

# PUBLIC BUILDINGS

## CHAPTER 443

### HOUSE BILL NO. 1452

(Representatives Carlson, Hagle, Skarphol)  
(Senator Freborg)

## PUBLIC CONSTRUCTION AND IMPROVEMENT CONTRACTS

AN ACT to create and enact chapter 48-01.1 and a new section to chapter 48-02 of the North Dakota Century Code, relating to public construction and public improvement contracts; to amend and reenact sections 11-11-26, 15-47-15, 25-01.1-33, 39-03-08.1, 40-22-06, 40-22-19, 40-22-29, 40-24-19, 40-28-07, 40-29-07, 40-31-04, 40-33.2-09, subsection 7 of section 40-33.3-06, sections 40-49-14, 43-07-11, 48-02-10.1, 48-02-13, 48-02-15, 48-05-12, 57-40.2-14, 61-07-09, 61-12-25, 61-16.1-14, 61-21-25, 61-21-45, and 61-24.3-03.1 of the North Dakota Century Code, relating to public construction and public improvement contracts; and to repeal sections 11-11-31, 40-22-20, 40-22-22, 40-22-23, 40-22-24, 40-22-25, 40-22-27, 40-22-30, 40-22-31, 40-22-32, 40-22-33, 40-22-34, 40-28-08, 40-29-08, 40-31-03, 48-01-01, 48-01-01.1, 48-01-02, 48-01-03, 48-01-04, 48-01-05, 48-01-06, 48-02-01, 48-02-02, 48-02-03, 48-02-04, 48-02-05, 48-02-05.1, 48-02-06, and 48-02-06.1 of the North Dakota Century Code, relating to public construction and public improvement contracts.

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

**SECTION 1. AMENDMENT.** Section 11-11-26 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**11-11-26. When board shall advertise for bids.** ~~When~~ Except as provided in chapters 48-01.1 and 48-02, when the amount to be paid during the current year for the erection of county buildings or for election ballots and supplies exceeds ten thousand dollars, the board of county commissioners shall cause 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 such other newspapers as it shall deem advisable. The first publication shall be made at least fifteen days ~~prior to~~ before the day set for the opening of the bids. For the purchase of fuel when the amount exceeds four thousand dollars, the board of county commissioners shall seek bids 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 ~~such~~ other newspapers as the board deems advisable.

**SECTION 2. AMENDMENT.** Section 15-47-15 of the North Dakota Century Code is amended and reenacted as follows:

**15-47-15. School contracts - Advertisement for bids - Publication - Exceptions - Penalty.** Except as provided in this section, a school board may not enter into a contract involving the expenditure of an aggregate amount greater than eight

thousand dollars unless the school board has given ten days' notice by at least one publication in the official newspaper of the school district, received sealed bids, and accepted the bid of the lowest responsible bidder who in the opinion of the school board will best serve the interests of the school district. The provisions of this section do not apply to contracts for:

1. Personal services of employees of the district.
2. School text or reference books.
3. Articles not sold on the open market.
4. Patented, copyrighted, or exclusively sold devices or features required to match articles already in use.
5. Patented, copyrighted, or exclusively sold articles so distinctive that only one brand can be purchased.
6. Building contracts under chapters 48-01.1 and 48-02.
7. School transportation services or fuel for vehicles the purchase of which is made by direct negotiation with a contractor using the procedure described in section 15-34.2-07.1.
8. The purchase of heating fuel which is made by direct negotiation with a contractor using the procedure described in section 15-34.2-07.1.

Such exceptions must be strictly construed. Any member of a school board who participates in a violation of this section is guilty of a class B misdemeanor.

**SECTION 3. 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 ~~his~~ the patient's health or treatment and where the use of such labor will not substantially depart from the requirements of ~~chapter~~ chapters 48-01.1 and 48-02.

**SECTION 4. AMENDMENT.** Section 39-03-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-03-08.1. Contracts - Bids.** Whenever the cost of any ~~improvement or the~~ purchase price of equipment or materials and supplies exceeds the sum of one thousand dollars, the department of the state highway patrol shall ~~proceed to~~ advertise the same, request bids, and award such contracts in the manner provided in sections 39-03-08.1, 39-03-08.2, 39-03-08.3, 39-03-08.4, and 39-03-08.5. Whenever any proposed contract or purchase of the state highway patrol is for a sum less than one thousand dollars, it is discretionary with the state highway patrol whether the same shall be awarded after advertising for bids. The department shall request bids from as many ~~contractors,~~ manufacturers; and dealers as can be requested conveniently.

**SECTION 5. AMENDMENT.** Section 40-22-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**40-22-06. Agreement with state agency, county, water resource district, or federal agency for certain improvements.** Any municipality in this state, through its governing body, may enter into an agreement with any state agency, the board of county commissioners, or water resource board of the county in which the municipality is located, or a joint water resource board which jurisdiction includes the municipality, or any federal agency, or any combination thereof, for the improvement of streets, sewers, water mains, flood control projects, or of any of such facilities, under the terms of which the contract for such work is to be let by the state agency, the board of county commissioners, water resource board, joint water resource board, the federal agency, or any combination thereof, and for this purpose may create a special improvement district or districts. No such agreement may be entered into until and unless the governing body certifies that it has obtained authority in accordance with this section to issue improvement warrants to finance the amount that the municipality will be obligated to pay thereunder, over and above the amount of any bonds which have been voted and any other funds which are on hand and properly available for such purpose. If any portion of the cost is to be paid by the levy of special assessments, the governing body shall by resolution declare the necessity of the improvement, setting forth its general nature, the approximate amount or fraction of the cost which the municipality will be obligated to pay under the agreement, and the fact that this amount, or such lesser amount as the governing body may specify, is proposed to be paid by the levy of special assessments upon property determined to be benefited by the improvement. Any portion of the cost for which the municipality is obligated and which is not assessed upon benefited property or paid from other funds may be agreed to be paid by general taxation of all the taxable property in the municipality, if approval for the incurring of such debt is obtained and provision for the payment thereof is made in accordance with section 40-24-10. The resolution of necessity must be published once each week for two consecutive weeks in the official newspaper of the municipality and ~~protest protests~~ may be filed and their sufficiency to bar the improvement must be determined in accordance with sections 40-22-16 through 40-22-18; except that if under the terms of the resolution of necessity the portion of the cost of the project to be assessed upon benefited property does not exceed twenty-five percent of the total cost to be paid by the state agency, county, water resource board, joint water resource board, federal agency, and municipality, written protests by the owners of seventy-five percent of the property liable to be assessed for the improvement shall be required to bar further proceedings with reference thereto. ~~In districts created under this section the governing body may dispense with all requirements, other than those herein stated, preliminary to the construction of an improvement by the special assessment method, including the preparation and approval of plans and specifications, advertisement for bids, and execution of contracts and bonds.~~ At any time after the period for filing protests has expired and the protests filed, if any, have been heard and determined to be insufficient, the governing body may issue warrants on the fund of the improvement in the total amount for which the municipality is obligated under the agreement, and may cause to be certified to the special assessment commission that portion of the cost to be borne by the property owners within the district, and the assessment of such amount may be made and such warrants may be issued as in other cases provided for in chapters 40-23 and 40-24.

**SECTION 6. AMENDMENT.** Section 40-22-19 of the North Dakota Century Code is amended and reenacted as follows:

**40-22-19. Call for bids - Contents - Advertising Contract proposals.** Proposals for the work of making improvements provided for in this chapter shall must be advertised for by the governing body in the official newspaper of the municipality once each week for two consecutive weeks. The governing body may cause the work on two or more improvements to be combined in one advertisement and one contract awarded pursuant thereto. The advertisement for bids may be published at the same time as the resolution of necessity and shall:

- 1- Specify the work to be done according to the plans and specifications on file in the office of the city auditor;
- 2- Call for bids upon the basis of cash payment for the work;
- 3- Describe the several kinds of paving material if the governing body shall have required plans, specifications, and estimates for the improvement to be made for more than one kind of pavement;
- 4- State the time within which the bids will be received; and
- 5- State the time within which the work on the improvement is to be completed.

The governing body may require bidders to state also the rate of interest, not exceeding seven percent per annum, which the warrants to be received and accepted by the bidder at par in payment for the work shall bear. All other provisions for proposals under this chapter are governed by chapters 48-01.1 and 48-02.

**SECTION 7. AMENDMENT.** Section 40-22-29 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**40-22-29. Engineer's statement of estimated cost required - Governing body to enter into contracts.** Before adopting or rejecting any bid filed under the provisions of this chapter, the governing body shall require the engineer for the municipality to make a careful and detailed statement of the estimated cost of the work. The governing body may not award the contract to any bidder if the engineer's estimate prepared pursuant to this section exceeds the engineer's estimate prepared pursuant to section 40-22-10 by forty percent or more. If all bids are not rejected, the governing body shall award the contract to the lowest responsible bidder, upon the basis of cash payment for the work, if such bidder has furnished the certified check and bidder's bond required under the provisions of this chapter.

**SECTION 8. AMENDMENT.** Section 40-24-19 of the North Dakota Century Code is amended and reenacted as follows:

**40-24-19. Warrants and improvement bonds - Issuance - When payable - Amounts - Temporary warrants and temporary improvement bonds - Interest - Interest coupons - Negotiability - Eligibility as investments.** The municipality, at any time after making a contract or otherwise providing in accordance with section 40-22-27 for the construction of any improvement to be financed in whole or in part by assessments, under authority of any chapter of this title, or prior thereto but after the period for filing protests against the making of such improvement has expired and the protests filed, if any, have been heard and determined to be insufficient, and in anticipation of the levy and collection of such assessments and of any taxes or revenues derived from service charges pledged to pay for such improvement, may issue warrants or improvement bonds on the fund created for such improvement. The municipality is responsible to the holders of the warrants or improvement bonds

for the proper advertisement and award of a contract or contracts or provision by other means for the completion of the improvement, for the acquisition of all land, easements, licenses, and permits required for such completion, and for the valid and final levy of special assessments upon all properties within the improvement district to be benefited by the improvement, in an aggregate principal amount equal to the total cost of the improvement as finally ascertained, less the portions thereof, if any, determined to be paid from taxes, service charges, and any other source. The issuance of the warrants or improvement bonds constitutes a representation and covenant binding upon the municipality, that the aggregate benefits to be derived from the making of the improvement by the properties to be assessed therefor, are not less than the aggregate amount of the special assessments so required to be levied. The warrants or improvement bonds shall be issued and shall mature in such amounts as in the judgment of the governing body will be provided for, at or before the maturity dates specified, by the taxes and assessments to be levied and spread and the revenues pledged therefor. In lieu of issuing definitive warrants or improvement bonds on any such fund, the governing body may by resolution authorize the issuance and sale of temporary warrants or temporary improvement bonds maturing in not to exceed three years from the date of issue of the first such warrant or temporary improvement bonds, to be repaid with interest from the proceeds of definitive warrants or improvement bonds maturing as hereinabove required, which the governing body shall issue and sell at or before the maturing date of said temporary warrants or temporary improvement bonds, in the amount required, with moneys theretofore received in such fund, to pay the total cost of the improvement and all temporary warrants or temporary improvement bonds theretofore issued on the fund, with interest then accrued thereon. The warrants or temporary improvement bonds must bear interest at a rate or rates and must be sold at a price, not less than ninety-eight percent of par, resulting in an average net interest cost not to exceed twelve percent per annum payable annually or semiannually, except that there is no interest rate ceiling on an issue sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The definitive warrants or improvement bonds may bear interest at a rate or rates higher or lower than those borne by the temporary warrants or temporary improvement bonds, as determined by the governing body in effecting the sale thereof. In the sale of temporary warrants or temporary improvement bonds, the municipality may by resolution of the governing body agree to issue to the holder or holders thereof definitive warrants or improvement bonds upon specified terms as to interest, maturity, redemption provisions, and all other pertinent details, in the event that the municipality is unable to sell definitive warrants or improvement bonds to others upon more favorable terms. Coupons representing the interest for each year or lesser period may be attached to the warrants, whether definitive or temporary, or improvement bonds or temporary improvement bonds. All such warrants or bonds shall be negotiable within the meaning of and for all the purposes specified in title 41, and, to the same extent as general obligation bonds of the issuing municipality, are valid investments of the funds of any guardian, trustee, and other fiduciary of any kind or nature, any bank or other financial institution, any charitable, educational, or eleemosynary institution, and any public corporation or official, municipality, school district, or other political subdivision, including bond sinking funds, special improvement funds, municipal utility funds, and funds of the state of North Dakota and its instrumentalities and agencies.

**SECTION 9. AMENDMENT.** Section 40-28-07 of the North Dakota Century Code is amended and reenacted as follows:

**40-28-07. Bids for service connections - Advertising - Accompanied by check - Awarding - Returning checks.** The governing body shall direct the city auditor to advertise for bids in accordance with chapters 48-01.1 and 48-02 for the laying and

construction of service connections in accordance with the plans and specifications therefor. Each bid shall be accompanied by a separate envelope containing a certified or cashier's check in the amount of five hundred dollars to guarantee the entering into the contract if the contract is awarded to him. Bids shall be received by the governing body. The governing body may reject any or all bids for work on service connections and may readvertise for other bids. If all the bids are not rejected, the contract shall be awarded to the responsible bidder whose bid is the lowest upon the basis of cash payment for the work if such bidder has complied with all the requirements of this chapter and furnished the required bond. Upon the awarding of the contract, the checks of all unsuccessful bidders shall be returned to them.

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

**40-29-07. Advertising for bids** ~~Bids~~ for sidewalks - ~~Making of bids.~~ The city auditor shall advertise in the official municipal newspaper once each week for two consecutive weeks for bids ~~Bids~~ for the construction of the various kinds of sidewalks in the municipality. ~~The bids shall~~ a city must be made in accordance with the specifications of the ordinance required by section 40-29-01 and shall be accompanied by a separate envelope containing a certified or cashier's check in the amount of fifty dollars in accordance with section 40-22-20, and by a separate envelope containing a bond in the amount of five hundred dollars conditioned as provided in section 40-22-23 ~~chapters 48-01.1 and 48-02.~~

**SECTION 11. 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 advertise in the official newspaper of the city once each week for two consecutive weeks for bids for the construction of the various kinds of curbing in the city during the ensuing year. ~~The solicit bids shall be made in accordance with the plans and specifications set out in the resolution or ordinance provided for in section 40-31-01. At a regular meeting of the governing body, the bids shall be received and opened and if accompanied by the requisite check, or check and bond, as required by the resolution of the governing body, the contract shall be awarded to the lowest responsible bidder. Contracts may be awarded to different bidders for the different kinds of curbing required~~ chapters 48-01.1 and 48-02.

**SECTION 12. 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 ~~48-01~~ 48-02, it shall be is enforceable as therein provided, and no lien may be filed under chapter 35-27.

**SECTION 13. 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 ~~48-01~~ 48-02, no lien may be filed under chapter 35-27.

**SECTION 14. AMENDMENT.** Section 40-49-14 of the 1993 Supplement to 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. ~~All~~ Except as provided in chapters 48-01.1 and 48-02, 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.

<sup>210</sup> **SECTION 15. AMENDMENT.** Section 43-07-11 of the North Dakota Century Code is amended and reenacted as follows:

<sup>210</sup> Section 43-07-11 was repealed by section 9 of Senate Bill No. 2168, chapter 397.

**43-07-11. Contractor's bond - Requirements.** Every contractor is required to execute and file with the application for license required by this chapter a good and valid bond issued by a surety company authorized to do business in this state or, in the case of class D contractors only, a personal bond with two sureties who are acceptable to the registrar and who are residents of this state. Every bond for a class A contractor must be written in the amount of two thousand dollars; bonds for class B, C, and D contractors must be in the amount of one thousand dollars, each running to the state of North Dakota and conditioned upon the payment of all taxes, including workers' compensation premiums under title 65, and unemployment compensation contributions due under chapters 52-01 through 52-07.1, all use taxes required to be paid by the contractor to the state of North Dakota and all income taxes withheld or required to be withheld from employees pursuant to chapter 57-38, which may accrue to the state of North Dakota or the political subdivisions thereof on account of the execution and performance of the construction contract or subcontract; provided that any bond required by this section is in addition to any bond required by ~~section 48-01-05~~ law and is also in addition to the obligation imposed by section 57-40.2-14 upon a surety company to the state of North Dakota. If any surety or bonding company or one or more sureties decides to terminate the contractor bond for any reason, the company or sureties shall give the bond recipient and secretary of state sixty days' notice before the termination takes effect. Every contractor upon making application for renewal of the contractor's license may not be required to furnish a contractor's bond; however, the secretary of state as registrar may not issue a certificate of renewal to any contractor upon notification by any department or agency of the state or political subdivision thereof, any secrecy provisions contained in the North Dakota tax laws notwithstanding, that the contractor has not paid a tax or other obligation presently due to the state of North Dakota or its political subdivisions. Upon notification that the contractor has been delinquent in the payment of any tax or other obligation to the state of North Dakota or the political subdivisions thereof, the secretary of state shall require the bond specified herein prior to the renewal of the license.

**SECTION 16.** Chapter 48-01.1 of the North Dakota Century Code is created and enacted as follows:

48-01.1-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Construction" includes repair and alteration.
2. "Contractor" means any person, duly licensed, that undertakes or enters into a contract with a governing body of the construction of any public improvement.
3. "Governing body" means the governing officer or board of any state entity or of any political subdivision.
4. "Public improvement" means any improvement the cost of which is payable from taxes or other funds under the control of a governing body including improvements for which special assessments are levied. The term does not include any county road construction and maintenance, state highway, or public service commission project governed by titles 11, 24, or 38.
5. "Surety" means a bond or undertaking executed by a surety company authorized to do business in this state which is countersigned by an agent of that company.

48-01.1-02. Contracts let to lowest bidder - Emergency waiver. A governing body shall award a contract for the construction of a public improvement under this chapter to the lowest responsible bidder. The governing body may reject any bid and readvertise for proposals if no bid is satisfactory, or if it believes any agreement has been entered into by the bidders or others to prevent competition. If the governing body determines that an emergency situation exists, a contract may be made without seeking bids.

48-01.1-03. Publication of advertisement for bids. If a contract of a governing body for the construction of a public improvement is estimated to cost in excess of fifty thousand dollars, the governing body shall advertise for bids by publishing for three consecutive weeks, the first publication to be at least twenty-one days before the date of the opening of bids. The advertisement must be published in the official newspaper of the political subdivision in which the public improvement is or will be located, and in a trade publication of general circulation among the contractors, building manufacturers, and dealers in this state.

48-01.1-04. Plans and specifications for public improvement contracts. If a contract of a governing body for the construction of a public improvement is estimated to cost in excess of fifty thousand dollars, the governing body shall procure plans, drawings, and specifications for the work from a licensed architect or registered professional engineer. For public buildings in use by or to be used by the North Dakota agricultural experiment stations in connection with farm or agricultural research operations, the plans, drawings, and specifications may, with the approval of the board of higher education, be procured from a registered professional engineer if the engineer is in the regular employment of the agricultural experiment station.

48-01.1-05. Contents of advertisement. The advertisement for bids required by section 48-01.1-03 must state:

1. When and where the plans, drawings, and specifications may be seen and examined.
2. The place, date, and time the bids will be opened.
3. That each bid must be accompanied by a separate envelope containing a bidder's bond in a sum equal to five percent of the full amount of the bid, executed by the bidder as principal and by a surety, conditioned that if the principal's bid is accepted and the contract awarded to the principal, the principal, within ten days after notice of award, shall execute a contract in accordance with the terms of the bid and a contractor's bond as required by law and the regulations and determinations of the governing body. Countersignature of a bid bond is not required under this section.
4. That a bidder, except a bidder on a municipal, rural, and industrial water supply project authorized for funding under Public Law No. 99-294 [100 Stat. 426; 43 U.S.C. 390a], must be licensed for the full amount of the bid, as required by section 43-07-05. For projects authorized for funding under Public Law No. 99-294 [100 Stat. 426; 43 U.S.C. 390a], the advertisement must state that, unless a bidder obtains a contractor's license for the full amount of its bid within twenty days after it is determined the bidder is the lowest and best bidder, the bid must be rejected and the contract awarded to the next lowest, best, and licensed bidder.

5. That no bid may be read or considered if it does not fully comply with the requirements of this section and that any deficient bid submitted must be resealed and returned to the bidder immediately.
6. That the right of the governing body to reject any bid is reserved.

48-01.1-06. Bid requirements for public buildings. Multiple prime bids for the general, electrical, and mechanical portions of a project are required when any individual general, electrical, or mechanical contract is in excess of fifty thousand dollars. The governing body may also allow submission of single prime bids or bids for other portions of the project at its discretion. The governing body may not accept the single prime bid unless that bid is lower than the combined total of the lowest and best multiple bids for the project.

48-01.1-07. Opening of bids - Award of contract. At the time and place specified in the notice, the governing body shall open publicly and read aloud all bids received and thereafter award the contract to the lowest and best bidder or reject all bids. The governing body may advertise for new bids in accordance with this chapter until a satisfactory bid is received. The governing body shall require the contractor to whom the contract is awarded to post a bond in accordance with chapter 48-02.

48-01.1-08. Coordination of work under multiple prime bids. After competitive bids for the general, electrical, and mechanical work are received as part of the multiple prime bids, the governing board may assign the electrical and mechanical contract and any other contracts to the general contractor for the project to facilitate the coordination and management of the work only.

**SECTION 17.** A new section to chapter 48-02 of the North Dakota Century Code is created and enacted as follows:

Bonds from contractors for public improvements. A governing body, as defined in section 48-01.1-01, authorized to enter into a contract for construction of a public improvement shall take from the contractor a bond before permitting any work to be done on that contract. The bond must be for an amount equal at least to the price stated in the contract. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the contract and pay all bills or claims on account of labor 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 13-01-14 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, or any subcontractor, as provided in this chapter, may sue on the bond.

**SECTION 18. AMENDMENT.** Section 48-02-10.1 of the North Dakota Century Code is amended and reenacted as follows:

48-02-10.1. Advertising for bids. Advertisement for bids for such materials as are produced in North Dakota shall must be made in accordance with sections 48-02-03, 48-02-04, and 48-02-05 chapter 48-01.1, and may be included as a part of any advertisement for other items of the improvement. Each bid for furnishing materials produced in North Dakota shall be required to this state must contain the

bidder's certificate as to where the product is found, produced, or manufactured in the this state of North Dakota.

**SECTION 19. AMENDMENT.** Section 48-02-13 of the North Dakota Century Code is amended and reenacted as follows:

**48-02-13. Architects and superintendents engineers - Duties.** The governing ~~board~~ body shall employ the architect or engineer furnishing the plans as provided in this chapter, or some other suitable qualified person; ~~who shall be a practical mechanic and builder with four years experience, as superintendent of to provide construction of the work administration and construction observation services for which the plans and specifications are prepared, as provided by section 48-02-02 48-01.1-04. He shall have personal charge and supervision of the contractor on the work under the direction of the architect and the governing board employing him. He~~ The architect or engineer shall see that such contractor performs his the work in compliance with the plans and specifications adopted by such board. The architect or ~~any other person, acting as such superintendent,~~ engineer is entitled to receive a reasonable compensation to be fixed by ~~such board~~ the governing body. The duties imposed and powers conferred upon the governing ~~board~~ body by this chapter ~~shall apply to any other board hereafter created to succeed thereto~~ successor to the governing body.

**SECTION 20. AMENDMENT.** Section 48-02-15 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**48-02-15. Claim for work or improvement - Suit on contractor's bond.** Any person who has furnished labor or material for any work or improvement for this state, any of its departments, or any school district, city, county, or township in the state in respect of which a bond is furnished under this chapter ~~48-01~~ and who has not been paid in full within ninety days after completion of ~~his~~ the contribution of labor or materials, ~~has the right to~~ may sue on ~~such~~ the bond for the amount unpaid at the time of institution of suit. However, any person having a direct contractual relationship with a subcontractor, but no contractual relationship with the contractor furnishing the bond, does not have a claim for relief upon the bond unless ~~he~~ that person has given written notice to the contractor, within ninety days from the date on which the person completed ~~his~~ the contribution, stating with substantial accuracy the amount claimed and the name of the person for whom the contribution was performed. Each notice ~~shall~~ must be served by registered mail, postage prepaid, in an envelope addressed to the contractor at any place ~~he~~ the contractor maintains an office, conducts ~~his~~ business, or has a residence.

The contracting body and the agent in charge of its office are authorized and directed to furnish a certified copy of the bond and the contract for which it was given to anyone making an application therefor who submits an affidavit that either ~~he~~ the person has supplied labor or materials for such work or improvement and that payment has not been made, or that ~~he~~ the person is being sued on ~~any such~~ the bond. Applicants shall pay the actual cost of the preparation of the certified copy of the bond and the contract. The certified copy of the bond is prima facie evidence of the contents, execution, and delivery of the original.

**SECTION 21. AMENDMENT.** Section 48-05-12 of the 1993 Supplement to 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 ~~chapter~~

chapters 48-01.1 and 48-02, which relate to competitive bidding, and are not subject to section 43-19.1-28.

**SECTION 22. 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 ~~individual, firm, copartnership, association, corporation, limited liability company, person~~ or other group or combination thereof of persons acting as a unit; ~~and the plural as well as the singular number;~~ "subcontractor" includes any ~~individual, firm, copartnership, association, corporation, limited liability company, person~~ or other group or combination thereof of persons acting as a unit; ~~and the plural as well as the singular number,~~ 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" ~~shall mean~~ means a bond or undertaking executed by a surety company authorized to do business in ~~the this~~ the state of ~~North Dakota;~~ and "surety company" means any person; ~~firm, corporation, or limited liability company~~ executing such 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 ~~the provisions~~ of this chapter. In the case of a contractor and ~~his~~ 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 ~~his~~ the contractor's surety company is ~~hereby authorized to~~ 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 ~~shall be~~ 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 ~~shall~~ must give the names and addresses of the parties contracting with respect to the real property and the place where the contract is to be performed. After the completion of the contract and the acceptance of the improvement by the owner of the real property improved, the surety company shall give written notice of such completion and acceptance to the commissioner.

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

This section ~~shall does~~ not be construed to modify or repeal in any way any of the provisions of ~~sections 48-01-05 and 48-01-06~~ chapters 48-01.1 and 48-02.

**SECTION 23. AMENDMENT.** Section 61-07-09 of the North Dakota Century Code is amended and reenacted as follows:

**61-07-09. Advertising for bids - Letting contract - Bond required.** After adopting a plan of irrigation works, the board shall give notice, by publication at least once, not less than fifteen days before bids are received, as provided in this chapter, in such newspaper or newspapers as it deems advisable, calling for bids for the construction of the work or any portion thereof. If less than the whole work is advertised, then the portion so advertised must be described particularly in such notice. The notice shall set forth that plans and specifications can be seen at the office of the board, that the board will receive sealed proposals therefor, that such proposals will be opened at the time and place fixed in the notice, and that the contract will be let to the lowest and best bidder. The proposals, at the time and place specified, shall be opened in public. As soon as convenient thereafter the board shall let such contract either in part or as a whole to the lowest and best bidder, or it may reject all bids and readvertise for proposals, or it may proceed to construct the work under its own superintendence with the labor of the residents of the district secure bids as provided in chapters 48-01.1 and 48-02. Contracts for the purchase of materials shall must be awarded to the lowest and best bidder. The person to whom a contract may be awarded shall furnish a bond with good and sufficient sureties, to be approved 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 shall must be done under the direction and to the satisfaction of the engineer and shall must be approved by the board. ~~The provisions of this~~ This section shall 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 24. 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 for the construction of all work required, as shown by the plans and specifications on file. ~~Such notice shall be published at least once a week for three successive weeks in the official newspaper of the county, and in such other papers or builder's bulletins as the board may order. Sealed bids shall be addressed to the board of flood irrigation and shall be opened publicly by it at a regular or special meeting designated in the notice. The contract for the construction of the work shall be let to the lowest responsible bidder, but the board may reject any or all bids submitted. At least fifteen days' time shall intervene between the hearing upon the review of the assessments and the letting of the contract. The successful bidder shall give a bond to the board of flood irrigation in a sum equal to the contract price, conditioned for the faithful performance of and compliance with the terms and conditions of said contract.~~

**SECTION 25. AMENDMENT.** Section 61-16.1-14 of the 1993 Supplement to 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 ~~twenty-five~~ fifty thousand dollars, 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 ~~twenty-five~~ fifty thousand dollars, the ~~lowest and best bid must be accepted. The water resource board shall give at least ten days' notice of the time and place where the contract will be let. The notice must be published at least once~~

in a newspaper of general circulation in the district in which the work is to be carried on and must be mailed to any prospective bidders known to the water resource board.

Any person receiving a contract for construction or maintenance of a project shall give a performance bond in an amount set by the water resource board, conditioned upon the proper performance of the contract within the time specified by the contract. The board shall reserve the right to reject any or all bids and may postpone the letting of contracts from time to time or to such other time and place as the board may publicly announce. Any contracts not let at the original contract letting may be let by the board at a later time after notice and in accordance with the provisions of this section. The competitive bid requirement of this section may be waived, upon the determination of the water resource board that an emergency situation exists requiring the prompt repair of a project, and a contract may be made for the prompt repair of the project without seeking bids board must let a contract in accordance with chapters 48-01.1 and 48-02.

**SECTION 26. 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 at the appointed time and place to the lowest and best bidder. Any person receiving a contract for the construction of a drain or portions thereof shall give a performance bond in an amount set by the board for the proper construction of the work within the time specified in the contract. The board shall reserve the right to reject any and all bids and may postpone the letting of contracts for the construction of such drain or parts thereof from time to time or to such other time and place as the board may publicly announce. Any parties who are to be assessed for the construction of such drain may be bidders on construction contracts and, if equal bidders with other parties and equally well qualified, shall be preferred in awarding construction contracts. Any contracts for the construction of portions of a drain which are not let at the original contract letting may be let at a later time by the board after due notice as provided in section 61-21-24 and in accordance with the provisions of this section. If the board does not receive any acceptable bids after having advertised for the same upon two separate occasions, it may, at its sole and absolute discretion, negotiate a contract acceptable to it with the board of county commissioners of its county or any other party in accordance with chapters 48-01.1 and 48-02.

**SECTION 27. AMENDMENT.** Section 61-21-45 of the 1993 Supplement to 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 ~~twenty-five~~ fifty thousand dollars in any one year, ~~such~~ 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 such work exceeds ~~twenty-five~~ fifty thousand dollars in any one year, a contract must be let to the lowest and best bidder in the manner described in this chapter for the letting of bids for construction of drains. The board may reject any and all bids for the cleaning and repairing of drains and have such work performed by county equipment at the expense of the drainage district in accordance with chapters 48-01.1 and 48-02. The competitive bid requirement of this section is waived, upon the determination of the board that an emergency situation exists

requiring the prompt repair of a project, and a contract may be made for the prompt repair of the project without seeking bids.

**SECTION 28. AMENDMENT.** Section 61-24.3-03.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**61-24.3-03.1. Preference for resident pipeline manufacturers and bidders for labor and services.** Any contracts for the purchase of pipeline materials, labor, or services awarded by the state water commission in regard to the construction of the southwest water pipeline project must be awarded to North Dakota resident pipeline manufacturers and North Dakota resident bidders for labor and services making the lowest responsible bids if those bids do not exceed by more than five percent the lowest responsible bid submitted by a nonresident pipeline manufacturer or bidder for labor or services. As used in this section, "North Dakota resident pipeline manufacturers and bidders for labor or services" means bidders or sellers who have maintained a bona fide place of business within this state for at least five years prior to the date on which the contract bid on is awarded. If the state water commission awards any contract for pipeline materials, labor, or services in regard to construction of the southwest water pipeline project to a nonresident bidder, the commission shall publicly give notice in a newspaper of general circulation regarding the specific reasons why it did not award the contract to a resident bidder. This section ~~shall~~ does not apply to contracts that involve federal moneys where a preference would be contrary to federal laws or regulations, contracts covered under chapter 48-01.1, or to architect, engineer, professional right of way, and land surveying services.

**SECTION 29. REPEAL.** Sections 11-11-31, 40-22-20, 40-22-23, 40-22-24, 40-22-25, 40-22-31, 40-22-32, 40-22-33, 40-22-34, 40-28-08, 40-29-08, 40-31-03, 48-01-02, 48-01-03, 48-01-04, 48-01-05, 48-01-06, 48-02-01, and 48-02-05 of the North Dakota Century Code and sections 40-22-22, 40-22-27, 40-22-30, 48-01-01, 48-01-01.1, 48-02-02, 48-02-03, 48-02-04, 48-02-05.1, 48-02-06, and 48-02-06.1 of the 1993 Supplement to the North Dakota are repealed.

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