

Sixtieth  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1033

Introduced by

Legislative Council

(Industry, Business, and Labor Committee)

1 A BILL for an Act to create and enact chapter 48-01.2 of the North Dakota Century Code,  
2 relating to public improvements, bidding, construction management, and public improvement  
3 contracts; to amend and reenact section 11-11-26, subdivision f of subsection 1 of section  
4 15.1-09-34, sections 23-11-11, 25-01.1-33, 40-22-19, 40-28-07, 40-29-07, 40-31-04, and  
5 40-33.2-09, subsection 7 of section 40-33.3-06, section 40-49-14, subsection 12 of section  
6 40-57-03, sections 43-07-23, 48-05-12, and 57-40.2-14, subsection 2 of section 61-02-04.1,  
7 subsection 2 of section 61-02-23.2, sections 61-07-09, 61-12-25, 61-16.1-14, 61-21-25,  
8 61-21-45, 61-24.3-03.1, 61-35-13, and 61-35-88, and subsection 2 of section 61-35-94 of the  
9 North Dakota Century Code, relating to public improvements, bidding, and public improvement  
10 contracts; and to repeal chapters 48-01.1 and 48-02 of the North Dakota Century Code, relating  
11 to public improvements, bidding, and public improvement contracts.

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

13 **SECTION 1. AMENDMENT.** Section 11-11-26 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **11-11-26. When board shall advertise for bids.** Except as provided in ~~chapters~~  
16 ~~48-01.1 and 48-02~~ chapter 48-01.2, when the amount to be paid during the current year for the  
17 erection of county buildings or for election ballots and supplies exceeds ten thousand dollars,  
18 the board of county commissioners shall cause an advertisement for bids to be published at  
19 least once each week for two successive weeks in the official newspaper of the county and in  
20 such other newspapers as it shall deem advisable. The first publication shall be made at least  
21 fifteen days before the day set for the opening of the bids. For the purchase of fuel when the  
22 amount exceeds four thousand dollars, the board of county commissioners shall seek bids  
23 either by telephone solicitation from at least two suppliers, or by an advertisement for bids to be

published at least once each week for two successive weeks in the official newspaper of the county and in other newspapers as the board deems advisable.

**SECTION 2. AMENDMENT.** Subdivision f of subsection 1 of section 15.1-09-34 of the North Dakota Century Code is amended and reenacted as follows:

- f. Building construction projects under ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

**SECTION 3. AMENDMENT.** Section 23-11-11 of the North Dakota Century Code is amended and reenacted as follows:

**23-11-11. Powers of authority.** An authority has the following powers and duties:

1. To exercise public and essential governmental functions.
2. To sue and be sued.
3. To have perpetual succession.
4. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
5. To make, amend, and repeal such bylaws, rules, and regulations, not inconsistent with this chapter, as are necessary to carry into effect the powers and purposes of the authority.
6. To prepare, carry out, acquire, lease, and operate housing projects within its area of operation.
7. To provide for the construction, reconstruction, improvement, alteration, or repair of any housing project, or any part of a housing project, within the authority's area of operation.
8. To arrange or contract for the furnishing by any person or any public or private agency of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants of a housing project.
9. To include, in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractor comply with requirements as to minimum wages and maximum hours of labor and any conditions that the federal government may have attached to the financial aid for the project.
10. To lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project and, subject to the

- 1 limitations contained in this chapter, to establish and revise the rents or charges in
- 2 the housing project.
- 3 11. To own, hold, and improve property.
- 4 12. To purchase, lease, obtain options upon, or acquire, by gift, grant, bequest, devise,
- 5 or otherwise, any property or any interest in property.
- 6 13. To acquire real property by the exercise of the power of eminent domain.
- 7 14. To sell, lease, exchange, transfer, assign, pledge, or dispose of any property, or
- 8 any interest in property.
- 9 15. To insure, or provide for the insurance of, any property, or any operation of the
- 10 authority, against any risks or hazards.
- 11 16. To procure insurance or guaranties from the federal government of the payment of
- 12 any debts, or parts of debts, secured by mortgages on any property included in any
- 13 of the authority's housing projects, whether the debts were incurred by the
- 14 authority or not.
- 15 17. To invest any funds held by the authority in reserves or sinking funds, or any funds
- 16 not required for immediate disbursement, in property or securities in which savings
- 17 banks may legally invest funds subject to a savings bank's control.
- 18 18. To purchase its bonds at a price not more than the principal amount of the bonds
- 19 and accrued interest, a bond so purchased is canceled.
- 20 19. To investigate, in the authority's area of operation, living, dwelling, and housing
- 21 conditions and the means and methods of improving the same.
- 22 20. To determine, within the authority's area of operation, where slum areas exist or
- 23 where there is a shortage of decent, safe, and sanitary dwelling accommodations
- 24 for persons of low or moderate income.
- 25 21. To make studies and recommendations relating to the problem of clearing,
- 26 replanning, and reconstructing the slum areas within the authority's area of
- 27 operation and the problem of providing dwelling accommodations for the persons
- 28 of low or moderate income, and to cooperate with the city, county, or state, or any
- 29 political subdivision in any action taken in connection with these problems.
- 30 22. To engage in research, studies, and experimentation on the subject of housing
- 31 within the authority's area of operation.

- 1           23.   To conduct examinations and investigations and to hear testimony and take proof
- 2                   under oath at public or private hearings on any matter material for the authority's
- 3                   information.
- 4           24.   To administer oaths, issue subpoenas requiring the attendance of witnesses or the
- 5                   production of books and papers, and to issue commissions for the examinations of
- 6                   witnesses who are outside of the state or unable to attend before the authority or
- 7                   who are excused from attendance.
- 8           25.   To make available to appropriate agencies, including those charged with the duty
- 9                   of abating or requiring the correction of nuisances or like conditions, or of
- 10                  demolishing unsafe or unsanitary structures within the authority's area of operation,
- 11                  the authority's findings and recommendations with regard to any building or
- 12                  property where conditions exist which are dangerous to the public health, morals,
- 13                  safety, or welfare.
- 14           26.   To issue bonds from time to time for any of its corporate purposes.
- 15           27.   To issue refunding bonds for the purpose of paying or retiring bonds previously
- 16                  issued by the authority.
- 17           28.   To borrow money or accept grants or other financial assistance from the federal
- 18                  government for, or in aid of, any housing project within the authority's area of
- 19                  operation.
- 20           29.   To take over or lease or manage any housing project or undertaking constructed or
- 21                  owned by the federal government.
- 22           30.   To comply with conditions and to enter into mortgages, trust indentures, leases, or
- 23                  agreements as may be necessary, convenient, or desirable to carry out this
- 24                  section.
- 25           31.   To do any and all things necessary or desirable to secure the financial aid or
- 26                  cooperation of the federal government in the undertaking, construction,
- 27                  maintenance, or operation of any housing project.
- 28           32.   To exercise all or any part or combination of powers granted.
- 29           33.   To exercise within the authority's area of operation the authority granted to the
- 30                  industrial commission under section 54-17-07.6.

34. To exercise the power to provide operation and maintenance expenses under subdivision a of subsection 23 of section 23-11-24.

35. To exercise the power to issue general obligation bonds in accordance with chapter 21-03.

36. To develop a plan identifying the public purposes of the authority's ownership, conditions that would make the authority's ownership no longer necessary for accomplishing those public purposes, and a plan to divest the authority's ownership interest as soon as economically prudent once those conditions occur and to effectuate the plan.

37. To exercise other powers and duties as may be necessary to carry out the purposes and provisions of this chapter.

An authority, in exercising the powers specified in subsections 23, 24, and 25, may act through one or more of the commissioners or through other persons designated by the authority.

Provisions of law with respect to the acquisition, operation, or disposition of property by other public bodies are not applicable to an authority unless there is specific provision to that effect by the legislative assembly. The construction of a housing project is a public improvement for which an authority is subject to the ~~competitive bidding~~ requirements of chapter ~~48-01.1~~ 48-01.2.

**SECTION 4. AMENDMENT.** Section 25-01.1-33 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.1-33. Use of patient labor in erection or repair of buildings of institutions.**

All work for the erection, repair, or improvement of buildings, grounds, or properties under the control of the supervising department must be let by contract, except that the work of patients in such institutions may be utilized if approved by the superintendent of such institution as having possible benefits to the patient and not detrimental to the patient's health or treatment and when the use of such labor will not substantially depart from the requirements of ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

**SECTION 5. AMENDMENT.** Section 40-22-19 of the North Dakota Century Code is amended and reenacted as follows:

**40-22-19. Contract proposals.** Proposals for the work of making improvements provided for in this chapter must be advertised for by the governing body in the official

newspaper of the municipality once each week for two consecutive weeks. All other provisions for proposals under this chapter are governed by ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

**SECTION 6. AMENDMENT.** Section 40-28-07 of the North Dakota Century Code is amended and reenacted as follows:

**40-28-07. Bids for service connections.** The governing body shall direct the city auditor to advertise for bids in accordance with ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2 for the laying and construction of service connections in accordance with the plans and specifications therefor.

**SECTION 7. AMENDMENT.** Section 40-29-07 of the North Dakota Century Code is amended and reenacted as follows:

**40-29-07. Bids for sidewalks.** Bids for the construction of sidewalks in a city must be made in accordance with ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

**SECTION 8. AMENDMENT.** Section 40-31-04 of the North Dakota Century Code is amended and reenacted as follows:

**40-31-04. Letting contracts for curbing.** At least once every year that the city plans to construct or repair curbing or gutters, the city auditor shall solicit bids in accordance with ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

**SECTION 9. AMENDMENT.** Section 40-33.2-09 of the North Dakota Century Code is amended and reenacted as follows:

**40-33.2-09. Construction contracts.** A city or municipal power agency may contract for the planning, acquisition, construction, reconstruction, operation, maintenance, repair, extension, and improvement of generation and transmission facilities outside of its corporate limits or those of its members, or may contract with other public or private owners of these facilities to perform these functions, without advertising for bids, preparing final plans and specifications in advance of construction, or securing performance and payment bonds. If a payment bond is secured as provided in ~~chapter 48-02~~ chapter 48-01.2, is enforceable as therein provided, and no lien may be filed under chapter 35-27.

**SECTION 10. AMENDMENT.** Subsection 7 of section 40-33.3-06 of the North Dakota Century Code is amended and reenacted as follows:

7. May contract with any person for the construction of any project or for the sale, transmission, or distribution of liquids or of natural or synthetic gas by any project,

or for any interest therein or any right to capacity thereof, upon such terms as the authority determines. If a payment bond is secured as provided in chapter ~~48-02~~ 48-01.2, no lien may be filed under chapter 35-27.

**SECTION 11. AMENDMENT.** Section 40-49-14 of the North Dakota Century Code is amended and reenacted as follows:

**40-49-14. When yea and nay vote taken - Letting contracts - Debt limit - Bills, claims, and demands against board.** Yea and nay votes must be taken on all propositions involving the expenditure of money, levying of taxes, or the issuance of bonds or certificates of indebtedness. Approval of an expenditure of money must be recorded in the record of the board's proceedings and this shall be sufficient to indicate approval without requiring the members to sign or initial the voucher or order for payment. Except as provided in ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2, all contracts exceeding ten thousand dollars must be let to the lowest responsible bidder after advertisement in the official newspaper of the municipality once each week for two successive weeks. The board may reject any or all bids. All contracts must be in writing and must be signed by the president of the board or a designated representative and unless so executed, they shall be void. The debt of a park district may not exceed one percent of the taxable property within the district according to the last preceding assessment. No bill, claim, account, or demand against the district may be audited, allowed, or paid until a full, written, itemized statement has been filed with the governing body or unless otherwise authorized by the governing body pursuant to contract or other action. The governing body, in its discretion, may require the filing of any additional information which it may deem necessary to the proper understanding and audit of any claim or account and it may require the filing of a sworn statement in such form as it may prescribe or as noted below:

CERTIFICATE

I do hereby certify that the within bill, claim, account, or demand is just and true; that the money therein charged was actually paid for the purposes therein stated; that the services therein charged were actually rendered and of the value therein charged; and that no part of such bill, claim, account, or demand has been paid; and that the goods therein charged were actually delivered and were of the value charged.

Sign here \_\_\_\_\_

If signed for a firm or company,  
show authority on this line.

**SECTION 12. AMENDMENT.** Subsection 12 of section 40-57-03 of the North Dakota Century Code is amended and reenacted as follows:

12. If the project financed by the municipality consists of the construction, reconstruction, improvement, or betterment of real property, buildings and improvements on real property, and buildings, the provisions of chapter ~~48-02~~ 48-01.2 and other applicable statutes shall apply; except that the municipality, in the revenue agreement and resolution or mortgage defining the terms and conditions upon which the project is to be constructed and financed, or in a preliminary agreement establishing the general terms of the revenue agreement and financing of the project when constructed, may permit a contracting party which is not a governmental entity or a public institution, subject to such terms and conditions as the municipality shall find necessary or desirable and proper, to provide for the construction, acquisition, and installation of the buildings, improvements, and equipment to be included in the project by any means available to the contracting party, whether or not the procedure followed by the contracting party is in conformity with said chapter ~~48-02~~ 48-01.2.

**SECTION 13. AMENDMENT.** Section 43-07-23 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-23. Allowable retention of estimates - Interest on retainage.** Contracts entered ~~into~~ between persons for the performance of work to be done by a contractor, except those contracts subject to section 40-22-37 or ~~48-02-07~~ 48-01.2-13, or contracts governed by federal statutes or regulations which require other provisions with respect to retention, are subject to a maximum retention on amounts due under the contract as follows: retention of ten percent of each estimate presented is allowable until such time as the project is fifty percent complete, with no further retainage on estimates during the continuance of the contract. If the owner, governing board, or authorized committee invests the retained estimate funds, the interest earned on those retained funds is payable at the time of final payment on the contract to the contractor on whose account the moneys were held.



1           **SECTION 14.** Chapter 48-01.2 of the North Dakota Century Code is created and  
2 enacted as follows:

3           **48-01.2-01. Definitions.** In this chapter, unless the context otherwise requires:

- 4           1. "Agency construction management" means a public improvement delivery method  
5           through which a person provides to a governing body experienced construction  
6           management services, including ideas on constructability, documentation of design  
7           and construction, and coordination of project schedules.
- 8           2. "Architect" means an individual registered as an architect under chapter 43-03.
- 9           3. "Common ownership" means any entity owned by a construction manager or  
10           owned by any principal owner of the construction manager providing agency  
11           construction management.
- 12           4. "Construction" means the process of building, altering, repairing, improving, or  
13           demolishing any public structure or building or other improvement to any public  
14           property. The term does not include the routine operation or maintenance of  
15           existing facilities, structures, buildings, or real property or demolition projects  
16           costing less than one hundred thousand dollars.
- 17           5. "Construction administration" means administrative services provided by a  
18           governing body or an architect, a landscape architect, or an engineer, and includes  
19           providing clarifications, submittal review, recommendations for payment,  
20           preparation of change orders, and other administrative services included in the  
21           agreement with the architect, landscape architect, or engineer. The term does not  
22           include supervision of the construction activities for the construction contracts.
- 23           6. "Construction management at-risk" means a public improvement delivery method  
24           through which a construction manager provides advice to the governing body  
25           during the planning and design phase of a public improvement, negotiates a  
26           contract with the governing body for the general construction bid package of the  
27           public improvement, and contracts with subcontractors and suppliers for the actual  
28           construction of the public improvement.
- 29           7. "Construction manager" means a contractor licensed under chapter 43-07 or an  
30           individual employed by a licensed contractor which has the expertise and

- 1            resources to assist a governing body with the management of the design,  
2            contracting, and construction aspects of a public improvement.
- 3            8.    "Construction observation" means observation of construction work and site visits  
4            by an architect, a landscape architect, or an engineer to assist the governing body  
5            in determining that the work conforms in general to the requirements of the  
6            construction contract and that the contractor has implemented and maintained the  
7            integrity of the design concept of a project as a functioning whole as indicated in  
8            the construction contract.
- 9            9.    "Contract" means a type of agency agreement for the procurement of services  
10           under this chapter.
- 11           10.   "Contractor" means any person, duly licensed, that undertakes or enters a contract  
12           with a governing body for the construction or construction management of any  
13           public improvement, including multiple prime contracts.
- 14           11.   "Design services" means architect services, engineer services, landscape architect  
15           services, or surveyor services.
- 16           12.   "Design-bid-build" means a project delivery method in which design and  
17           construction of the project are in sequential phases, and in which the first project  
18           phase involves design services, the second project phase involves securing a  
19           contractor through a bidding process, and the third project phase provides for  
20           construction of the project by a contractor awarded the project.
- 21           13.   "Emergency situation" means a sudden generally unexpected occurrence that  
22           requires immediate action to protect public health, safety, or property and which  
23           ends when the immediate threat to public health, safety, or property ceases and  
24           services are restored. The term does not include a lack of planning on the part of  
25           the governing body, architect, engineer, landscape architect, or contractor.
- 26           14.   "Engineer" means an individual registered as an engineer under chapter 43-19.
- 27           15.   "General conditions" means the written portion of a contract setting forth the  
28           governing body's minimum acceptable performance requirements, including the  
29           rights, responsibilities, and relationships of the parties involved in the performance  
30           of the contract.

1       16.   "Governing body" means the governing officer or board of a state entity or a  
2           political subdivision.

3       17.   "Guaranteed maximum price" means the maximum amount a construction  
4           manager at-risk may be paid under a contract to construct a public improvement.

5       18.   "Landscape architect services" means landscape architecture services governed  
6           under chapter 43-03.

7       19.   "Lowest responsible bidder" means the lowest best bidder for the project  
8           considering past experience, financial condition, past work with the governing  
9           body, and other pertinent attributes that may be identified in the advertisement for  
10          bids.

11      20.   "Public improvement" means any improvement undertaken by a governing body for  
12          the good of the public and which is paid for with public funds and constructed on  
13          public land or within a public building and includes an improvement on public or  
14          nonpublic land if any portion of the construction phase of the project is paid for with  
15          public funds. The term does not include a county road construction and  
16          maintenance, state highway, or public service commission project governed by  
17          title 11, 24, or 38.

18      21.   "Subcontractor" means a person that contracts to perform work or render a service  
19          to a contractor or to another subcontractor as part of a contract with a governing  
20          body.

21           **48-01.2-02. Plans and specifications for a public improvement contract.** Except  
22   as otherwise provided in this chapter, if a contract for the construction of a public improvement  
23   is estimated to cost in excess of one hundred thousand dollars, the governing body shall  
24   procure plans, drawings, and specifications for the improvement from an architect or engineer.  
25   For a public building in use by or to be used by the North Dakota agricultural experiment station  
26   in connection with farm or agricultural research operations, the plans, drawings, and  
27   specifications, with the approval of the state board of higher education, may be prepared by an  
28   engineer in the regular employment of the agricultural experiment station. For a public building  
29   in use by or to be used by the department of transportation for the storage and housing of road  
30   materials or road machinery, equipment, and tools, the plans, drawings, and specifications may  
31   be prepared by an engineer employed by the department of transportation.

1           **48-01.2-03. Specified brands, marks, names, or patented articles may not be**  
2 **specified.** A governing body, in specifying materials to be used for a public improvement or in  
3 plans or specifications for a public improvement, may not request bids for any article of a  
4 specified or copyrighted brand or name, the product of any one manufacturer, or any patented  
5 apparatus or appliance when the requirement will prevent proper competition, unless the  
6 specifications also request bids on other similar articles of equal value, utility, and merit.

7           **48-01.2-04. Publication of advertisement for bids - Emergency exception.**

- 8           1. Except as otherwise provided in this chapter, if the construction of a public  
9 improvement is estimated to cost in excess of one hundred thousand dollars, the  
10 governing body shall advertise for bids by publishing for three consecutive weeks.  
11 The first publication of the advertisement must be at least twenty-one days before  
12 the date of the opening of bids. The advertisement must be published in the official  
13 newspaper of the political subdivision in which the public improvement is or will be  
14 located, and in a trade publication of general circulation among the contractors,  
15 building manufacturers, and dealers in this state, except the advertisement for a  
16 public improvement financed by special assessments need be published only once  
17 each week for two weeks in the official newspaper with the first publication being at  
18 least fourteen days before the bid opening.
- 19          2. If a governing body declares an emergency situation, the governing body may  
20 contract for the construction of a public improvement without seeking bids.

21           **48-01.2-05. Contents of advertisement.** The advertisement for bids required by  
22 section 48-01.2-04 must state:

- 23          1. The nature of the work and the type and location of the proposed public  
24 improvement.
- 25          2. When and where the plans, drawings, and specifications may be seen and  
26 examined.
- 27          3. The place, date, and time the bids will be opened.
- 28          4. That each bid must be accompanied by a separate envelope containing the  
29 contractor's license and bid security. The bid security must be in a sum equal to  
30 five percent of the full amount of the bid and must be in the form of a bidder's bond.  
31 A bidder's bond must be executed by the bidder as principal and by a surety,

1           conditioned that if the principal's bid is accepted and the contract awarded to the  
2           principal, the principal, within ten days after notice of the award, shall execute a  
3           contract in accordance with the terms of the bid and the bid bond and any condition  
4           of the governing body. A countersignature of a bid bond is not required under this  
5           section. If a successful bidder does not execute a contract within the ten days  
6           allowed, the bidder's bond must be forfeited to the governing body and the project  
7           awarded to the next lowest responsible bidder.

8           5. That a bidder, except a bidder on a municipal, rural, and industrial water supply  
9           project authorized for funding under Public Law No. 99-294 [100 Stat. 426;  
10           43 U.S.C. 390a], must be licensed for the full amount of the bid as required by  
11           section 43-07-05. For projects authorized for funding under Public Law No. 99-294  
12           [100 Stat. 426; 43 U.S.C. 390a], the advertisement must state that, unless a bidder  
13           obtains a contractor's license for the full amount of its bid within twenty days after it  
14           is determined the bidder is the lowest responsible bidder, the bid must be rejected  
15           and the contract awarded to the next lowest responsible bidder.

16          6. That no bid may be read or considered if the bid does not fully comply with the  
17           requirements of this section and that any deficient bid submitted must be resealed  
18           and returned to the bidder immediately.

19          7. That the governing body reserves the right to reject any and all bids and rebid the  
20           project until a satisfactory bid is received.

21           **48-01.2-06. Bid requirements for public improvements.** Multiple prime bids for the  
22           general, electrical, and mechanical portions of a project are required when any individual  
23           general, electrical, or mechanical contract or any combination of individual contracts is in  
24           excess of one hundred thousand dollars. If a general, mechanical, or electrical contract is  
25           estimated to be less than twenty-five thousand dollars, the contract may be included in one of  
26           the other prime contracts. A governing body may allow submission of a single prime bid for the  
27           complete project or bids for other specialized portions of the project. A governing body may not  
28           accept the single prime bid unless that bid is lower than the combined total of the lowest  
29           responsible multiple bids for the project.

30           **48-01.2-07. Opening of bids - Award of contract.** At the time and place specified in  
31           the notice, a governing body shall open publicly and read aloud each responsible bid received

1 and award the contract to the lowest responsible bidder. A governing body may reject any and  
2 all bids and readvertise for bids if no bid is satisfactory or if the governing body determines any  
3 agreement has been entered by the bidders or others to prevent competition. The governing  
4 body may advertise for new bids in accordance with this chapter until a satisfactory bid is  
5 received.

6 **48-01.2-08. Officers must not be interested in contract.** A governing body, or any  
7 member, employee, or appointee of a governing body, may not be pecuniarily interested or  
8 concerned in a contract for a public improvement entered by the governing body.

9 **48-01.2-09. Contract with successful bidder.** A governing body shall enter a  
10 contract with the lowest responsible bidder as determined under section 48-01.2-07. The  
11 contract must contain the following:

- 12 1. The written terms of the agreement and any associated document signed by the  
13 governing body and the contractor;
- 14 2. The required surety bond; and
- 15 3. Any other document deemed appropriate by the governing body and identified in  
16 the advertisement for bids.

17 **48-01.2-10. Bonds from contractors for public improvements.**

- 18 1. Unless otherwise provided under this chapter, a governing body authorized to  
19 enter a contract for the construction of a public improvement in excess of one  
20 hundred thousand dollars shall take from the contractor a bond before permitting  
21 any work to be done on the contract. The bond must be for an amount equal at  
22 least to the price stated in the contract. The bond must be conditioned to be void if  
23 the contractor and all subcontractors fully perform all terms, conditions, and  
24 provisions of the contract and pay all bills or claims on account of labor performed  
25 and any supplies, and materials furnished and used in the performance of the  
26 contract, including all demands of subcontractors. The requirement that bills and  
27 claims be paid must include the requirement that interest of the amount authorized  
28 under section 13-01-14 be paid on bills and claims not paid within ninety days.  
29 The bond is security for all bills, claims, and demands until fully paid, with  
30 preference to labor and material suppliers as to payment. The bond must run to

1           the governing body, but any person having a lawful claim against the contractor or  
2           any subcontractor may sue on the bond.

- 3           2. A governing body may not require any person required to provide a surety bond to  
4           obtain the surety bond from a specified insurance or surety company or insurance  
5           producer or to submit financial data to the company or producer.

6           **48-01.2-11. Claim for public improvement - Suit on contractor's bond.** A person  
7           that has furnished labor or material for any public improvement for which a bond is furnished  
8           and has not been paid in full within ninety days after completion of the contribution of labor or  
9           materials may sue on the bond for the amount unpaid at the time of institution of suit. However,  
10          a person having a direct contractual relationship with a subcontractor, but no contractual  
11          relationship with the contractor furnishing the bond, does not have a claim for relief upon the  
12          bond unless that person has given written notice to the contractor, within ninety days from the  
13          date on which the person completed the contribution, stating with substantial accuracy the  
14          amount claimed and the name of the person for which the contribution was performed. The  
15          notice must be served by registered mail in an envelope addressed to the contractor at any  
16          place the contractor maintains an office, conducts business, or has a residence.

17          A governing body shall provide a certified copy of the bond and the contract for which  
18          the bond was given to any individual who submits an affidavit that either the individual has  
19          supplied labor or materials for the improvement and that payment has not been made or that  
20          the individual is being sued on the bond. The individual requesting the copy shall pay the  
21          actual cost of the preparation of the certified copy of the bond and the contract. The certified  
22          copy of the bond is prima facie evidence of the contents, execution, and delivery of the original.

23          **48-01.2-12. Claims - When barred as liens against contractor and surety.** Any  
24          claim for any labor, material, or supply furnished for an improvement, upon which a suit is not  
25          commenced within one year after completion and acceptance of the project, is barred as a lien  
26          or claim against the contractor and the contractor's surety and any right of setoff or  
27          counterclaim may be enforced in any court in this state against the governing body, the  
28          contractor, or the contractor's surety. This chapter does not bar the right of any person who  
29          has furnished any labor, supply, or material to any subcontractor to enforce the claim against  
30          the subcontractor.

1       **48-01.2-13. Payments.** At least once in each calendar month during the continuance  
2 of work upon any public improvement, the governing body shall receive and consider any partial  
3 payment estimate prepared by the architect or engineer. Upon review and approval, the  
4 governing body shall pay an estimate in an amount equal to the estimated value of the labor  
5 and material furnished plus the material adequately stored. A partial payment estimate must  
6 include retentions or retainage as follows: ten percent of each estimate until the project is fifty  
7 percent completed with no further retainage on estimates during the continuance of the contract  
8 unless unsatisfactory progress or performance is documented. The governing body may, upon  
9 completion of ninety-five percent of the contract, pay to the contractor up to ninety-five percent  
10 of the amount retained from previous estimates. The remaining amount retained must be paid  
11 to the contractor in the amounts and at the times approved by the architect or engineer. The  
12 governing body shall make final payment of all moneys due to the contractor following  
13 completion of all work, acceptance of the project by the governing body, and the provision of  
14 necessary releases. If an architect or engineer is not employed by the governing body for  
15 administration of the contract, the contractor, at the end of each calendar month during the  
16 continuance of work, may furnish a payment estimate to the governing body. After considering  
17 and approving an estimate, the governing body shall draw a warrant upon the proper fund and  
18 promptly transmit the warrant to the contractor. The governing body may invest or deposit any  
19 retained amount in a financial association or institution so that the contractor's money retained  
20 is earning interest or dividends for the benefit of the contractor. Any amount invested or  
21 deposited must remain in the name of the governing body until final payment of all money due  
22 to the contractor is to be made.

23       **48-01.2-14. Late payment - Rate of interest.** If a governing body fails or neglects to  
24 consider any estimate properly submitted, pay any estimate approved, or make final payment  
25 upon completion and acceptance of a public improvement, for a period of more than thirty days  
26 from the date of approval of the estimate or the completion and acceptance date, the governing  
27 body shall pay interest on the estimate or final payment from the date of approval. The interest  
28 rate must be the rate per annum of two percentage points below the Bank of North Dakota  
29 prime interest rate as set thirty days from the date of the estimate or completion date until the  
30 issuance of a proper warrant for the payment. The governing body shall compute and add the  
31 interest to the face of the estimate or final payment and the interest must be charged to the fund



1 upon which payment for the contract is to be made. No payment for, or on account of, any  
2 contract made under this chapter may be made except upon estimate of the architect, engineer,  
3 or contractor as provided in section 48-01.2-13.

4 **48-01.2-15. Appropriations may not be diverted.** No portion of any special  
5 appropriation for the erection of any public improvement, or for the doing of any work, may be  
6 drawn from the state treasury in advance of the work being completed or of the materials  
7 furnished. The funds may be drawn only upon proper estimates approved by the governing  
8 body of the institution for which the improvement is being constructed. No portion of any  
9 appropriation for any purpose may be drawn from the treasury before the appropriation is  
10 required for the purpose for which it is made, and no appropriation that is or may be made for  
11 any purpose with respect to the construction or improvement may be drawn or used for any  
12 other purpose until the construction or improvement for which the appropriation was made is  
13 fully completed and paid for.

14 **48-01.2-16. Architects, landscape architects, and engineers - Duties.** The  
15 governing body shall employ the architect, landscape architect, or engineer furnishing the plans  
16 as provided in this chapter or some other qualified person to provide construction administration  
17 and construction observation services for which the plans and specifications are prepared as  
18 provided by section 48-01.2-02. The architect, landscape architect, or engineer shall assist the  
19 governing body to ensure that the contractor performs the work in compliance with the plans  
20 and specifications. As part of a site visit or construction observation, the architect, landscape  
21 architect, or engineer may not supervise, direct, or have control over the contractor's work. The  
22 architect, landscape architect, or engineer may not exercise control over or responsibility for the  
23 means, methods, techniques, sequences, or procedures of construction selected or used by the  
24 contractor, the quality control of the work, the security or safety on the site, any safety  
25 precaution or program incident to the contractor's work, the failure of the contractor to comply  
26 with any law or rule applicable to the contractor's furnishing of or performance of the work, or  
27 the failure of the contractor to furnish or perform the work in accordance with the construction  
28 contract. The architect, landscape architect, or engineer is entitled to receive a reasonable  
29 compensation to be fixed by the governing body. Any duty imposed or power conferred upon  
30 the governing body by this chapter applies to a successor to the governing body.

1       **48-01.2-17. Coordination of work under multiple prime bids.** If a public  
2 improvement is awarded as multiple prime contracts for the general, electrical, mechanical  
3 work, and other prime contracts as contained in the bid for the project, the governing body may  
4 assign the coordination of the electrical and mechanical contracts and any other contracts to  
5 the general contractor for the project to facilitate the coordination of the work.

6       **48-01.2-18. Construction management - Governing body determinations.**

- 7       1. Notwithstanding any other provision of law, a governing body may use the agency  
8 construction management or construction management at-risk delivery methods for  
9 construction of a public improvement if the construction manager has no common  
10 ownership or conflict of interest with the architect, landscape architect, or engineer  
11 involved in the planning and design of the public improvement or with the  
12 contractor constructing the public improvement. The governing body shall require  
13 the construction manager for a public improvement to hold and be responsible for  
14 the general conditions for the construction of the public improvement.
- 15       2. Before utilizing the agency construction management or construction management  
16 at-risk delivery method, a governing body shall make the following determinations:
- 17       a. That it is in the best interest of the public to utilize the agency construction  
18 manager or construction manager at-risk public improvement delivery method.
- 19       b. That the agency construction manager or construction manager at-risk  
20 planning and design phase services will not duplicate services normally  
21 provided by an architect or engineer.
- 22       c. That the agency construction manager or construction manager at-risk  
23 construction services will be in addition to and not duplicate the services  
24 provided for in the architect and engineer contracts.
- 25       3. The governing body shall provide written documentation of the determinations  
26 provided for under subsection 2 upon written request from any individual.

27       **48-01.2-19. Agency construction management procurement procedures -**  
28 **Contract.**

- 29       1. A governing body electing to utilize the agency construction management delivery  
30 method shall establish a construction management services selection committee  
31 composed of individuals the governing body determines to be qualified to make an

1 informed decision as to the most competent and qualified person for the proposed  
2 public improvement.

3 2. The agency selection committee shall:

- 4 a. Develop a description of the proposed public improvement;  
5 b. Enumerate each required agency construction management service for the  
6 proposed public improvement; and  
7 c. Prepare the formal invitation request for qualifications, which must include the  
8 project title, the general scope of work, a description of each service required  
9 for the public improvement, the final selection criteria, the address to which  
10 responses to the request must be submitted, and the deadline for submission  
11 of responses.

12 3. The governing body shall publish a notice of the request for qualifications in a  
13 newspaper of general circulation in the county in which the public improvement is  
14 located and in a construction trade publication in general circulation among the  
15 contractors, building manufacturers, and dealers in this state and shall be  
16 published for three consecutive weeks, with the first publication being at least  
17 twenty-one days before the date of opening of the request for qualifications. Upon  
18 written request, the governing body shall mail a copy of the invitation to any  
19 interested party.

20 4. After the submission deadline, the selection committee shall hold interviews with at  
21 least three persons that have responded to the advertisement and which are  
22 deemed most qualified on the basis of information available before the interviews.  
23 If less than three persons have responded to the advertisement, the committee  
24 may readvertise or hold interviews with any person that submitted a response. The  
25 selection committee's determination as to which person will be interviewed must be  
26 in writing and must be based upon the committee's review and evaluation of all  
27 materials submitted. The written report of the committee must list the name of  
28 each person that responded to the advertisement and enumerate any reason for  
29 selecting any person to be interviewed. The written report must be available to the  
30 public upon written request. The purpose of the interviews must be to provide any  
31 information required by the selection committee to fully acquaint the committee

members with the relative qualifications of each person that responded to the advertisement.

5. The selection committee shall evaluate each person interviewed on the basis of the following criteria:

- a. The past performance of the person with respect to prior public improvements.
- b. The qualifications of proposed personnel.
- c. The willingness to meet time and budget requirements of the governing body.
- d. The business location of the person.
- e. The recent, current, and projected workloads of the person.
- f. Any related experience performing agency construction management services on projects of similar size and scope.
- g. Any recent or current work by the person for the agency.
- h. The ability of the person to provide the bond for the person's portion of the work on the public improvement.
- i. The possession by the person of a class A contractor's license.

6. Based upon the evaluation under subsection 5, the selection committee shall rank the three persons which, in its judgment, are most qualified. If fewer than three persons responded to the advertisement, the selection committee shall rank each person that responded. The selection committee's report ranking the interviewed persons must be in writing and must include data substantiating the committee's determinations. The data must be available to the public upon written request.

7. The selection committee shall submit its written report ranking the interviewed persons to the governing body for evaluation and approval by the governing body. The governing body shall determine the final ranking of each person and provide written notification of the order of preference to each person that responded to the request for qualifications.

8. After providing the notice under subsection 7, the governing body shall negotiate a contract for services with the most qualified person at a compensation which is fair and reasonable to the governing body. If the governing body is unable to negotiate a satisfactory contract with that person, the governing body shall terminate

negotiations with that person and commence negotiations in the same manner with the second and then the third most qualified person until a satisfactory contract has been negotiated. If no agreement is reached, three additional persons in order of the original ranking must be selected after consultation with the selection committee, and negotiations must be continued in the same manner until agreement is reached.

9. The governing body, at any time, may reject all proposals and readvertise or select another allowed project delivery method.

**48-01.2-20. Selection process for construction management at-risk planning and design phase services.**

1. A governing body electing to utilize a construction management at-risk delivery process for a proposed public improvement shall create a selection committee composed of:
  - a. An administrative individual from the governing body.
  - b. A registered architect.
  - c. A registered engineer.
  - d. A contractor.
2. Before issuing a notice of request for qualifications to enter a construction management at-risk services contract, the selection committee shall establish the content of the request for qualifications, which must include the following:
  - a. The identity of the governing body and a list of the members of the selection committee;
  - b. A description of the proposed public improvement;
  - c. The proposed budget limits of the public improvement;
  - d. The commencement and completion date of the public improvement;
  - e. The procedures to be used in submitting proposals;
  - f. The qualifications evaluation criteria and the relative weighting of items;
  - g. The subcontractor selection process to be used for construction services;
  - h. The number of persons to be included in the final list;
  - i. A statement indicating whether formal interviews will be held;

- j. A statement indicating whether fees and prices must be included in any proposal;
- k. A description of contract terms and conditions for the construction management at-risk services contract, including a description of the scope of services to be provided;
- l. A description of the procedures to be used for making the contract award;
- m. The insurance and bonding requirements and a statement requiring any person submitting a proposal to include with the proposal a certificate of insurance, indicating liability coverage; and
- n. The identification and location of other pertinent information the governing body may possess, including surveys, soils reports, drawings or models of existing structures, environmental studies, photographs, or references to public records.

3. The request for qualifications submittal procedures must include the specific format that must be used by a construction manager at-risk when submitting a request for qualifications and the submission deadline location for submission of the request for qualifications.

4. The selection committee shall determine the appropriate evaluation criteria for each request for qualifications, including:

- a. The person's experience on any similar project;
- b. The person's existing workload and available capacity;
- c. The person's key personnel experience on any similar project;
- d. The person's safety record;
- e. The person's familiarity with the location of the public improvement;
- f. The person's fees and expenses;
- g. The person's compliance with state and federal law; and
- h. Any reasonable information the selection committee deems necessary.

5. The selection committee shall evaluate each submission based on the qualification criteria under subsection 4 and shall include the numeric scoring of each criteria item on a weighted basis, with no item being weighted at more than twenty percent and no less than five percent. The weighting of the qualification criteria must be

done in a manner to ensure no subjective bias and encourage the maximum participation of qualified construction managers at-risk.

6. a. The selection committee shall review each proposal submitted and include the three highest ranked construction managers at-risk on a list of finalists. If fewer than three proposals were submitted, the governing body may resolicit for qualifications, interview any person that applied, or consider using another allowed delivery method. The selection committee shall recommend to the governing body the construction manager at-risk receiving the highest score on the evaluation criteria.
- b. If a construction manager at-risk selected for a public improvement declines the appointment or is unable to reach agreement with the governing body concerning fees or terms of the contract, the governing body shall terminate negotiations with the construction manager at-risk and begin negotiations with the construction manager at-risk with the next highest score and continue that process until agreement is reached or the list of finalists is exhausted.
- c. If the list of finalists is exhausted, the governing body shall request the selection committee to revise the request for qualifications and solicit new submissions. If the selection committee is unable to provide any constructive revision to the request for qualifications, the governing body shall select another allowed public improvement delivery method.
- d. The governing body, upon reaching an agreement with a construction manager at-risk on compensation and contract terms for construction management planning and design services, shall enter a written contract with the construction manager at-risk for the services.

**48-01.2-21. Selection process for construction management at-risk services -**

**Construction services.** After the governing body and the construction manager at-risk have finalized the contract for planning and design phase services and the process has progressed sufficiently to provide the construction manager at-risk the necessary project details, the governing body and the construction manager at-risk shall enter negotiations for a guaranteed maximum price and contract terms for the general construction of the public improvement. If the governing body is unable to negotiate a satisfactory contract with the highest qualified

1 person on the list of finalists, the governing body shall terminate negotiations with that person.  
2 The governing body shall commence negotiations with the next most qualified person on the list  
3 in sequence until an agreement is reached or a determination is made to reject all persons on  
4 the list. If the governing body reaches an agreement with a construction manager at-risk on a  
5 guaranteed maximum price and on contract terms, the governing body and construction  
6 manager at-risk shall enter a written contract for the general construction management at-risk  
7 construction services.

8 **48-01.2-22. Subcontractor bids.**

- 9 1. An agency construction manager selected for a public improvement shall advertise  
10 publicly and receive bids from subcontractors for the work items necessary to  
11 complete the general construction portions of the improvement. The governing  
12 body may influence the selection of the subcontractors, but only insofar as the  
13 governing body's past experience with a subcontractor or a current legal dispute  
14 with a subcontractor.
- 15 2. A construction manager at-risk selected for a public improvement shall advertise  
16 publicly and receive bids from subcontractors for the work items the construction  
17 manager at-risk chooses not to perform. The governing body may influence the  
18 selection of the subcontractors, but only insofar as the governing body's past  
19 experience with a subcontractor or a current legal dispute with a subcontractor.

20 **48-01.2-23. Bond required.**

- 21 1. An agency construction manager, before starting any work, shall provide the  
22 governing body with a bond that is equal to the cost of the agency construction  
23 manager's services with the governing body. Each contractor performing services  
24 on the public improvement shall provide the governing body with a separate bond  
25 for the contractor's portion of the public improvement.
- 26 2. A construction manager at-risk, before starting any construction, shall provide the  
27 governing body with a bond in an amount at least equal to the amount of the  
28 guaranteed maximum price. The bond must be conditioned to be void if the  
29 contractor and all subcontractors fully perform all terms, conditions, and provisions  
30 of the construction services contract and pay all bills or claims on account of labor  
31 and materials, including supplies used for machinery and equipment, performed,



furnished, and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section 13-01.1-02 be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor may sue on the bond.

3. Each mechanical contractor and electrical contractor providing work on a public improvement project that utilizes the construction management at-risk delivery method shall provide the governing body with a separate bond for the contractor's portion of the public improvement.

**48-01.2-24. Public buildings and facilities - Statement of compliance with accessibility guidelines.** Each governing body shall require a statement from any person preparing the plans and specifications for a public building or facility that, in the professional judgment of that person, the plans and specifications are in conformance with the Americans with Disabilities Act accessibility guidelines for buildings and facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36], subject to the exception stated in section 54-21.3-04.1.

**48-01.2-25. Authorization of expansion of public improvements by legislative assembly or budget section.** Notwithstanding any other provision of law, a state agency or institution may not significantly change or expand a public improvement beyond what has been approved by the legislative assembly unless the legislative assembly, or the budget section of the legislative council if the legislative assembly is not in session, approves the change or expansion of the project or any additional expenditure for the project. For the purposes of this section, a significant change or expansion includes the construction of an addition to a building, including skywalks or other type of enclosed walkway, or any other substantial increase in the area of the building, but does not include the construction of building entrances and stairwells.

**SECTION 15. AMENDMENT.** Section 48-05-12 of the North Dakota Century Code is amended and reenacted as follows:

**48-05-12. Competitive bidding and architect and engineering services.**

Guaranteed energy savings contracts are not subject to the requirements of ~~chapters 48-01.1~~

and ~~48-02~~ chapter 48-01.2, which relate to competitive bidding, and are not subject to section 43-19.1-28.

**SECTION 16. AMENDMENT.** Section 57-40.2-14 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.2-14. Contractor's performance bonds for payment of use tax.** For the purposes of this section, the term "contractor" includes any person or group or combination of persons acting as a unit; "subcontractor" includes person or group or combination of persons acting as a unit, who undertakes to perform all or any part of work covered by the original contract entered into by the contractor, including the furnishing of any supplies, materials, equipment, or any other tangible personal property; "surety" means a bond or undertaking executed by a surety company authorized to do business in this state; and "surety company" means any person executing the surety.

Whenever any contractor or subcontractor enters into any contract for the erection of buildings or the alteration, improvement, or repair of real property in this state and the contractor or subcontractor furnishes surety for the faithful performance of such contract, there is hereby imposed the additional obligation upon the surety company to the state of North Dakota that said contractor or subcontractor shall promptly pay all use taxes which may accrue to the state of North Dakota under this chapter. In the case of a contractor and the contractor's surety company, this additional obligation shall include liability to pay to the commissioner on purchases made by either the contractor or the subcontractor all such use taxes which have not been paid to a retailer authorized or required to collect such taxes; and the contractor or the contractor's surety company may recover from the subcontractor the amount of any use taxes accruing with respect to purchases made by the subcontractor which the contractor or the surety company may be required to pay to the commissioner, or to withhold from the amount due the subcontractor under the subcontract an amount equal to any use taxes accruing with respect to purchases of the subcontractor which have not been paid by the subcontractor to the commissioner or to a retailer authorized or required to collect such taxes. Such liability on the part of the surety company is limited to three percent of the amount of the contract price.

The surety company within sixty days after executing such surety shall send written notice of the same to the commissioner, which notice must give the names and addresses of the parties contracting with respect to the real property and the place where the contract is to

1 be performed. After the completion of the contract and the acceptance of the improvement by  
2 the owner of the real property improved, the surety company shall give written notice of such  
3 completion and acceptance to the commissioner.

4 Six months after the completion of the contract and the acceptance of the improvement  
5 by the owner thereof, the additional obligation imposed upon the surety company ceases unless  
6 written notice, within such period of time, of unpaid use taxes, is given to the surety company by  
7 the commissioner.

8 This section does not modify or repeal any ~~of the provisions~~ provision of ~~chapters~~  
9 ~~48-01.1 and 48-02~~ chapter 48-01.2.

10 **SECTION 17. AMENDMENT.** Subsection 2 of section 61-02-04.1 of the North Dakota  
11 Century Code is amended and reenacted as follows:

- 12 2. Sections 12.1-13-02, 12.1-13-03, and ~~48-02-12~~ 48-01.2-08 do not apply to  
13 contracts in which a member of the commission is directly or indirectly interested if  
14 the requirements of subsection 1 have been met.

15 **SECTION 18. AMENDMENT.** Subsection 2 of section 61-02-23.2 of the North Dakota  
16 Century Code is amended and reenacted as follows:

- 17 2. May issue, when it determines that it would be advantageous to the state or that it  
18 is necessary in order to construct the outlet in a timely manner, a request for  
19 proposals to design and build the outlet. The request for proposals must require  
20 that each proposal submitted contain a single price that includes the cost to design  
21 and build the outlet. Neither chapter ~~48-01.4~~ 48-01.2 or 54-44.7, nor any other law  
22 requiring competitive bidding applies to the construction of the outlet if the  
23 commission determines to use the design and build procedure. The commission  
24 shall select the proposal that it determines is the most advantageous to the state.

25 **SECTION 19. AMENDMENT.** Section 61-07-09 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **61-07-09. Advertising for bids.** After adopting a plan of irrigation works, the board  
28 shall secure bids as provided in ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2. Contracts for the  
29 purchase of materials must be awarded to the lowest and best bidder. The person to whom a  
30 contract may be awarded shall furnish a bond with good and sufficient sureties, to be approved  
31 by the board, payable to such district for its use, in an amount at least equal to the contract

price, conditioned for the faithful and complete performance of the contract. The work must be done under the direction and to the satisfaction of the engineer and must be approved by the board. This section does not apply in case of any contract between the district and the United States, or any department, bureau, or agency thereof, or with the state water commission.

**SECTION 20. AMENDMENT.** Section 61-12-25 of the North Dakota Century Code is amended and reenacted as follows:

**61-12-25. Notice of construction - Letting of contracts.** After the order establishing a project has been entered, the board of flood irrigation shall advertise bids in accordance with ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2 for the construction of all work required, as shown by the plans and specifications on file.

**SECTION 21. AMENDMENT.** Section 61-16.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-14. Contracts for construction or maintenance of project.** If the cost of construction or maintenance of a project does not exceed the amount provided for construction of a public improvement under section ~~48-01.1-03~~ 48-01.2-02, the work may be done on a day work basis or a contract may be let without being advertised. In cases where the cost of the construction or maintenance exceeds the amount provided for construction of a public improvement under section ~~48-01.1-03~~ 48-01.2-02, the board must let a contract in accordance with ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

**SECTION 22. AMENDMENT.** Section 61-21-25 of the North Dakota Century Code is amended and reenacted as follows:

**61-21-25. Letting of contracts for drains.** The board shall let contracts for the construction of the drain, culverts, bridges, and appurtenances thereto, or portions thereof in accordance with ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

**SECTION 23. AMENDMENT.** Section 61-21-45 of the North Dakota Century Code is amended and reenacted as follows:

**61-21-45. Contracts for work of cleaning and repairing drains.** If the cost of any work of cleaning out or repairing any drain, or system of legal drains, if more than one cleaning or repair project is carried on under one contract, does not exceed the amount provided for construction of a public improvement under section ~~48-01.1-03~~ 48-01.2-02 in any one year, the work may be done on a day work basis or a contract may be let without being advertised.

1 When the cost of such work exceeds the amount provided for construction of a public  
2 improvement under section ~~48-01.1-03~~ 48-01.2-02 in any one year, a contract must be let in  
3 accordance with ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2. The competitive bid requirement  
4 is waived, upon the determination of the board that an emergency situation exists requiring the  
5 prompt repair of a project, and a contract may be made for the prompt repair of the project  
6 without seeking bids.

7 **SECTION 24. AMENDMENT.** Section 61-24.3-03.1 of the North Dakota Century Code  
8 is amended and reenacted as follows:

9 **61-24.3-03.1. Preference for resident pipeline manufacturers and bidders for labor**  
10 **and services.** Any contracts for the purchase of pipeline materials, labor, or services awarded  
11 by the state water commission in regard to the construction of the southwest water pipeline  
12 project must be awarded to North Dakota resident pipeline manufacturers and North Dakota  
13 resident bidders for labor and services making the lowest responsible bids if those bids do not  
14 exceed by more than five percent the lowest responsible bid submitted by a nonresident  
15 pipeline manufacturer or bidder for labor or services. As used in this section, "North Dakota  
16 resident pipeline manufacturers and bidders for labor or services" means bidders or sellers who  
17 have maintained a bona fide place of business within this state for at least five years prior to the  
18 date on which the contract bid on is awarded. If the state water commission awards any  
19 contract for pipeline materials, labor, or services in regard to construction of the southwest  
20 water pipeline project to a nonresident bidder, the commission shall publicly give notice in a  
21 newspaper of general circulation regarding the specific reasons why it did not award the  
22 contract to a resident bidder. This section does not apply to contracts that involve federal  
23 moneys where a preference would be contrary to federal laws or regulations, contracts covered  
24 under chapter ~~48-01.4~~ 48-01.2, or to architect, engineer, professional right of way, and land  
25 surveying services.

26 **SECTION 25. AMENDMENT.** Section 61-35-13 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28 **61-35-13. Contracts for construction or maintenance of a project.** If the cost of  
29 construction or maintenance of a project does not exceed the amount provided for construction  
30 of a public improvement under section ~~48-01.1-03~~ 48-01.2-02, the work may be done on a day  
31 work basis or a contract may be let without being advertised. If the cost of the construction or

1 maintenance exceeds the amount provided for construction of a public improvement under  
2 section ~~48-01.1-03~~ 48-01.2-02, the lowest and best bid must be accepted. The board must  
3 comply with the requirements of sections 61-35-88 through 61-35-103 when bidding a project.

4 The competitive bid requirement of this section may be waived if the board determines  
5 that an emergency exists requiring the prompt repair of a project and a contract may be made  
6 for the prompt repair of the project without seeking bids.

7 **SECTION 26. AMENDMENT.** Section 61-35-88 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **61-35-88. Call for bids - Contents - Advertising.** Proposals for the work of making  
10 improvements provided for in this chapter that exceed the amount provided for construction of a  
11 public improvement under section ~~48-01.1-03~~ 48-01.2-02 must be advertised for by the board in  
12 the official newspaper of the county where the district office is located once each week for two  
13 consecutive weeks. The board may cause the work on two or more improvements to be  
14 combined in one advertisement and one contract awarded pursuant to that advertisement. The  
15 advertisement for bids must:

- 16 1. Specify the work to be done according to the plans and specifications on file in the  
17 office of the district;
- 18 2. Call for bids upon the basis of cash payment for the work;
- 19 3. State the time within which the bids will be received; and
- 20 4. State the time within which the work on the improvement is to be completed.

21 The board may require bidders to state also the rate of interest, not exceeding seven percent  
22 per annum, which the bonds to be received and accepted by the bidder at par in payment for  
23 the work are to bear.

24 **SECTION 27. AMENDMENT.** Subsection 2 of section 61-35-94 of the North Dakota  
25 Century Code is amended and reenacted as follows:

- 26 2. Cause the work described in the plans, specifications, and estimates to be done  
27 directly by the district by the employment of labor and the purchase of materials  
28 required, or in any other manner the board considers proper, and payment for the  
29 work may be provided through special assessments in the same manner as though  
30 the work had been performed under contract, provided this work amounts to no

- 1 more than the amount provided for construction of a public improvement under  
2 section ~~48-01.1-03~~ 48-01.2-02; or  
3 **SECTION 28. REPEAL.** Chapters 48-01.1 and 48-02 of the North Dakota Century  
4 Code are repealed.