

TESTIMONY OF

John Boyle, Director, Facilities Management Division

Good afternoon Chairman Louser and members of the conference committee on HB 1288. I am John Boyle, Director of the Facilities Management Division of the Office of Management (OMB) and Budget. Thank you for the opportunity to submit my testimony.

Amendments have been added to HB 1288 by the Senate without any testimony provided by the public.

The 59th Legislative Assembly approved a study for N.D.C.C. Chapter 48-01.1, Public Improvement Contract Bids. A committee was established consisting of members from industry organizations that represent general contractors, architects, engineers. State agencies, including OMB, were also represented. The final report prepared after more than a year of work was presented to an interim committee and eventually resulted in introduction of a bill. The 60th Legislative Assembly repealed N.D.C.C. Chapter 48-01.1, Public Improvement Contract Bids, and replaced it with N.D.C.C. Chapter 48-01.2.

Maybe it is time to revisit this section of century code. In lieu of the amendments by the Senate, language could be drafted for a study.

A couple other questions concerning the amendments are as follows:

Section 1 Bid Process- Public Funds

While explaining this amendment, it was mentioned there are certain public improvement projects that do not require going through the bidding process. I am not aware of any public improvement project that is subject to NDCC 48-01.2 that do not need proceed without using one of the three delivery methods identified in this chapter for projects over the current threshold of \$200,000. Can someone provide examples of such projects?

Section 2 – The new subsection shall require the governing body to follow the bid process under this chapter.

Chapter 48-01.2-18 and 48-01.2-19 set forth the criteria used in selecting an agency construction manager or construction manager at risk. These individuals or firms are selected on a basis of qualifications, not cost. I just chaired a selection committee that interviewed three firms to provide construction manager at risk services for the new \$70 million state lab project.

Section 3 – New Subsection to N.D.C.C. 48-01.2-19

Senator Sickler mentioned under N.D.C.C. 48-01.2-19 (5) the fee should be allocated the most points during the evaluation process. Fees are currently not part of the selection committee's evaluation criteria in this section of N.D.C.C. See N.D.C.C. § 48-01.2-19 (5) below:

- 48-01.2-19. Agency construction management procurement procedures - Contract.
(5). The selection committee shall evaluate each person interviewed on the basis of the following criteria:
 - a. The past performance of the person with respect to prior public improvements.
 - b. The qualifications of proposed personnel.
 - c. The willingness to meet time and budget requirements of the governing body.
 - d. The business location of the person.
 - e. The recent, current, and projected workloads of the person.
 - f. Any related experience performing agency construction management services on projects of similar size and scope.
 - g. Any recent or current work by the person for the agency.
 - h. The ability of the person to provide the bond for the person's portion of the work on the public improvement.
 - i. The possession by the person of a class A contractor's license.

Is the Senate amendment requiring that a fee be allocated the highest weight within the existing evaluation criteria, or do they want to add a fee as part of the criteria first and then allocate the highest weight to it? Clarification is needed.

Chairman Louser and members I would be more than happy to discuss further at your committee's convenience.