

N.D.A.G. Letter to Eiken (Oct. 18, 1985)

October 18, 1985

Mr. Doug Eiken, Director
North Dakota Parks and Recreation Department
Pinehurst Office Park
1424 West Century Avenue
Suite 202
Bismarck, ND 58501

Dear Mr. Eiken:

Thank you for your letter of October 11, 1985, concerning the bidding requirements of state law for a proposed boat ramp project at Icelandic State Park.

N.D.C.C. §48-02-02 requires "plans, drawings, and specifications for the work, upon competitive bids" for "altering, repairing, or constructing any building belonging or appertaining to any of the public institutions of the state, or to any county, city, park district, school district, or other political subdivision of the state, or in making any improvements connected with the building," if "the total estimated cost or work involved amounts to more than fifty thousand dollars for the completed project. . ." (Emphasis supplied.)

N.D.C.C. §48-02-03 requires advertising "for bids for the doing of the work for which plans, drawings, and specifications are required by section 48-02-02."

N.D.C.C. §48-02-06 requires governing boards to "open publically and read aloud all bids received," and allows them to "reject all bids or award the contract to the lowest and best bidder." Further, it provides that the governing boards "shall have the power to reject any and all bids and may advertise anew" as required by law "until a satisfactory bid is received." (Emphasis supplied.)

The initial question which must be answered is whether the North Dakota Parks and Recreation Department was required by law to advertise for bids and to award the contract for the Icelandic State Park project to the lowest and best bidder.

First of all, it should be noted that the engineer's estimate stated in your letter was \$46,200. This amount is under the \$50,000 threshold amount required by N.D.C.C. § 48-02-02. Therefore on that basis alone, a competitive bidding process was not required.

Additionally, this office has indirectly addressed the issue of what is a building, pursuant to N.D.C.C. § 48-02-02, on a prior occasion. In an April 13, 1983, letter to David M. Wheelihan, city attorney for Ellendale, North Dakota, it was stated:

Because of the scope of Chapter 48-02, N.D.C.C, it is my opinion that Section 48-02-12, N.D.C.C., applies only to public contracts for altering, repairing, or constructing of any building by the particular governing body concerned. Therefore, it is my opinion that Section 48-02-12, N.D.C.C., would not in itself prohibit a city council member from entering into a contract with the city for construction work on a municipal sewer lagoon project. (See also, Letter to Steven J. Wild, Bowman County State's Attorney, May 21, 1985, which followed the conclusion of the April 13, 1983 letter).

"When competitive bidding is not required by statute but the public authorities voluntarily advertise for bids, they may reject all the bids if they see fit and then enter into private negotiations with one of the bidders in order to secure a lower bid, but when the statute requires competitive bidding, such a course cannot be taken, and if all the bids are rejected, there must be a second competition open to all bidders on equal terms." 64 Am. Jur.2d Public Works and Contracts §80 (1972).

Therefore, it is my opinion that the Department of Parks and Recreation was not required by law to advertise bids for the proposed boat ramp project at Icelandic State Park or award the contract to the lowest and best bidder for that project. The Department, having already advertised bids on a voluntary basis, however, may reject the lone bid and enter into direct negotiations with that bidder or any other qualified contractor.

Sincerely,

Nicholas J. Spaeth

cv