

**FIRST ENGROSSMENT**

**ENGROSSED SENATE BILL NO. 2130**

Introduced by

Industry and Business Committee

(At the request of the Adjutant General)

1 A BILL for an Act to create and enact a new section to chapter 37-10 of the North Dakota  
2 Century Code, relating to prequalification, selection, and contracting of architect, engineer,  
3 construction management, land surveying services; and to declare an emergency.

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

5 **SECTION 1.** A new section to chapter 37-10 of the North Dakota Century Code is created  
6 and enacted as follows:

7 **Prequalification, selection, and contracting for consultants - Solicitations.**

8 1. The adjutant general or the adjutant general's designee may prequalify, select, and  
9 contract for consultants in the areas of architecture, engineering, construction  
10 management, land surveying, and related matters.

11 a. The prequalification of the consultant must be based on detailed information  
12 provided to the adjutant general and evaluated using the criteria outlined in  
13 subsection 5 of section 54-44.7-03.

14 b. If a consultant meets the prequalification criteria established by the adjutant  
15 general, and the consultant agrees to the terms and fee limits established by the  
16 adjutant general, the adjutant general or the adjutant general's designee may  
17 contract with the consultant for the delivery of an indefinite quantity of services in  
18 the area in which the consultant is prequalified. The contract:

19 (1) May not exceed a term of five years, including optional renewal periods; and

20 (2) Must be selected and negotiated in accordance with subsection 7 of section  
21 54-44.7-03.

- 1           c. The selection of a contracted consultant under this section for the delivery of  
2           services for a specific project must be determined according to the criteria listed  
3           in subdivisions a through g of subsection 5 of section 54-44.7-03.
- 4           2. The adjutant general is not required to comply with subsection 3 of section 54-44.7-03  
5           or section 54-44.7-04 and may procure consultant services for:
- 6           a. A project for which the estimated state share of consultant costs is no more than  
7           two hundred fifty thousand dollars through direct negotiation with a selected  
8           prequalified firm, after considering:
- 9           (1) The nature of the project;  
10          (2) The proximity of the consultant services to the project;  
11          (3) The capability of the consultant to produce the required services within a  
12          reasonable time;  
13          (4) The consultant's past performance; and  
14          (5) The consultant's ability to meet project budget requirements.
- 15          b. A project for which the estimated state share of consultant costs is greater than  
16          two hundred fifty thousand dollars but not more than five hundred thousand  
17          dollars after:
- 18          (1) Following the criteria listed in subdivisions a through g of subsection 5 of  
19          section 54-44.7-03;  
20          (2) Providing notice of the specific project to all prequalified firms in the specific  
21          area of need; and  
22          (3) Allowing a minimum of seven calendar days to submit information the firm  
23          did not provide in response to the prequalification solicitation and additional  
24          information related to the firm's ability to:
- 25                  (a) Perform the services required for the specific project;  
26                  (b) Produce the required results within the time required for the specific  
27                  project; or  
28                  (c) Meet budget requirements of the specific project.
- 29          c. A project for which the estimated state share of consultant costs is greater than  
30          five hundred thousand dollars, after:  
31          (1) Notifying all prequalified firms;

1                   (2) Allowing the prequalified firms a minimum of twenty-one days to respond;

2                   and

3                   (3) Following the requirements provided in subsections 4 through 7 of section  
4                   54-44.7-03.

5           3. As deemed appropriate by the adjutant general or the adjutant general's designee, if a  
6           project for which the estimated state share of consultant costs is less than:

7           a. Two hundred fifty thousand dollars, the adjutant general or the adjutant general's  
8           designee may use any of the procurement processes under subsection 2.

9           b. Five hundred thousand dollars, the adjutant general or the adjutant general's  
10           designee may use the procurement process under subdivision b or c of  
11           subsection 2.

12           4. Notwithstanding any other provision of law, if the adjutant general or the adjutant  
13           general's designee solicits consultant services under this section, the adjutant general  
14           or the adjutant general's designee may include more than one project in one  
15           solicitation. For purposes of a multiple project solicitation, the requirements for the  
16           project with the highest dollar threshold under subsection 2 apply to all projects in the  
17           multiple project solicitation.

18           **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.