

N.D.A.G. Letter to Fahy (Oct. 3, 1985)

October 3, 1985

Mr. Vern Fahy
State Engineer
North Dakota State Water Commission
900 East Boulevard
Bismarck, ND 58505-0187

Dear Mr. Fahy:

Thank you for your letter of September 23, 1985, wherein you set forth your interpretation of N.D.C.C. §61-24.3-03.1 in connection with awarding contracts for the Southwest Pipeline Project.

N.D.C.C. §61-24.3-03.1 provides, in pertinent part, as follows:

61-24.3-03.1. PREFERENCE FOR RESIDENT PIPELINE MANUFACTURERS AND BIDDERS FOR LABOR AND SERVICES. Any contracts for the purchase of pipeline materials, labor, or services awarded by the state water commission in regard to the construction of the southwest water pipeline project must be awarded to North Dakota resident pipeline manufacturers and North Dakota resident bidders for labor and services making the lowest responsible bids if those bids do not exceed by more than five percent the lowest responsible bid submitted by a nonresident pipeline manufacturer or bidder for labor or services. As used in this section, "North Dakota resident pipeline manufacturers and bidders for labor or services" means bidders or sellers who have maintained a bona fide place of business within this state for at least five years prior to the date on which the contract bid on is awarded. . . .

The unequivocal language of N.D.C.C. §61-24.3-03.1 and the corresponding legislative history indicate that the statute is directed solely at contracts awarded by the State Water Commission. Inasmuch as the State Water Commission will only be awarding contracts to general contractors, and not to the individual subcontractors or suppliers, the Commission need only concern itself with the residency requirements of the bidding general contractors in determining whether the 5 percent preference is applicable.

Thus, I concur with your interpretation of N.D.C.C. § 61-24.3-03.1 and the proposed method of receiving bids and awarding contracts for the Southwest Pipeline Project.

Sincerely,

Nicholas J. Spaeth

CV