the department determines that emergency action is required, reports need not be filed before a contract is awarded. However, the section requires that the reports “be promptly filed.”

MDOT construction and capital preservation projects are performed by private construction contractors employed through a competitive bidding process. The department does not use its own forces to perform capital construction work. Most MDOT construction projects are awarded through a Design-Bid-Build process in which the department is responsible for project design, private construction contractors submit bids, and the contract is awarded to, and performed by, the responsive low bidder. MDOT also uses contracting methods other than Design-Bid-Build, including Design-Build and Construction Manager/General Contractor (CM/GC).

All of these procurement methods involve a competitive bid process. The department does not award capital construction contracts by noncompetitive means. Both Design-Bid-Build and Design-Build contracts are awarded to the responsive low bidder. CM/GC contracts are also competitively bid, although the contract award may be based on other qualification selection criteria and not solely on lowest bid price.

Section 11c includes a similar requirement with respect to local road agency construction contracts. Specifically, the section currently requires that “all construction projects of a local road agency whose cost exceeds \$100,000 for construction or preservation... shall be performed by contract awarded by competitive bidding unless the local road agency affirmatively finds that under the circumstances relating to those projects, some other method is in the public interest.”

Among other things, the bill would increase the threshold to require competitive bidding for local road agency projects from \$100,000 to \$300,000.

Current law defines “local road agency” to mean what that term means under section 9a of Act 51, i.e., “a county road commission or designated county road agency or city or village that is responsible for the construction or maintenance of public roads within the state under this act.”

This Act 51 requirement for local road agency construction projects parallels federal-aid program requirements that generally require federal-aid highway projects to be performed by contracts awarded by competitive bidding. However, Federal Highway Administration (FHWA) policy allows noncompetitive contract work under specific circumstances. Specifically, FHWA policy allows local agency force account work when the state department of transportation demonstrates that force account work is more cost-effective than competitive bidding (and for emergency work).<sup>2</sup>

Construction work performed by local road agency forces, as opposed to private contractors through competitive bidding, is termed “force account” work.<sup>3</sup>

The department’s Local Agency Program Unit publishes an annual report of noncompetitive local agency projects. That report is available on the department’s website.

### **FISCAL IMPACT:**

It is not clear how the bill would affect state or local contracting requirements.

The bill would appear to have limited impact on MDOT contracting and project delivery. MDOT construction and capital preservation projects are performed almost exclusively by private construction contractors employed through a competitive bidding process. The department does not award contracts by noncompetitive means. The use of force account method on trunkline projects is infrequent and limited.

The bill would appear to provide a higher threshold for required bidding on local road agency construction projects—from \$100,000 to \$300,000. This would appear to allow local road agencies more latitude in using force account work for local construction projects, in particular, on projects funded from local sources. The bill would not affect the current limitations on the use of local agency force account work on federal-aid projects. Those projects are currently governed by federal-aid program requirements and related MDOT guidelines.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

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<sup>2</sup> <https://www.fhwa.dot.gov/legsregs/directives/orders/50601.cfm>

<sup>3</sup> MDOT guidance document, Construction of Federally Funded Local Agency Projects by Non-Competitive Bid Contract (Force Account), dated June 2018, is available from the department’s website.

[https://www.michigan.gov/documents/mdot/FORCE\\_ACCOUNT\\_GUIDANCE\\_INCL\\_FHWA\\_ORDER\\_050417\\_560873\\_7.pdf](https://www.michigan.gov/documents/mdot/FORCE_ACCOUNT_GUIDANCE_INCL_FHWA_ORDER_050417_560873_7.pdf)