

PUBLIC BUILDINGS

CHAPTER 319

SENATE BILL NO. 2168

(Senators Burckhard, Campbell, Laffen)
(Representatives Rich S. Becker, B. Koppelman, Streyle)

AN ACT to amend and reenact section 48-01.2-01 of the North Dakota Century Code, relating to public improvements.

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. "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 and, including public loans, bonds, leases, or alternative funding, and is constructed on public land or within an existing or new public building and includes an improvement on public or nonpublic land if any portion of the construction phase of the project is paid for with public funds 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.
- 21-22. "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.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 320

SENATE BILL NO. 2146

(Senators Kannianen, Campbell, Laffen)
(Representatives Beadle, Sukut)

AN ACT to amend and reenact sections 48-01.2-02.1 and 48-01.2-10 of the North Dakota Century Code, relating to public improvement bid and bond thresholds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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.

The threshold for bidding construction of a public improvement is one hundred fifty thousand dollars. The threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement is one hundred fifty thousand dollars.

SECTION 2. AMENDMENT. Section 48-01.2-10 of the North Dakota Century Code is amended and reenacted as follows:

48-01.2-10. Bonds from contractors for public improvements.

1. Unless otherwise provided under this chapter, a governing body authorized to enter a contract for the construction of a public improvement in excess of one hundred fifty thousand dollars shall take from the contractor a bond before permitting any work to be done on the contract. The bond must be for an amount equal at least to the price stated in the contract. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the contract and pay all bills or claims on account of labor performed and any supplies, and materials furnished and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section 13-01-14 be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor or any subcontractor may sue on the bond.
2. A governing body may not require any person required to provide a surety bond to obtain the surety bond from a specified insurance or surety company or insurance producer or to submit financial data to the company or producer.

Approved March 24, 2017

Filed March 24, 2017

CHAPTER 321

SENATE BILL NO. 2142

(Senators Laffen, Klein, Oban)
(Representative Kasper)

AN ACT to amend and reenact section 48-01.2-22 of the North Dakota Century Code, relating to construction manager at-risk subcontractor bids.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-01.2-22 of the North Dakota Century Code is amended and reenacted as follows:

48-01.2-22. Subcontractor bids.

1. An agency construction manager selected for a public improvement shall publicly advertise and publicly open bids from subcontractors for the work items necessary to complete the general construction portions of the improvement. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor.
2. A construction manager at-risk selected for a public improvement shall publicly advertise ~~publicly~~ and ~~receive~~publicly open bids from subcontractors for the work items the construction manager at-risk chooses not to perform. The construction manager at-risk then shall evaluate the bids and determine which is the most responsible. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor.

Approved March 24, 2017

Filed March 24, 2017

CHAPTER 322

SENATE BILL NO. 2147

(Senators Kannianen, Campbell, Laffen)
(Representatives Beadle, Sukut)

AN ACT to amend and reenact section 48-01.2-23 of the North Dakota Century Code, relating to bond requirements for public improvements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-01.2-23 of the North Dakota Century Code is amended and reenacted as follows:

48-01.2-23. Bond required.

1. An agency construction manager, before starting any work, shall provide the governing body with a bond that is equal to the cost of the agency construction manager's services with the governing body. ~~Each~~Under an agency construction manager delivery method, each contractor performing services on the public improvement shall provide the governing body with a separate bond for the contractor's portion of the public improvement.
2. A construction manager at-risk, before starting any construction, shall provide the governing body with a bond in an amount at least equal to the amount of the guaranteed maximum price. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the construction services contract and pay all bills or claims on account of labor and materials, including supplies used for machinery and equipment, performed, furnished, and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section 13-01.1-02 be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor may sue on the bond. Under a construction manager at-risk delivery method, the governing body may not require each contractor performing services on the public improvement to provide a separate bond for the contractor's portion of the public improvement.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 323

SENATE BILL NO. 2271

(Senator Laffen)

AN ACT to amend and reenact sections 48-05-10, 48-05-11, and 48-05-12 of the North Dakota Century Code, relating to energy conservation measures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-05-10 of the North Dakota Century Code is amended and reenacted as follows:

48-05-10. Energy conservation measure recommendations.

Before entering into a contract under section 48-05-11, a governmental unit shall submit a request for proposals. The time period between the request for proposals and the due date for proposals may be no less than fifteen business days. Upon receipt of the request for proposals, the governmental unit shall evaluate all ~~reports~~ proposals from qualified providers which ~~summarize~~ include estimates of all costs of installations, modifications, or remodeling, including costs of design, engineering, installation, maintenance, repairs, or debt service, and estimates of the amounts by which energy or operating costs will be reduced. ~~If technical assistance is not available by a licensed architect or registered professional engineer on the governmental unit staff, then the evaluation of this report must be done by a registered professional engineer or architect, who is to be retained by the governmental unit. The governmental unit may pay a reasonable fee for preparation of the report or include the fee as part of a contract under section 48-05-11.~~

SECTION 2. AMENDMENT. Section 48-05-11 of the North Dakota Century Code is amended and reenacted as follows:

48-05-11. Guaranteed energy savings contracts.

The governmental unit shall provide public notice of the meeting at which it proposes to award a guaranteed energy savings contract, the names of the parties to the proposed contract, and the purpose of the contract. After reviewing the report under section 48-05-10, a governmental unit may enter a guaranteed energy savings contract with a qualified provider if the governmental unit finds that the amount the governmental unit would spend on the energy conservation measures recommended in the report is not likely to exceed the amount to be saved in energy and operation costs over a period not exceeding fifteen years from the date of installation if the recommendations in the report are followed. The contract must include a written guarantee of the qualified provider that the energy and operating cost-savings will meet or exceed the costs of the project, including costs of the system, a list of subcontractor pricing, the financing costs for the project, and any provider fees. The written guarantee must be for a period equal to the financing period, which may provide payments over a period not exceeding fifteen years. If the governmental unit can document that savings meet or exceed the payment for a period of not less than three years, the governmental unit may request a waiver of the guaranteed portion of the contract for the remainder of the financing term. A guarantee waiver request must be approved by a committee administered by the division of community services. If

the contract involves facility alteration or real property improvement, a qualified provider to whom the contract is awarded shall give a sufficient bond to the governmental unit for the faithful performance of the contract.

SECTION 3. AMENDMENT. Section 48-05-12 of the North Dakota Century Code is amended and reenacted as follows:

48-05-12. Competitive bidding and architect and engineering services.

Guaranteed energy savings contracts are not subject to the requirements of chapter 48-01.2, which relate to competitive bidding, ~~and are not subject to section 43-19.1-28.~~

Approved April 7, 2017

Filed April 7, 2017

CHAPTER 324

SENATE BILL NO. 2334

(Senator Wardner)

AN ACT to create and enact a new section to chapter 48-08 of the North Dakota Century Code, relating to the designation of memorial hall.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 48-08 of the North Dakota Century Code is created and enacted as follows:

Designation of memorial hall.

The area on the first floor of the state capitol from the legislative assembly hall on the west, past the double stairway, to the brass columns on the east, is designated as memorial hall.

Approved March 29, 2017

Filed March 30, 2017