

Sixtieth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2203**

Introduced by

Senators G. Lee, Heitkamp

Representative Carlson

1 A BILL for an Act to create and enact two new sections to chapter 61-24 of the North Dakota  
2 Century Code, relating to expanding the construction contracting, bidding, and project delivery  
3 system for the Red River valley water supply project.

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

5 **SECTION 1.** Two new sections to chapter 61-24 of the North Dakota Century Code are  
6 created and enacted as follows:

7 **Contracting for construction of Red River valley water supply project.**

8 Notwithstanding chapter 48-01.1 or 54-44.7, or any other provision of law regarding bidding,  
9 public contracting, or procurement, the district may engage a construction manager with  
10 guaranteed maximum price or a single source engineering, procurement, and construction open  
11 book method of project delivery to expedite construction of the Red River valley water supply  
12 project. These provisions supplement other available design bid-build or construction  
13 management methods otherwise authorized by law.

14 For purposes of this Act, authorized construction contracting methods are generally  
15 defined as follows:

16 1. Construction manager with guaranteed maximum price.

17 a. The district may hire a construction management firm to manage all  
18 preconstruction and construction processes, which include responsibility for a  
19 guaranteed maximum price, cost estimating, schedule, value engineering,  
20 sequencing of work, and possibly acting as general contractor during the  
21 construction phase, detailing the trade contractor scope of work, holding trade  
22 contracts and subcontracts, and holding the warranty on the project and pipe.

23 b. There may be a separate contract between the district and a builder for  
24 general contractor construction services, which may be entered into

1 concurrently or sequentially with the construction management service  
2 contract. Either contract may include finance services, maintenance services,  
3 operation services, preconstruction services, or other related services.

4 2. Single source engineering, procurement, and construction open book.

5 a. The district may contract with a single source to provide engineering,  
6 procurement, and construction of the Red River valley water supply project.  
7 The single source must design and manage all preconstruction and  
8 construction processes including the completion of identified design services,  
9 schedule, value engineering, sequencing of work, acting as general contractor  
10 during the construction phase, detailing the trade contractor scope of work,  
11 holding trade contracts and subcontracts, and holding the warranty on the  
12 project and pipe.

13 b. The district has access to all income and expenditures, cost commitments,  
14 fees, records, estimates, and invoices. The district may take an active role in  
15 the selection of materials and contractors, although all subcontracts must be  
16 directly between contractors and the engineering, procurement, and  
17 construction single source. A guaranteed maximum price for the project may  
18 be negotiated following open book bidding of a majority of the project  
19 components.

20 **District responsibilities.** In selecting the construction manager with guaranteed  
21 maximum price or a single source engineering, procurement, and construction open book  
22 system, the responsibilities of the district include:

- 23 1. Determining in writing that the selected construction project delivery method is  
24 appropriate for the Red River valley water supply project and is in the best interest  
25 of the public;  
26 2. Responsibility for preparation of all environmental documents;  
27 3. Responsibility for acquisition of needed right of way and for provision for the  
28 relocation of utilities that may be in conflict with the project; and  
29 4. Adopting policies for procuring the project using the chosen method of project  
30 delivery. The policies must encourage a competitive process, soliciting bids from  
31 responsible and experienced trade contractors and subcontract bidders.

- 1 The prime construction management or single source firm selected is not required to be
- 2 registered to perform design, land surveying services, construction, construction engineering, or
- 3 inspection pursuant to state law if the subcontractor actually performing the services on behalf
- 4 of the firm is appropriately registered within the state. The selected construction management
- 5 or single source firm must provide an appropriate performance and payment bond.