

CONCESSIONS BIDDING

North Dakota Century Code Chapter 48-09 contains the bidding requirements for concessions. Under Section 48-09-01, any state entity or political subdivision may grant a concession for any café, restaurant, or confectionary by leasing the concession to the highest bidder or best bidder or both. By way of comparison, under Section 48-01.2-07, in bidding for a public improvement contract, the contract must be awarded to the lowest responsible bidder.

Section 48-09-01 also provides that the lease may be for a reasonable rental per month for a period not to exceed eight years. The state entity or political subdivision may reject any and all bids for a concession. There are two exceptions from the bidding process--any North Dakota fair association or a board of county park commissioners. These entities may grant a concession without letting bids.

Under Section 48-09-02, when a concession is deemed worth more than \$500, the concession must be advertised in a legal newspaper at or near the concession. The advertisement must be once each week for three consecutive weeks. By way of comparison, under Section 48-01.2-04, for a public improvement contract, advertisement in a newspaper is required when the cost is in excess of \$100,000. The advertisement must be for three consecutive weeks.

Under Section 48-09-03, the governing body of the state or political subdivision entity may require a deposit of security. All money received as security or

for the lease must be deposited in the general fund of the entity. Under Section 48-01.2-10, in a public improvement contract a bond equal to at least the price stated in the contract for the performance of the contract must be furnished to the governing body of the state entity or political subdivision. Under Section 48-09-05, a violation of the chapter is a Class B misdemeanor. Research does not reveal a specific criminal penalty for not following the public improvement bidding requirements. Under Section 12.1-11-06, however, a public servant knowingly refusing to perform any duty imposed by law is guilty of a Class A misdemeanor.

CONCLUSION

Bidding requirements for concession contracts are different from those of public improvement contracts. The most disparate is the threshold for public advertisement. For a concession contract, the threshold is \$500 and for a public improvement the threshold is \$100,000. In both cases, however, the cost of advertisement and administrative burden are the same. In a concession contract near the threshold, the cost of advertisement and administrative costs would be a substantial portion of the contract price. This would not be the case with a public improvement contract due to the much higher threshold.