

# PUBLIC BUILDINGS

## CHAPTER 493

HOUSE BILL NO. 1442  
(St. Aubyn, Svedjan)

### PUBLIC IMPROVEMENT CONTRACTORS' BONDS

AN ACT to amend and reenact section 48-01-01 of the North Dakota Century Code, relating to bond requirements on contracts for public buildings or improvements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-01-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-01-01. Bonds from contractors for public improvements. Every public officer or board authorized to enter into a contract for the erection, repair, or alteration of any public building or any other public improvement, except a municipal improvement made under special assessment statutes, before permitting any work to be done on that contract, shall take from the contractor a good and sufficient bond. 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 motor power equipment, performed, furnished, and used in and about 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 stands as security for all such bills, claims, and demands until fully paid, with preference to labor and materialmen as to payment. The bond must run to this state, but any person having a lawful claim against the contractor, or any subcontractor, as provided in this chapter, on account of labor, materials, or supplies, or for a breach of the contract, may sue on the bond. The mandatory bond requirement of this section only applies to contracts under which the total estimated cost of all work involved amounts to more than twenty-five thousand dollars for the completed project.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 494

SENATE BILL NO. 2455  
(Wogsland, Langley, Schoenwald)

### PUBLIC CONTRACT BIDDING METHODS

AN ACT to amend and reenact subsection 4 of section 48-02-04 and section 48-02-05.1 of the North Dakota Century Code, relating to bid requirements and acceptance for building and repair contracts and contents of bid advertisements and awarding contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 48-02-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. ~~That the bids may be submitted as bids for the single project; individual bids for general, electrical, and mechanical contracts; or bids for other portions of the project. The type of bids as required by section 48-02-05.1.~~

SECTION 2. AMENDMENT. Section 48-02-05.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-02-05.1. Bid requirements and acceptance. Competitive bids for the work for which plans, drawings, and specifications are required by section 48-02-02 ~~may~~ must be allowed to be submitted as multiple prime bids for the ~~single project; individual bids for~~ general, electrical, and mechanical contracts, when applicable. In addition to the required multiple prime bids, the governing board may also allow submission of single prime bids or bids for other portions of the project. Determining bids for other portions of the project is the responsibility of the governing board. The governing board may not accept the single project prime bid unless that bid is lower than the combined total of the lowest and best bids for general, electrical, and mechanical the contracts.

Approved March 15, 1991  
Filed March 15, 1991

## CHAPTER 495

SENATE BILL NO. 2556  
(Krebsbach, Nething)

### FUEL COST ADJUSTMENT CLAUSES

AN ACT to provide for fuel cost line item and fuel cost adjustment clause inclusion in any construction contract entered by the state or a political subdivision.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Public contract to contain a fuel cost line item and a fuel cost adjustment clause. Any public contract, as defined by section 43-07-01, for which submission of bids is required by law must contain a fuel cost line item and a fuel cost adjustment clause based on the costs of motor fuels and heating fuels consumed in completing the contract work. The director of the department of transportation shall make available to any affected agency fuel cost adjustment clause provisions and computations as are used by the department in its construction contracts. This section applies if the amount of the fuel expected to be used is twenty thousand gallons [75708 liters] or more.

SECTION 2. APPLICATION. This Act applies to all contracts entered into after the effective date of this Act.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 496

HOUSE BILL NO. 1266  
(Representatives St. Aubyn, Schindler, Tollefson)  
(Senators Kelly, Stenehjem)

### ENERGY EFFICIENCY CONTRACTS

AN ACT to allow governmental units to enter energy efficiency performance-based contracts to provide guaranteed energy savings in buildings owned by governmental units.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Energy conservation measure" means a training program or facility alteration intended to reduce energy consumption or operating costs, including the following:
  - a. Insulation of the building or any structure associated with the building.
  - b. Window or door modifications that reduce energy consumption.
  - c. Automatic energy control systems.
  - d. Replacement or modification to increase the energy efficiency of the lighting, heating, air-conditioning, or ventilating system.
  - e. Energy recovery or cogeneration systems.
2. "Governmental unit" means any instrumentality of state government or any political subdivision of the state.
3. "Guaranteed energy savings contract" means a contract for energy conservation measures which provides that energy cost savings are guaranteed to the extent necessary to make payments for the recommended energy conservation measures.
4. "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures.
5. "Request for proposals" means a procurement announcement through a public notice from a governmental unit, which will administer the program, detailing the work, service, or supplies needed for an energy conservation measure. The request for proposals must include:

- a. The name and address of the governmental unit.
- b. The name, address, title, and phone number of a contact person.
- c. The response due date and time deadline.
- d. The scope of the project.
- e. The project completion deadline.
- f. The criteria for awarding a contract.
- g. The right to reject the request for proposals.
- h. Other stipulations and clarifications as required.

SECTION 2. Energy conservation measure recommendations. Before entering into a contract under section 3 of this Act, a governmental unit shall submit a request for proposals. Upon receipt of the request for proposals, the governmental unit shall evaluate all reports from qualified providers which summarize estimates of all costs of installations, modifications, or remodeling, including costs of design, engineering, installation, maintenance, repairs, or debt service, and estimates of the amounts by which energy or operating costs will be reduced. If technical assistance is not available by a licensed architect or registered professional engineer on the governmental unit staff, then the evaluation of this report must be done by a registered professional engineer or architect, who is to be retained by the governmental unit. The governmental unit may pay a reasonable fee for preparation of the report or include the fee as part of a contract under section 3 of this Act.

SECTION 3. Guaranteed energy savings contracts. The governmental unit shall provide public notice of the meeting at which it proposes to award a guaranteed energy savings contract, the names of the parties to the proposed contract, and the purpose of the contract. After reviewing the report under section 2 of this Act, a governmental unit may enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measures recommended in the report is not likely to exceed the amount to be saved in energy and operation costs over a period not exceeding ten years from the date of installation if the recommendations in the report are followed. The contract must include a written guarantee of the qualified provider that the energy and operating cost savings will meet or exceed the costs of the system. A qualified provider to whom the contract is awarded shall give a sufficient bond to the governmental unit for the faithful performance of the contract. The guaranteed energy savings contract may provide for payments over a period not exceeding five years.

SECTION 4. Competitive bidding and architect and engineering services. Guaranteed energy savings contracts are not subject to the requirements of chapter 48-02, which relate to competitive bidding, and are not subject to section 43-19.1-28.

SECTION 5. Appropriations for contract payments. The governmental unit shall include in its annual appropriations measure for each later biennium or fiscal year any amounts payable under guaranteed energy savings contracts during the biennium or fiscal year.