

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2173

Introduced by

Senators Wardner, Cook, Warner

Representatives Heller, Ruby, Gruchalla

1 A BILL for an Act to create and enact three new subsections to section 24-01-01.1 and two new
2 sections to chapter 24-02 of the North Dakota Century Code, relating to design-build
3 procurement for state highways.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Three new subsections to section 24-01-01.1 of the North Dakota Century
6 Code are created and enacted as follows:

7 "Design-build" means a procurement process under which the design and construction
8 of a project on the state highway system are procured from one entity that is
9 appropriately licensed to provide design services and construction services, whether
10 directly or through a subcontractor.

11 "Design-builder" or "design-build entity" means the corporation, partnership, limited
12 partnership, sole proprietorship, joint venture, or other entity established by written
13 agreement which undertakes or enters a contract with the department for the design
14 and construction of a design-build project.

15 "Design-build team" means the design-build entity and major subcontractors, including
16 those entities that are responsible for completing at least the design, general
17 construction, mechanical construction, and electrical construction of a design-build
18 project.

19 **SECTION 2.** A new section to chapter 24-02 of the North Dakota Century Code is created
20 and enacted as follows:

1 **Design-build procurement.**

- 2 1. The department may utilize the design-build procurement method for a project if the
3 department determines the use of the design-build method will:
- 4 a. Reduce the cost of the project;
5 b. Expedite the completion of the project; or
6 c. Provide design features not achievable through the design-bid-build method.
- 7 2. If the department elects to utilize the design-build method for a project, the department
8 shall appoint a selection committee of at least three individuals to review the proposals
9 submitted and select the best proposal. At least fifty percent of the members of the
10 selection committee must be registered architects or registered engineers and at least
11 one member must be a licensed contractor. The selection committee may include
12 employees of the department. A member of the selection committee may not be
13 associated with a design-build entity submitting a proposal.
- 14 3. If the department elects to utilize the design-build method for a project, the department
15 shall establish the content of a request for qualifications, which must include:
- 16 a. The minimum qualifications of the design-builder.
17 b. A scope of work statement and schedule.
18 c. A definition of the project requirements.
19 d. The form of the contract to be awarded.
20 e. The selection criteria for completing a final list of proposals and the number of
21 entities to be included on the final list, which may not exceed five.
22 f. A description of the project requirements and the management necessary to
23 complete the project.
24 g. The maximum time allowed for design and completion of the project.
25 h. The estimated cost of the project.
26 i. A description of any stipend that may be offered under section 3 of this Act.
- 27 4. If the department utilizes the design-build method, it may train key personnel and
28 develop procedures in accordance with accepted design-build best practices. The
29 design-build training of key department personnel may be through an accredited
30 university or a nationally recognized design-build certification program.

1 5. The department may not exceed two percent of the department's total annual projects,
2 or thirty million dollars, whichever is less, for projects utilizing the design-build method.

3 **SECTION 3.** A new section to chapter 24-02 of the North Dakota Century Code is created
4 and enacted as follows:

5 **Design-build procurement selection process.**

6 1. If the department elects to utilize the design-build method, the department shall
7 establish a procedure using a standard questionnaire to qualify design-build entities. In
8 developing the questionnaire, the department shall consult with representatives of the
9 construction, building trades, and surety industries. A questionnaire used by the
10 department must include the following information:

11 a. A list of each member of the design-build entity.

12 b. Evidence that the design-build team for the proposed project has completed or
13 demonstrated the experience, competency, capability, and capacity to complete a
14 project of the size, scope, and complexity of the proposed project and that key
15 personnel expected to be involved on the project have sufficient experience and
16 training to competently manage and complete the design and construction of the
17 proposed project.

18 c. Evidence of the licenses, registrations, and credentials required to design and
19 construct the proposed project and information detailing any revocation or
20 suspension of a license, registration, or credential.

21 d. Evidence that the design-build entity has the capability to obtain all required
22 payment and performance bonds, liability insurance, and errors and omissions
23 insurance to provide the capacity to complete the proposed project.

24 e. A description of any instance in which the design-build entity or its principals
25 submitted a bid for a public improvement project which was found to be
26 nonresponsive or any instance in which the entity or principals were found not to
27 be a responsible bidder.

28 f. A description of any instance in which the design-build entity or its principals
29 defaulted on a construction contract.

- 1 g. A description of any declaration of bankruptcy or any case of receivership of any
2 member of the design-build entity and a disclosure of any instance in which a
3 surety was required to finish a project.
- 4 h. A list detailing each settled adverse claim, dispute, or lawsuit in excess of fifty
5 thousand dollars involving a public improvement project in which any member of
6 the design-build entity has been a party within the last five years.
- 7 i. Detailed data regarding the safety record of all members of the design-build
8 entity.
- 9 2. A member of a design-build entity submitting a response may not be replaced at any
10 time during the submission process or at any point of the project without the written
11 consent of the department. The department may revoke a contract if a design-build
12 entity replaces a member without receiving written approval. A request to replace a
13 member must document the reason for the replacement of the member. The
14 department may not approve a request to replace a member solely due to financial
15 considerations. A request to replace a member must provide assurance the proposed
16 replacement is equal to or better than the member being replaced.
- 17 3. Unless otherwise provided by law, the department shall advertise for proposals for a
18 design-build contract by publishing for three consecutive weeks. The first publication
19 of the advertisement must be at least twenty-one days before the date of the opening
20 of bids. The advertisement must be published in the official newspaper of the political
21 subdivision in which the public improvement is or will be located and in a trade
22 publication of general circulation among the contractors, building manufacturers, and
23 dealers in this state.
- 24 4. a. The selection committee shall review each submission and each bid submitted
25 based upon the selection criteria established by the department. In evaluating
26 proposals, the selection committee shall include the numeric scoring of each
27 criteria item on a weighted basis, with at least ten percent of the total weight
28 being given to each of the following:
- 29 (1) Price.
- 30 (2) Technical design of the project.
- 31 (3) Construction expertise.

- 1 (4) Life cycle costs over fifteen years or more.
- 2 b. The selection committee shall rank the top submissions sequentially based upon
- 3 the directives established by the department as provided under section 2 of this
- 4 Act and recommend to the department the design-builder receiving the highest
- 5 score on the evaluation criteria.
- 6 5. The department shall announce the issuance of the contract award by identifying the
- 7 selected design-builder and providing a written explanation of the factors supporting its
- 8 decision. The announcement of the award must also identify the submissions that
- 9 were ranked second and third.
- 10 6. The department may offer a stipend to any design-build entity determined to be a
- 11 finalist to obtain any intellectual property included in the submission. If a design-build
- 12 entity declines the stipend, the intellectual property remains the property of the
- 13 design-builder and the department and successful bidder are prohibited from utilizing
- 14 the intellectual property.