

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

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

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

5 f. Building construction projects under ~~chapters 48-01.1 and 48-02~~ chapter
6 48-01.2.

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

9 **23-11-11. Powers of authority.** An authority has the following powers and duties:

- 10 1. To exercise public and essential governmental functions.
- 11 2. To sue and be sued.
- 12 3. To have perpetual succession.
- 13 4. To make and execute contracts and other instruments necessary or convenient to
14 the exercise of the powers of the authority.
- 15 5. To make, amend, and repeal such bylaws, rules, and regulations, not inconsistent
16 with this chapter, as are necessary to carry into effect the powers and purposes of
17 the authority.
- 18 6. To prepare, carry out, acquire, lease, and operate housing projects within its area
19 of operation.
- 20 7. To provide for the construction, reconstruction, improvement, alteration, or repair of
21 any housing project, or any part of a housing project, within the authority's area of
22 operation.
- 23 8. To arrange or contract for the furnishing by any person or any public or private
24 agency of services, privileges, works, or facilities for, or in connection with, a
25 housing project or the occupants of a housing project.
- 26 9. To include, in any contract let in connection with a project, stipulations requiring
27 that the contractor and any subcontractor comply with requirements as to minimum
28 wages and maximum hours of labor and any conditions that the federal
29 government may have attached to the financial aid for the project.
- 30 10. To lease or rent any dwellings, houses, accommodations, lands, buildings,
31 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.

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- 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.

- 1 34. To exercise the power to provide operation and maintenance expenses under
2 subdivision a of subsection 23 of section 23-11-24.
- 3 35. To exercise the power to issue general obligation bonds in accordance with
4 chapter 21-03.
- 5 36. To develop a plan identifying the public purposes of the authority's ownership,
6 conditions that would make the authority's ownership no longer necessary for
7 accomplishing those public purposes, and a plan to divest the authority's
8 ownership interest as soon as economically prudent once those conditions occur
9 and to effectuate the plan.
- 10 37. To exercise other powers and duties as may be necessary to carry out the
11 purposes and provisions of this chapter.

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

14 Provisions of law with respect to the acquisition, operation, or disposition of property by other
15 public bodies are not applicable to an authority unless there is specific provision to that effect by
16 the legislative assembly. The construction of a housing project is a public improvement for
17 which an authority is subject to the ~~competitive bidding~~ requirements of chapter ~~48-01.1~~
18 48-01.2.

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

21 **25-01.1-33. Use of patient labor in erection or repair of buildings of institutions.**

22 All work for the erection, repair, or improvement of buildings, grounds, or properties under the
23 control of the supervising department must be let by contract, except that the work of patients in
24 such institutions may be utilized if approved by the superintendent of such institution as having
25 possible benefits to the patient and not detrimental to the patient's health or treatment and
26 when the use of such labor will not substantially depart from the requirements of ~~chapters~~
27 ~~48-01.1 and 48-02~~ chapter 48-01.2.

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

30 **40-22-19. Contract proposals.** Proposals for the work of making improvements
31 provided for in this chapter must be advertised for by the governing body in the official

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

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

5 **40-28-07. Bids for service connections.** The governing body shall direct the city
6 auditor to advertise for bids in accordance with ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2 for
7 the laying and construction of service connections in accordance with the plans and
8 specifications therefor.

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

11 **40-29-07. Bids for sidewalks.** Bids for the construction of sidewalks in a city must be
12 made in accordance with ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

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

15 **40-31-04. Letting contracts for curbing.** At least once every year that the city plans
16 to construct or repair curbing or gutters, the city auditor shall solicit bids in accordance with
17 ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

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

20 **40-33.2-09. Construction contracts.** A city or municipal power agency may contract
21 for the planning, acquisition, construction, reconstruction, operation, maintenance, repair,
22 extension, and improvement of generation and transmission facilities outside of its corporate
23 limits or those of its members, or may contract with other public or private owners of these
24 facilities to perform these functions, without advertising for bids, preparing final plans and
25 specifications in advance of construction, or securing performance and payment bonds. If a
26 payment bond is secured as provided in chapter ~~48-02~~ 48-01.2, is enforceable as therein
27 provided, and no lien may be filed under chapter 35-27.

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

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

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

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

5 12. If the project financed by the municipality consists of the construction,
6 reconstruction, improvement, or betterment of real property, buildings and
7 improvements on real property, and buildings, the provisions of chapter ~~48-02~~
8 48-01.2 and other applicable statutes shall apply; except that the municipality, in
9 the revenue agreement and resolution or mortgage defining the terms and
10 conditions upon which the project is to be constructed and financed, or in a
11 preliminary agreement establishing the general terms of the revenue agreement
12 and financing of the project when constructed, may permit a contracting party
13 which is not a governmental entity or a public institution, subject to such terms and
14 conditions as the municipality shall find necessary or desirable and proper, to
15 provide for the construction, acquisition, and installation of the buildings,
16 improvements, and equipment to be included in the project by any means available
17 to the contracting party, whether or not the procedure followed by the contracting
18 party is in conformity with said chapter ~~48-02~~ 48-01.2.

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

21 **43-07-23. Allowable retention of estimates - Interest on retainage.** Contracts
22 entered ~~into~~ between persons for the performance of work to be done by a contractor, except
23 those contracts subject to section 40-22-37 or ~~48-02-07~~ 48-01.2-13, or contracts governed by
24 federal statutes or regulations which require other provisions with respect to retention, are
25 subject to a maximum retention on amounts due under the contract as follows: retention of ten
26 percent of each estimate presented is allowable until such time as the project is fifty percent
27 complete, with no further retainage on estimates during the continuance of the contract. If the
28 owner, governing board, or authorized committee invests the retained estimate funds, the
29 interest earned on those retained funds is payable at the time of final payment on the contract
30 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

- 1 members with the relative qualifications of each person that responded to the
2 advertisement.
- 3 5. The selection committee shall evaluate each person interviewed on the basis of the
4 following criteria:
- 5 a. The past performance of the person with respect to prior public
6 improvements.
- 7 b. The qualifications of proposed personnel.
- 8 c. The willingness to meet time and budget requirements of the governing body.
- 9 d. The business location of the person.
- 10 e. The recent, current, and projected workloads of the person.
- 11 f. Any related experience performing agency construction management services
12 on projects of similar size and scope.
- 13 g. Any recent or current work by the person for the agency.
- 14 h. The ability of the person to provide the bond for the person's portion of the
15 work on the public improvement.
- 16 i. The possession by the person of a class A contractor's license.
- 17 6. Based upon the evaluation under subsection 5, the selection committee shall rank
18 the three persons which, in its judgment, are most qualified. If fewer than three
19 persons responded to the advertisement, the selection committee shall rank each
20 person that responded. The selection committee's report ranking the interviewed
21 persons must be in writing and must include data substantiating the committee's
22 determinations. The data must be available to the public upon written request.
- 23 7. The selection committee shall submit its written report ranking the interviewed
24 persons to the governing body for evaluation and approval by the governing body.
25 The governing body shall determine the final ranking of each person and provide
26 written notification of the order of preference to each person that responded to the
27 request for qualifications.
- 28 8. After providing the notice under subsection 7, the governing body shall negotiate a
29 contract for services with the most qualified person at a compensation which is fair
30 and reasonable to the governing body. If the governing body is unable to negotiate
31 a satisfactory contract with that person, the governing body shall terminate

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

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

9 **48-01.2-20. Selection process for construction management at-risk planning and**
10 **design phase services.**

11 1. A governing body electing to utilize a construction management at-risk delivery
12 process for a proposed public improvement shall create a selection committee
13 composed of:

14 a. An administrative individual from the governing body.

15 b. A registered architect.

16 c. A registered engineer.

17 d. A contractor.

18 2. Before issuing a notice of request for qualifications to enter a construction
19 management at-risk services contract, the selection committee shall establish the
20 content of the request for qualifications, which must include the following:

21 a. The identity of the governing body and a list of the members of the selection
22 committee;

23 b. A description of the proposed public improvement;

24 c. The proposed budget limits of the public improvement;

25 d. The commencement and completion date of the public improvement;

26 e. The procedures to be used in submitting proposals;

27 f. The qualifications evaluation criteria and the relative weighting of items;

28 g. The subcontractor selection process to be used for construction services;

29 h. The number of persons to be included in the final list;

30 i. A statement indicating whether formal interviews will be held;

- 1 j. A statement indicating whether fees and prices must be included in any
2 proposal;
- 3 k. A description of contract terms and conditions for the construction
4 management at-risk services contract, including a description of the scope of
5 services to be provided;
- 6 l. A description of the procedures to be used for making the contract award;
- 7 m. The insurance and bonding requirements and a statement requiring any
8 person submitting a proposal to include with the proposal a certificate of
9 insurance, indicating liability coverage; and
- 10 n. The identification and location of other pertinent information the governing
11 body may possess, including surveys, soils reports, drawings or models of
12 existing structures, environmental studies, photographs, or references to
13 public records.
- 14 3. The request for qualifications submittal procedures must include the specific format
15 that must be used by a construction manager at-risk when submitting a request for
16 qualifications and the submission deadline location for submission of the request
17 for qualifications.
- 18 4. The selection committee shall determine the appropriate evaluation criteria for
19 each request for qualifications, including:
- 20 a. The person's experience on any similar project;
- 21 b. The person's existing workload and available capacity;
- 22 c. The person's key personnel experience on any similar project;
- 23 d. The person's safety record;
- 24 e. The person's familiarity with the location of the public improvement;
- 25 f. The person's fees and expenses;
- 26 g. The person's compliance with state and federal law; and
- 27 h. Any reasonable information the selection committee deems necessary.
- 28 5. The selection committee shall evaluate each submission based on the qualification
29 criteria under subsection 4 and shall include the numeric scoring of each criteria
30 item on a weighted basis, with no item being weighted at more than twenty percent
31 and no less than five percent. The weighting of the qualification criteria must be

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

3 6. a. The selection committee shall review each proposal submitted and include the
4 three highest ranked construction managers at-risk on a list of finalists. If
5 fewer than three proposals were submitted, the governing body may resolicit
6 for qualifications, interview any person that applied, or consider using another
7 allowed delivery method. The selection committee shall recommend to the
8 governing body the construction manager at-risk receiving the highest score
9 on the evaluation criteria.

10 b. If a construction manager at-risk selected for a public improvement declines
11 the appointment or is unable to reach agreement with the governing body
12 concerning fees or terms of the contract, the governing body shall terminate
13 negotiations with the construction manager at-risk and begin negotiations with
14 the construction manager at-risk with the next highest score and continue that
15 process until agreement is reached or the list of finalists is exhausted.

16 c. If the list of finalists is exhausted, the governing body shall request the
17 selection committee to revise the request for qualifications and solicit new
18 submissions. If the selection committee is unable to provide any constructive
19 revision to the request for qualifications, the governing body shall select
20 another allowed public improvement delivery method.

21 d. The governing body, upon reaching an agreement with a construction
22 manager at-risk on compensation and contract terms for construction
23 management planning and design services, shall enter a written contract with
24 the construction manager at-risk for the services.

25 **48-01.2-21. Selection process for construction management at-risk services -**
26 **Construction services.** After the governing body and the construction manager at-risk have
27 finalized the contract for planning and design phase services and the process has progressed
28 sufficiently to provide the construction manager at-risk the necessary project details, the
29 governing body and the construction manager at-risk shall enter negotiations for a guaranteed
30 maximum price and contract terms for the general construction of the public improvement. If
31 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,

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

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

12 **48-01.2-24. Public buildings and facilities - Statement of compliance with**
13 **accessibility guidelines.** Each governing body shall require a statement from any person
14 preparing the plans and specifications for a public building or facility that, in the professional
15 judgment of that person, the plans and specifications are in conformance with the Americans
16 with Disabilities Act accessibility guidelines for buildings and facilities as contained in the
17 appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36], subject to the exception
18 stated in section 54-21.3-04.1.

19 **48-01.2-25. Authorization of expansion of public improvements by legislative**
20 **assembly or budget section.** Notwithstanding any other provision of law, a state agency or
21 institution may not significantly change or expand a public improvement beyond what has been
22 approved by the legislative assembly unless the legislative assembly, or the budget section of
23 the legislative council if the legislative assembly is not in session, approves the change or
24 expansion of the project or any additional expenditure for the project. For the purposes of this
25 section, a significant change or expansion includes the construction of an addition to a building,
26 including skywalks or other type of enclosed walkway, or any other substantial increase in the
27 area of the building, but does not include the construction of building entrances and stairwells.

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

30 **48-05-12. Competitive bidding and architect and engineering services.**

31 Guaranteed energy savings contracts are not subject to the requirements of ~~chapters 48-01-1~~

1 ~~and 48-02~~ chapter 48-01.2, which relate to competitive bidding, and are not subject to section
2 43-19.1-28.

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

5 **57-40.2-14. Contractor's performance bonds for payment of use tax.** For the
6 purposes of this section, the term "contractor" includes any person or group or combination of
7 persons acting as a unit; "subcontractor" includes person or group or combination of persons
8 acting as a unit, who undertakes to perform all or any part of work covered by the original
9 contract entered into by the contractor, including the furnishing of any supplies, materials,
10 equipment, or any other tangible personal property; "surety" means a bond or undertaking
11 executed by a surety company authorized to do business in this state; and "surety company"
12 means any person executing the surety.

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

29 The surety company within sixty days after executing such surety shall send written
30 notice of the same to the commissioner, which notice must give the names and addresses of
31 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

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

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

7 **61-12-25. Notice of construction - Letting of contracts.** After the order establishing
8 a project has been entered, the board of flood irrigation shall advertise bids in accordance with
9 ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2 for the construction of all work required, as shown
10 by the plans and specifications on file.

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

13 **61-16.1-14. Contracts for construction or maintenance of project.** If the cost of
14 construction or maintenance of a project does not exceed the amount provided for construction
15 of a public improvement under section ~~48-01.1-03~~ 48-01.2-02, the work may be done on a day
16 work basis or a contract may be let without being advertised. In cases where the cost of the
17 construction or maintenance exceeds the amount provided for construction of a public
18 improvement under section ~~48-01.1-03~~ 48-01.2-02, the board must let a contract in accordance
19 with ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

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

22 **61-21-25. Letting of contracts for drains.** The board shall let contracts for the
23 construction of the drain, culverts, bridges, and appurtenances thereto, or portions thereof in
24 accordance with ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

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

27 **61-21-45. Contracts for work of cleaning and repairing drains.** If the cost of any
28 work of cleaning out or repairing any drain, or system of legal drains, if more than one cleaning
29 or repair project is carried on under one contract, does not exceed the amount provided for
30 construction of a public improvement under section ~~48-01.1-03~~ 48-01.2-02 in any one year, the
31 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.