

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1028

Introduced by

Legislative Management

(Government Services Committee)

1 A BILL for an Act to amend and reenact subsection 1 of section 48-01.2-20, subdivision f of
2 subsection 5 of section 48-01.2-20, subsection 6 of section 48-01.2-20, section 48-01.2-22, and
3 subsection 5 of section 54-44.7-03 of the North Dakota Century Code, relating to the selection
4 process for construction management at-risk planning and design phase services and the
5 procurement of architect, engineer, construction management, and land surveying services.

6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

7 **SECTION 1. AMENDMENT.** Subsection 1 of section 48-01.2-20 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 1. A governing body electing to utilize a construction management at-risk delivery
10 process for a proposed public improvement shall create a selection committee
11 composed of:

- 12 a. An administrative individual from the governing body.
13 b. A registered architect, excluding any architect contracted for the project.
14 c. A registered engineer, excluding any engineer contracted for the project.
15 d. A licensed contractor.

16 **SECTION 2. AMENDMENT.** Subdivision f of subsection 5 of section 48-01.2-20 of the North
17 Dakota Century Code is amended and reenacted as follows:

- 18 f. The person's fees and expenses for the entire project, which must be identified
19 on a standard bid form approved by the director of the office of management and
20 budget and issued by the governing body for the project;

1 **SECTION 3. AMENDMENT.** Subsection 6 of section 48-01.2-20 of the North Dakota
2 Century Code is amended and reenacted as follows:

- 3 6. The selection committee shall evaluate each submission based on the qualification
4 criteria under subsection 5 without modifying the qualification criteria and shall include
5 the numeric scoring of each criteria item on a weighted basis, ~~with~~. Excluding the
6 person's fees and expenses, which must be weighted no less than twenty percent, no
7 item being may be weighted at more than twenty percent and no less than five percent.
8 The weighting of the qualification criteria must be done in a manner to ensure no
9 subjective bias and encourage the maximum participation of qualified construction
10 managers at-risk. Each member of the selection committee shall apply the same
11 weighting of qualification criteria for a project.

12 **SECTION 4. AMENDMENT.** Section 48-01.2-22 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **48-01.2-22. Subcontractor bids.**

- 15 1. An agency construction manager selected for a public improvement shall publicly
16 advertise pursuant to section 48-01.2-04 and publicly open bids pursuant to section
17 48-01.2-07 from subcontractors for the work items necessary to complete the general
18 construction portions of the improvement. The agency construction manager shall
19 evaluate the bids and award the subcontract to the lowest responsible bidder. The
20 governing body may influence the selection of the subcontractors, but only insofar as
21 the governing body's past experience with a subcontractor or a current legal dispute
22 with a subcontractor.
- 23 2. A construction manager at-risk selected for a public improvement shall publicly
24 advertise pursuant to section 48-01.2-04 and publicly open bids pursuant to section
25 48-01.2-07 from subcontractors for the work items ~~the construction manager at-risk~~
26 ~~chooses not to perform~~ necessary to complete the general construction portions of the
27 improvement. A construction manager at-risk must submit a bid for any work item
28 necessary to complete the general construction portions of the improvement the
29 construction manager at-risk chooses to perform pursuant to this section. The
30 construction manager at-risk ~~then~~ shall evaluate the bids and ~~determine which is the~~
31 ~~most responsible~~ award the subcontract to the lowest responsible bidder. 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.

SECTION 5. AMENDMENT. Subsection 5 of section 54-44.7-03 of the North Dakota Century Code is amended and reenacted as follows:

5. a. The agency selection committee shall evaluate each of the persons or firms interviewed on the basis of the following criteria:

~~a.~~ (1) Past performance.

~~b.~~ (2) The ability of professional personnel.

~~c.~~ (3) Willingness to meet time and budget requirements.

~~d.~~ (4) Location, with higher priority given to firms headquartered in North Dakota.

~~e.~~ (5) Recent, current, and projected workloads of the persons or firms.

~~f.~~ (6) Related experience on similar projects.

~~g.~~ (7) Recent and current work for the agency.

(8) Fees and expenses for the entire project, which must be identified on a standard information submission form approved by the director of the office of management and budget and issued by the agency selection committee for the project.

b. This subdivision does not apply to:

(1) Section 24-02-07.3, unless the project is on the state capitol grounds and exclusively involves state funds; or

(2) A project involving federal funds when the use of such funds prohibit this criteria.

c. Based upon these evaluations, the agency selection committee shall select the three which, in its judgment, are most qualified, ranking the three in priority order. The agency selection committee's report ranking the interviewed persons or firms must be in writing and must include data substantiating its determinations. This data must be available to the public upon written request.