

Greetings, Chair and members of the Committee. I am Matt Linneman, Deputy Director for Engineering at the North Dakota Department of Transportation (NDDOT). I am here to provide opposition to HB 1028.

House Bill 1028 proposes changes to North Dakota Century Code (NDCC) Chapter 54 concerning selection criteria for procurement of architect, engineer, and land surveying services. The NDDOT routinely procures consultants for architect, engineer, and land surveying services with federal aid to deliver roadway and bridge infrastructure projects in the form of both preliminary engineering (PE), construction engineering (CE), and architectural services.

Section 5 of the bill changes *NDCC 54-44.7-03 Procurement Procedures* by adding an evaluation criterion for "*Fees and expenses*" when selecting a consultant. This is a direct conflict with the federal requirements in 23 Code of Federal Requirements (CFR) 172.7. On projects that use federal funding, the NDDOT must follow the federal selection requirements that states: "*Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.*"

However, after the selection of a consultant, Subsection 7 of NDCC 54-44.7-03 requires the NDDOT to enter a contract negotiation phase. If the fees, costs, or rates are too high and cannot be agreed upon during contract negotiation, then we can terminate negotiations with the selected consultant and move on to contract negotiations with the next most qualified firm. So, in essence, costs are considered prior to signing a contract.

The NDDOT is in opposition to the House Bill 1028 as written as we will be unable to use federal dollars to fund the PE portion of many projects. It should also be noted that the department does not have substantial state funds proposed in its budget to pay for the PE cost with state funds.

This concludes my testimony, and I would be happy to answer any questions. Thank you.