HIGHWAYS, BRIDGES, AND FERRIES

CHAPTER 198

SENATE BILL NO. 2175

(Senators G. Lee, Oehlke, Triplett)
(Representatives Ruby, Weisz, Delmore)

AN ACT to amend and reenact section 24-02-07.3 of the North Dakota Century Code, relating to prequalification and selection of consultants by the department of transportation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-07.3 of the North Dakota Century Code is amended and reenacted as follows:

24-02-07.3. Prequalification, selection, and contracting for consultants - Solicitations.

1. The director may prequalify, select, and contract for consultants in the area of engineering, land surveying, architecture, traffic safety, business administration, and related matters. The prequalification of the consultant must be based on detailed information regarding firm organization, qualifications of personnel, type of work the firm is qualified to perform, previous work experience, and financial status and must be provided to the director in a form approved by the director. If a consultant meets the criteria set by the director, the director shall prequalify the consultant, noting any limitations as to the type or amount of the work the consultant may perform. When a consultant is prequalified, the consultant is entitled to receive requests for proposals, proposals, and other solicitations for work in the areas in which the consultant is prequalified without any other screening or qualification process. The period of prequalification may not exceed three years. The qualifications of the consultant for a specific project must be determined according to the criteria in subsection 5 of section 54-44.7-03. The director shall publish a prequalification solicitation at least once each year and need not comply with the provision in subdivision c of subsection 2 of section 54-44.7-03 requiring the publication of an invitation for a specific project. The selection and contract negotiation must be performed according to subsections 6 and 7 of section 54-44.7-03.

2. The director is not required to comply with subsection 3 of section 54-44.7-03 or 54-44.7-04 and may procure the services of consultants for:

   a. Projects with consultant costs estimated to be not more than ~~twenty-five~~one hundred thousand dollars through direct negotiation with a selected prequalified firm, after considering the nature of the project; the proximity of the architect, engineer, construction management, or land surveying services to the project; the capability of the architect, engineer,

construction manager, or land surveyor to produce the required services within a reasonable time; past performance; and the ability to meet project budget requirements. Fees paid pursuant to this subdivision during the twelve months immediately preceding negotiation of the contract by the department of transportation for professional services performed by any one architectural, engineering, or land surveying individual or firm may not exceed ~~fifty~~two hundred thousand dollars. A person seeking to render professional services under this section shall furnish the department a list of professional services previously provided to the department, including the fees paid during the twelve months immediately preceding the contract being negotiated. If the department determines that it is appropriate, the department may use the procurement procedures in subdivision b or c in place of the procedures in this subdivision.

b. Projects with consultant costs estimated to be greater than ~~twenty-five~~one hundred thousand dollars but not more than ~~one~~three hundred thousand dollars by notifying all prequalified firms in the specific area of need, allowing a minimum of seven calendar days to respond, and following the remaining process in subsections 4 through 7 of section 54-44.7-03. If the department determines that it is appropriate, the department may use the procurement procedures in subdivision c in place of the procedures in this subdivision.

c. Projects with consultant costs estimated to be greater than ~~one~~three hundred thousand dollars by notifying all prequalified firms, allowing a minimum of twenty-one calendar days to respond, and following the remaining process in subsections 4 through 7 of section 54-44.7-03.

3. Notwithstanding any other provision of law, when soliciting the services of consultants under this section, the director may include multiple projects in one solicitation. The requirements for the project within the highest dollar threshold under subsection 2 apply to all of the projects in the multiple project solicitation.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 199

SENATE BILL NO. 2156

(Senators G. Lee, Nodland, Mathern)
(Representatives R. Kelsch, Onstad, Vigesaa)

AN ACT to amend and reenact sections 24-02-26 and 24-02-27 of the North Dakota Century Code, relating to arbitration on construction claims.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-26 of the North Dakota Century Code is amended and reenacted as follows:

24-02-26. Controversies to be arbitrated - Arbitrators - How named.

~~All controversies~~A controversy arising out of ~~any~~a contract for the construction or repair of ~~highways~~a highway entered ~~into~~ by the director must be submitted to arbitration ~~as provided in~~under this chapter and chapter 32-29.2. ~~Any~~A person ~~who~~that voluntarily enters ~~into~~ a contract for the construction or repair of ~~highways must be considered as having~~a highway is deemed to have agreed to arbitration of ~~all controversies~~a controversy arising out of that contract. For a claim for less than ~~fifty~~one hundred thousand dollars, only one arbitrator may be jointly selected by the parties. For a claim for ~~fifty~~one hundred thousand dollars or more, three persons comprise the arbitration board.

SECTION 2. AMENDMENT. Section 24-02-27 of the North Dakota Century Code is amended and reenacted as follows:

24-02-27. Arbitration demand - District court may appoint arbitrators if parties fail.

1. Unless a party submits the dispute to the American arbitration association, the arbitrators must be selected in accordance with this section. The party desiring arbitration of claims for more than ~~fifty~~one hundred thousand dollars shall serve a written demand upon the adverse party. The demand must designate an arbitrator and must describe and detail all claim items that are submitted to arbitration. The party served with the demand shall respond in writing within thirty days, and the response must designate a second arbitrator and must explain the respondent's position concerning each claim item. If the respondent does not designate the second arbitrator within thirty days, the claimant may apply to the district court of the judicial district in which the project, or any part of the project, is located for the appointment of the second arbitrator. If the two arbitrators do not designate the third arbitrator within thirty days after the second arbitrator is designated, either party may apply to the district court for the appointment of the third arbitrator. The proceedings in the district court are governed by the rules of civil procedure concerning motions.

2. The ~~parties shall follow the~~ same procedure applies to the parties for claims involving less than ~~fifty~~one hundred thousand dollars, except that the parties ~~shall~~ jointly shall select the arbitrator after the demand and response.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 200

HOUSE BILL NO. 1185

(Representatives Vigesaa, Steiner, Kilichowski)
(Senators Wardner, Laffen)

AN ACT to create and enact a new section to chapter 24-05 of the North Dakota Century Code, relating to advertisement of road construction contracts; and to amend and reenact section 24-05-04 of the North Dakota Century Code, relating to advertising contracts for road construction and equipment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 24-05 of the North Dakota Century Code is created and enacted as follows:

Contracts to be advertised - Road construction.

A contract for highway improvement that exceeds one hundred thousand dollars must be advertised as provided by sections 11-11-26 and 11-11-27. For any contract for highway improvement which exceeds fifty thousand dollars but does not exceed one hundred thousand dollars, the county, when possible, shall seek quotes from at least two contractors.

SECTION 2. AMENDMENT. Section 24-05-04 of the North Dakota Century Code is amended and reenacted as follows:

24-05-04. Contracts to be advertised - Requirements for rental contracts.

Any purchase of county road machinery and any rental contract or agreement for the use of road machinery and other articles ~~or any contract for highway improvement~~, except necessary repairs for road machinery, which exceeds the sum of fifty thousand dollars must be advertised as provided by law for the purchase of county supplies. The board of county commissioners may not enter into a rental contract or agreement for the use of road machinery and other articles for a longer period than twelve months from the date of the rental contract or agree to pay rental for the use of road machinery and other articles which would result in the lessor receiving rental at a rate in excess of twenty percent per year of the cash sale price of the road machinery or other articles, which cash sale price of the road machinery and other articles must be clearly set forth in any rental contract for road machinery and other articles, and failure to include this data in any rental contract for the use of road machinery and other articles renders the rental contract void, and any payments made under the rental contract are recoverable from the county commissioners making the contract, jointly and severally. Notwithstanding the provisions of this section relating to the duration of rental contracts, the board of county commissioners may enter into lease-purchase agreements under which the annual payments by the county do not exceed twenty thousand dollars for the road machinery and articles covered by this section, if those agreements provide for the complete performance and full payment of the purchase price of the machinery or articles within five years from the date of the execution of the lease-purchase agreement according to section 44-08-01.1.

Approved April 8, 2011
Filed April 11, 2011

CHAPTER 201

HOUSE BILL NO. 1232

(Representatives Monson, Headland, Kilichowski)
(Senators Miller, Olafson, Dotzenrod)

AN ACT to amend and reenact sections 24-06-28 and 24-06-29 of the North Dakota Century Code, relating to obstructions and traffic safety hazards on section line roads.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-06-28 of the North Dakota Century Code is amended and reenacted as follows:

24-06-28. Obstruction of section lines prohibited - Exception - Certain fences not considered obstructions - Obstructions and traffic safety hazards - Penalty.

1. A person may not place or cause to be placed any permanent obstruction~~, stone, tree or portion of a tree, or rubbish~~ within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway, unless written permission is first secured from the board of county commissioners or the board of township supervisors, as ~~the case may be~~appropriate. The permission must be granted where the section line has been closed pursuant to section 24-07-03 or where the topography of the land along the section line is such that in the opinion of the board of county commissioners or board of township supervisors, as the case may be, the construction of a road on the section line is impracticable.

2. A person may not place or cause to be placed any obstruction or traffic safety hazard within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway, unless written permission is first secured from the board of county commissioners or board of township supervisors, as appropriate.

3. Subsection 1 may not be construed to prohibit construction of fences:

   a. Along or across section lines which have been closed pursuant to section 24-07-03 or which have not been opened because construction of a road is impracticable due to the topography of the land along the section line, but such fences are subject to removal as provided in section 24-06-30.

   b. Across section lines which have not been closed pursuant to section 24-07-03 if cattle guards are provided in accordance with chapter 24-10 where fences cross the section lines.

~~3.~~4. The construction of fences pursuant to subsection ~~2~~3 may not be considered an obstruction of section lines and any person who damages any fence or who opens and fails to close any gate constructed under subsection ~~2~~3 is guilty of an infraction.

5. Subsection 2 does not apply to a railroad company performing maintenance and repair work of railroad track, crossings, or other railroad facilities.

SECTION 2. AMENDMENT. Section 24-06-29 of the North Dakota Century Code is amended and reenacted as follows:

24-06-29. Removal of permanent obstructions ~~when section lines opened~~ - Removal of obstructions and traffic safety hazards - Cost.

1. If a person places or causes to be placed a ~~stone, tree or portion of a tree, or rubbish~~permanent obstruction within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway, the board of county commissioners or board of township supervisors, as ~~the case may be~~appropriate, when a public highway is opened, shall notify the owners of adjacent property to remove the ~~stone, tree or portion of a tree, or rubbish~~permanent obstruction. Written notice by registered mail to the record owner of the adjacent property mailed to the owner's last-known address and to any other persons in possession of the property constitutes valid notice. If the owners fail to remove the ~~stone, tree or portion of a tree, or rubbish~~permanent obstruction within thirty days after the notice is mailed, the board of county commissioners or the board of township supervisors, as ~~the case may be~~appropriate, shall remove the ~~stone, tree or portion of a tree, or rubbish~~permanent obstruction. The cost of removal must be entered the same as taxes against the adjacent property and paid in the same manner as taxes.

2. If a person places or causes to be placed an obstruction or traffic safety hazard within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway road surface, the board of county commissioners or board of township supervisors, as appropriate, shall issue a written order to the person who caused the obstruction or traffic safety hazard to be placed there to remove the obstruction or traffic safety hazard. If the person notified fails to remove the obstruction or traffic safety hazard as soon as practical after the notice is received, the board of county commissioners or board of township supervisors, as appropriate, shall remove the obstruction or traffic safety hazard. The person responsible for placement of the obstruction or traffic safety hazard is responsible and may be billed for any costs incurred by the county or township for removal of the obstruction or traffic safety hazard.

3. Subsection 2 does not apply to railroad facilities.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 202

SENATE BILL NO. 2066

(Political Subdivisions Committee)
(At the request of the Department of Transportation)

AN ACT to create and enact a new subsection to section 24-17-02 and a new subsection to section 24-17-03 of the North Dakota Century Code, relating to political signs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 24-17-02 of the North Dakota Century Code is created and enacted as follows:

> "Political sign" means a temporary sign erected on private property, which includes signs which solicit votes or support for, or in opposition to, any candidate or any political party under whose designation any candidate is seeking nomination or election. Political signs may also contain messages concerning any public question on the ballot in an election held under the laws of the state. Political signs do not include signs which have been issued a legal billboard permit by a city, county, or the state of North Dakota.

SECTION 2. A new subsection to section 24-17-03 of the North Dakota Century Code is created and enacted as follows:

> Political signs temporarily installed on private property, providing the signs do not include any form of commercial advertising.

Approved April 19, 2011
Filed April 20, 2011