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Sixty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1445

Introduced by

Representatives Brandenburg, Beltz, Grueneich, Kempenich, O'Brien, Pyle, VanWinkle

Senators Erbele, Patten, Wanzek, Weber

A BILL for an Act to amend and reenact sections 48-01.2-01 and 48-01.2-02.1 of the North Dakota Century Code, relating to the definition of a pre-engineered structure and the threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-01.2-01 of the North Dakota Century Code is amended and reenacted as follows:

48-01.2-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Agency construction management" means a public improvement delivery method through which a person provides to a governing body experienced construction management services, including ideas on constructability, documentation of design and construction, and coordination of project schedules.
2. "Architect" means an individual registered as an architect under chapter 43-03.
3. "Common ownership" means a shared management or ownership interest in two or more entities.
4. "Construction" means the process of building, altering, repairing, improving, or demolishing any public structure or building or other improvement to any public property. The term does not include the routine operation or maintenance of existing facilities, structures, buildings, or real property or demolition projects costing less than the threshold established under section 48-01.2-02.1.
5. "Construction administration" means administrative services provided by a governing body or an architect, a landscape architect, or an engineer, and includes providing clarifications, submittal review, recommendations for payment, preparation of change

orders, and other administrative services included in the agreement with the architect, landscape architect, or engineer. The term does not include supervision of the construction activities for the construction contracts.

6. "Construction management at-risk" means a public improvement delivery method through which a construction manager provides advice to the governing body during the planning and design phase of a public improvement, negotiates a contract with the governing body for the general construction bid package of the public improvement, and contracts with subcontractors and suppliers for the actual construction of the public improvement.

7. "Construction manager" means a contractor licensed under chapter 43-07 or an individual employed by a licensed contractor which has the expertise and resources to assist a governing body with the management of the design, contracting, and construction aspects of a public improvement.

8. "Construction observation" means observation of construction work and site visits by an architect, a landscape architect, or an engineer to assist the governing body in determining that the work conforms in general to the requirements of the construction contract and that the contractor has implemented and maintained the integrity of the design concept of a project as a functioning whole as indicated in the construction contract.

9. "Contract" means a type of agency agreement for the procurement of services under this chapter.

10. "Contractor" means any person, duly licensed, that undertakes or enters a contract with a governing body for the construction or construction management of any public improvement, including multiple prime contracts.

11. "Design services" means architect services, engineer services, landscape architect services, or surveyor services.

12. "Design-bid-build" means a project delivery method in which design and construction of the project are in sequential phases, and in which the first project phase involves design services, the second project phase involves securing a contractor through a bidding process, and the third project phase provides for construction of the project by a contractor awarded the project.

13. "Emergency situation" means a sudden generally unexpected occurrence that requires immediate action to protect public health, safety, or property and which ends when the immediate threat to public health, safety, or property ceases and services are restored. The term does not include a lack of planning on the part of the governing body, architect, engineer, landscape architect, or contractor.
14. "Engineer" means an individual registered as an engineer under chapter 43-19.1.
15. "General conditions" means the written portion of a contract setting forth the governing body's minimum acceptable performance requirements, including the rights, responsibilities, and relationships of the parties involved in the performance of the contract.
16. "Governing body" means the governing officer or board of a state entity or a political subdivision.
17. "Guaranteed maximum price" means the maximum amount a construction manager at-risk may be paid under a contract to construct a public improvement.
18. "Landscape architect services" means landscape architecture services governed under chapter 43-03.
19. "Lowest responsible bidder" means the lowest best bidder for the project considering past experience, financial condition, past work with the governing body, and other pertinent attributes that may be identified in the advertisement for bids.
20. "Political subdivision" means a county, township, park district, school district, city, and any other unit of local government which is created either by statute or by the Constitution of North Dakota for local government or other public purposes.
21. "Pre-engineered structure" means a building, excluding infrastructure regulated under chapters 23.1-01 and 61-28.1, which has manufactured roof and wall components sent to a construction site to be assembled on location, has plans and specifications stamped by an architect or engineer, and is in compliance with state building code requirements under chapter 54-21.3.

~~21.~~22. "Public improvement" means any improvement undertaken by a governing body for the good of the public and which is paid for with any public funds, including public loans, bonds, leases, or alternative funding, and is constructed on public land or within an existing or new public building or any other public infrastructure or facility if the

result of the improvement will be operated and maintained by the governing body. The term does not include a county road construction and maintenance, state highway, or public service commission project governed by title 11, 24, or 38.

~~22.~~23. "Subcontractor" means a person that contracts to perform work or render a service to a contractor or to another subcontractor as part of a contract with a governing body.

SECTION 2. AMENDMENT. Section 48-01.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

48-01.2-02.1. Public improvement construction threshold.

1. The threshold for bidding construction of a public improvement is two hundred thousand dollars. The threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of ~~a~~:
   a. A public improvement is two hundred thousand dollars; or
   b. A pre-engineered structure to be constructed as a public improvement is one million dollars.
2. Notwithstanding the thresholds in subsection 1, if the state or a political subdivision undertakes the construction of a public improvement and there is reason to believe that engineering or architectural services are necessary to protect the health, safety, or welfare of the public, the state or political subdivision shall consider consulting with an engineer or architect.