

HOUSE BILL NO. 1260

Introduced by

Representatives Carlson, Hawken, Timm, Wald

Senators Espeland, Kringstad

1 A BILL for an Act to amend and reenact sections 48-01.1-01, 48-01.1-03, 48-01.1-05,
2 48-01.1-06, 48-01.1-08, and 48-01.1-09 of the North Dakota Century Code, relating to public
3 improvement contract bids.

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

5 **SECTION 1. AMENDMENT.** Section 48-01.1-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **48-01.1-01. Definitions.** In this chapter, unless the context otherwise requires:

- 8 1. "Construction" ~~includes repair and alteration~~ means the process of building,
9 equipping, altering, repairing, improving, maintaining, or demolishing any structure,
10 public works, or appurtenance thereto.
- 11 2. "Construction administration" means administrative services provided on behalf of
12 the governing body, either by the governing body or a registered design
13 professional, and includes providing clarifications, submittal review,
14 recommendations for payment, preparation of change orders, and other
15 administrative services included in the agreement with the registered design
16 professional. The term does not include supervision of the construction activities
17 for the construction contracts.
- 18 3. "Construction management" means ~~the management and supervision of the~~
19 ~~construction of a public improvement, including the management and supervision~~
20 ~~of multiple prime contracts. The term does not include construction administration~~
21 ~~performed by a design professional under the terms of a professional services~~
22 agreement with the governing body a project delivery method based on an
23 agreement whereby the owner acquires a series of services from a licensed
24 contractor which may include design review, scheduling, cost control, value

- 1 engineering, constructability evaluation, bidding processes, and project
2 coordination.
- 3 4. "Construction manager" means a person, firm or corporation that provides
4 construction management services to a governing body. The construction
5 manager shall be appropriately licensed in accordance with chapter 43-07
6 contractors.
- 7 5. "Contractor" means any person, duly licensed, that undertakes or enters a contract
8 with a governing body for the construction or construction management of any
9 public improvement, including multiple prime contracts.
- 10 5- 6. "Emergency situation" means any sudden, generally unexpected occurrence
11 demanding immediate action and whereby the public health and safety is
12 endangered. An emergency situation does not include a lack of planning on the
13 part of the governing body, architect, engineer, construction manager, or
14 contractor. The emergency situation ends when the immediate threat to public
15 health and safety ceases.
- 16 7. "Governor body" means ~~the governing officer or board of any state entity or of any~~
17 official, board, commission, or agency of this state, or any county, city, township,
18 school, or other political subdivision.
- 19 8. "Prime bids" means separate bids for the complete general, electrical, or
20 mechanical portions of a project.
- 21 6- 9. "Public improvement" means any improvement the cost of which is payable from
22 taxes or other funds under the control of a governing body including improvements
23 for which special assessments are levied. The term does not include any county
24 road construction and maintenance, state highway, or public service commission
25 project governed by titles 11, 24, or 38. The "public improvement" encompasses
26 the whole improvement and shall not be split into smaller parts to circumvent any
27 requirements of this chapter.
- 28 7- 10. "Surety" means a bond ~~or undertaking~~ executed by a surety company authorized
29 to do business in this state which is countersigned by an agent of that company.

30 **SECTION 2. AMENDMENT.** Section 48-01.1-03 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **48-01.1-03. Publication of advertisement for bids.** If a contract of a governing body
2 for the construction or construction management of a public improvement is estimated to cost in
3 excess of one hundred thousand dollars, the governing body shall advertise for bids by
4 publishing for three consecutive weeks, the first publication to be at least twenty-one days
5 before the date of the opening of bids. The advertisement must be published in the official
6 newspaper of the political subdivision in which the public improvement is or will be located, and
7 in a trade publication of general circulation among the contractors, building manufacturers, and
8 dealers in this state, ~~except the advertisement for a public improvement financed by special~~
9 ~~assessments need only be published once each week for two weeks in the official newspaper~~
10 ~~with the first publication being at least fourteen days before bid opening.~~ All necessary plans
11 and specifications for the advertised portion of a public improvement shall be ready for delivery
12 to prospective bidders prior to the first advertisement date.

13 **SECTION 3. AMENDMENT.** Section 48-01.1-05 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **48-01.1-05. Contents of advertisement.** The advertisement for bids required by
16 section 48-01.1-03 must state:

- 17 1. When and where the plans, drawings, and specifications may be seen and
18 examined.
- 19 2. The place, date, and time the bids will be opened.
- 20 3. That each bid must be accompanied by a separate envelope containing a bidder's
21 bond and a current North Dakota contractor's license. The bidder's bond must be
22 in a sum equal to five percent of the full amount of the bid, executed by the bidder
23 as principal and by a surety, conditioned that if the principal's bid is accepted and
24 the contract awarded to the principal, the principal, within ten days after notice of
25 award, shall execute a contract in accordance with the terms of the bid and a
26 contractor's bond as required by law and the regulations and determinations of the
27 governing body. Countersignature of a bid bond is not required under this section.
- 28 4. That a bidder, except a bidder on a municipal, rural, and industrial water supply
29 project authorized for funding under Public Law No. 99-294 [100 Stat. 426; 43
30 U.S.C. 390a], must be licensed for the full amount of the bid, as required by section
31 43-07-05. For projects authorized for funding under Public Law No. 99-294 [100

1 Stat. 426; 43 U.S.C. 390a], the advertisement must state that, unless a bidder
2 obtains a contractor's license for the full amount of its bid within twenty days after it
3 is determined the bidder is the lowest and best bidder, the bid must be rejected
4 and the contract awarded to the next lowest, best, and licensed bidder.

5 5. That no bid may be read or considered if it does not fully comply with the
6 requirements of this section and that any deficient bid submitted must be resealed
7 and returned to the bidder immediately.

8 6. That the right of the governing body to reject any bid for adequate cause is
9 reserved.

10 7. That the bid form issued must be fully completed or the incomplete bid form will
11 cause the bid to be considered nonresponsible and must be immediately resealed
12 and returned to the bidder.

13 **SECTION 4. AMENDMENT.** Section 48-01.1-06 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **48-01.1-06. Bid requirements for public buildings.** ~~Multiple~~ Three prime bids, one
16 each for the general, electrical, and mechanical portions of a project, are required when any
17 individual general, electrical, or mechanical contract or any combination of individual contracts
18 is in excess of one hundred thousand dollars. The governing body ~~may also~~ shall allow
19 submission of single prime bids ~~or bids for other portions of the project at its discretion.~~ The
20 governing body may not accept the single prime bid unless that bid is lower than the combined
21 total of the lowest and best multiple prime bids for the project.

22 **SECTION 5. AMENDMENT.** Section 48-01.1-08 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **48-01.1-08. Coordination of work under multiple prime bids.** After competitive
25 prime bids for the general, electrical, and mechanical work are received as part of the multiple
26 prime bids, the governing board may assign the electrical and mechanical contract and any
27 other contracts to the general contractor for the project to facilitate the coordination and
28 management of the work only.

29 **SECTION 6. AMENDMENT.** Section 48-01.1-09 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **48-01.1-09. Use of construction manager.** If a governing body uses a construction
2 manager on a public improvement, the construction manager must be a licensed contractor and
3 may not have common ownership with the architect, engineer, or contractors involved in the
4 planning, design, or construction of the public improvement and may not undertake to construct
5 any portion of the public improvement or contract with any subcontractors to construct any
6 portion of the public improvement. The construction manager awarded the contract for
7 construction of a public improvement shall bond the entire cost of the project through a single
8 bond, or through bonds provided by ~~all bid packages~~ the multiple prime contracts, in the
9 amount of those contracts, and the construction manager's bond for the full amount of the
10 construction manager's ~~services~~ service contract. If the total of the multiple prime contracts
11 and construction manager's bonds is less than the total project bid, the construction manager
12 shall bond the difference between the total of the bonds and the total project bid.