

**Testimony To The  
ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS  
Prepared April 6, 2010 by the  
North Dakota Association of Counties  
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**CONCERNING PUBLIC IMPROVEMENT BIDDING**

Chairman Potter and members of the Advisory Commission, thank you for the opportunity to follow-up on the county concerns expressed at your previous meeting by Cass County Administrator, Bonnie Johnson.

Attached to this testimony are suggestions for possible amendments to Chapter 48-01.2 that would address several of these concerns. To explain, I will attempt to summarize the purpose of each.

You will notice that the \$100,000 bid threshold has been amended out of 48-01.2-02 and 48-01.2-04 by referencing a new section that I have numbered 48-01.2-02.1. This new section would set the threshold at \$135,000 for CY2012 and then inflate the threshold by the specific consumer price index that is used three other times in State statute. (By my calculation, if the 1997-established threshold of \$100,000 had been inflated by this CPI since that time, it would already be \$133,668 for CY2010).

The second change to 48-01.2-02 would permit a county or city with their own engineer to design storage buildings, as is currently permitted for the Department of Transportation.

The change to 48-01.2-03 would remove the prohibition on specifying trademarked products, but only for situations where an addition or remodeling was taking place where those products were already in use.

The final proposed change to 48-01.2-04 would reduce the 21-day, 3-week advertisement period to coincide with the 15-day, 2-week advertisement period that is now required for county road construction, the erection of county buildings in 11-11-26, and county for county supplies.

**48-01.2-02. Plans and specifications for a public improvement contract.** Except as otherwise provided in this chapter, if a contract for the construction of a public improvement is estimated to cost in excess of ~~one hundred thousand dollars~~ the threshold established by section 48-01.2.-2.1, the governing body shall procure plans, drawings, and specifications for the improvement from an architect or engineer. For a public building in use by or to be used by the North Dakota agricultural experiment station in connection with farm or agricultural research operations, the plans, drawings, and specifications, with the approval of the state board of higher education, may be prepared by an engineer in the regular employment of the agricultural experiment station. For a public building in use by or to be used by the department of transportation for the storage and housing of road materials or road machinery, equipment, and tools, the plans, drawings, and specifications may be prepared by an engineer employed by the department of transportation. For a public building in use by or to be used by a city or county for the storage and housing of road materials or road machinery, equipment, and tools, the plans, drawings, and specifications may be prepared by an engineer employed by that city or county.

**48-01.2-02.1. Public Improvement Bidding Threshold.** The bidding threshold for public improvements governed by this chapter shall be calculated for each successive year by increasing the amount of \$135,000 for calendar year 2012 by the annual consumer price index for all urban consumers (all items, United States city average).

**48-01.2-03. Specified brands, marks, names, or patented articles may not be specified.** A Unless remodeling or expanding an existing building already containing these specified articles, products, or patented apparatus or appliances a governing body, in specifying materials to be used for a public improvement or in plans or specifications for a public improvement, may not request bids for any article of a specified or copyrighted brand or name, the product of any one manufacturer, or any patented apparatus or appliance when the requirement will prevent proper competition, unless the specifications also request bids on other similar articles of equal value, utility, and merit.

**48-01.2-04. Publication of advertisement for bids -- Emergency exception.**

1. Except as otherwise provided in this chapter, if the construction of a public improvement is estimated to cost in excess of ~~one hundred thousand dollars~~ the threshold established by section 48-01.2.-2.1, the governing body shall advertise for bids by publishing for ~~three~~ two consecutive weeks. The first publication of the advertisement must be at least ~~twenty-one~~ fifteen days before the date of the opening of bids. The advertisement must be published in the official newspaper of the political subdivision in which the public improvement is or will be located, and in a trade publication of general circulation among the contractors, building manufacturers, and dealers in this state, except the advertisement for a public improvement financed by special assessments need be published only once each week for two weeks in the official newspaper with the first publication being at least fourteen days before the bid opening.
2. If a governing body declares an emergency situation, the governing body may contract for the construction of a public improvement without seeking bids.