

AGC/ABA Construction State Law Matrix

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SEARCH: North Dakota

▼ FOR

North Dakota

Pre-Qualification Requirements

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS
Is There a State Licensing Requirement for General Contractors?	Yes	NDC §§ 43-07-02 to -10 NDC § 43-07-12 (license to accompany bid on public works) NDC § 48-01.2-05 (license on certain water supply projects)	<ul style="list-style-type: none"> • There are 4 classes of licenses that subject the contractor to various dollar limits on the contract amounts. The 4 classes are Class A, B, C, and D. Class A has no project value limitation; Class B has a project limitation of not in excess of \$500,000; Class C has a project limitation of not in excess of \$300,000; and Class D has a project limitation of not in excess of \$100,000. NDC § 43-07-07. • A person may not engage in the business nor act in the capacity of a contractor within North Dakota when the cost, value, or price per job exceeds the sum of \$4,000 nor may that person maintain any claim, action, suit, or proceeding in any court of North Dakota related to the person's business or capacity as a contractor without first having a license. NDC § 43-07-02. • Except for bids on Department of Transportation projects, Public Service Commission projects, use of federal highway funds and certain municipal, rural, and industrial water supply projects, the bidder must include a copy of its license or certificate of renewal enclosed in the required bid bond envelope. NDC § 43-07-12. • For bids on certain municipal, rural, and industrial water supply projects, the bidder must be licensed within 20 days after it is determined that it is the lowest responsible bidder. NDC § 48-01.2-05(5).
Is There a State Licensing Requirement for Construction Managers?	Yes	NDC § 48-01.2-01(Definitions)	<ul style="list-style-type: none"> • For public buildings, a construction manager must be licensed under NDC § 43-07 or employed by a licensed contractor which has the expertise to assist a governing body with the management of the design, contracting and construction aspects of public improvement. NDC § 48-01.2-01(7). • No requirement to be licensed if it is not a public project.

<p>Is There a State Licensing Requirement for Architects and Engineers</p>	<p>Yes</p>	<p>NDC § 43-03-09 (architects) NDC §§ 43-19.1-12 to -23 (engineers and land surveyors) NDAC 8-02-03-01 (architects)</p>	<ul style="list-style-type: none"> • North Dakota prohibits the unlicensed practice of architecture, engineering, and land surveying. • An individual may not practice architecture or landscape architecture unless registered as a landscape architect. NDAC 8-02-03-01.
<p>Is There a State Licensing Requirement for Other Parties?</p>	<p>Yes</p>	<p>NDC § 43-09-09 (electricians) NDAC 24-02-01-02 NDC § 43-18-11 (plumbers) NDAC 62-02-01-01 to -09 NDC § 43-18.1-04 (water conditioning contractors and installers) NDAC 62-02-02-01 to -09 NDC § 43-18.2-03 (sewer and water installers) NDAC 62-02-03-01 to -06 NDC § 23-25-03.1 (air pollution control/asbestos contractors) NDAC 33-15-13-02(16) NDC § 23-25-03.1 (air pollution control/lead paint contractors) NDAC 33-15-24-04</p>	<ul style="list-style-type: none"> • Every person, etc. that undertakes to plan, lay out, supervise, install, make additions, make alterations, or make repairs in the installation of wiring, or equipment for electric light, heat, or power should be licensed. NDC § 43-09-09. • No person, firm, corporation, or limited liability company shall engage in the business of a master plumber, journeyman plumber, or plumber's apprentice unless registered and licensed by the Board. NDC § 43-18-11. • No person, firm, corporation, or limited liability company, except plumbers holding valid licenses pursuant to 43-18, shall engage in the business of water conditioning contractor or water conditioning installer in any incorporated city in North Dakota having a system of waterworks or sewage unless registered and licensed to do so by the Board. Additionally, installation and repair of water conditioning equipment shall be done by the person holding a water conditioning installer's license. NDC § 43-18.1-04 (1). • No person, firm, corporation, or limited liability company, except plumbers holding valid licenses under chapter 43-18, may engage in the business of sewer and water contracting or sewer and water installation unless registered and licensed to do so. This license allows the licensee to do plumbing necessary for sewer and water installation. NDC § 43-18.2-03. • Those engaging in asbestos contracting and lead-based paint contracting are required to be licensed. NDC § 23-25-03.1.
<p>Is There a Foreign Corporation Registration Requirement?</p>	<p>Yes</p>	<p>NDC §§ 10-19.1-132 to -145</p>	<ul style="list-style-type: none"> • A foreign corporation must obtain a certificate of authority from the Secretary of State in order to transact business or obtain any license or permit in North Dakota. NDC § 10-19.1-134. • A foreign corporation authorized to transact business in North Dakota must continuously maintain a registered agent in North Dakota. NDC § 10-19.1-138. • The attorney general may bring an action to restrain a foreign corporation from transacting business in North Dakota in violation of the North Dakota Corporation Act. NDC § 10-19.1-144.

Must a Non-resident Contractor Post a Bond as Part of the Process of Qualifying to do Business?	No	NDC § 43-07-19 (nonresident contractors)	<ul style="list-style-type: none"> • Every applicant for a contractor's license who is not a resident of North Dakota, by signing and filing the application, appoints the Secretary of State as the applicant's agent for acceptance of service. NDC § 43-07-19.
Sales/Use Tax Obligations	Yes	<p>NDC § 57-39.2-04.2 (exemption for power plant construction, oil refinery or gas processing plant)</p> <p>NDC § 57-39.2 (exemption for materials used to construct a fertilizer or chemical processing facility; or construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for use in enhanced recovery of oil or natural gas) NDC § 57-39.4-05 (notice for state tax changes)</p> <p>NDC § 57-40.2-03.3 (use tax on contractors)</p> <p>NDC § 57-40.2-14 (contractor's performance bonds for payment of use tax)</p> <p>NDAC 81-04.1-04-20</p>	<ul style="list-style-type: none"> • A use tax obligation is imposed upon contractors and subcontractors using tangible personal property in the performance of the contractor's or subcontractor's contract obligations. NDC § 57-40.2-03.3. • There is also a use tax obligation imposed upon a contractor's surety. NDC § 57-40.2-14. • North Dakota has modified its laws to the Streamlined Sales and Use Tax Agreement. • NDC § 57-39.2-04.2 extends to oil refinery or gas processing plant environmental upgrade equipment. • The tax imposed by § 57-40.2-03.3 does not apply to tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in North Dakota or used to expand or build a gas-processing facility in North Dakota as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5, or to tangible personal property used to construct or expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioners under section 57-39.2-04.6.

Lien Law Requirements

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS
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Lien Statute	Yes	NDC §§ 35-27-01 to -28 NDC § 28-01-17	<ul style="list-style-type: none"> • Liens must be recorded within 90 days after the person's work is complete on the project. NDC § 35-27-13. • In no event shall a lien be filed more than 3 years after the date of first furnishing. NDC § 35-27-14. • Perfected lien priorities for construction projects are as follows: (1) manual labor; (2) materials; (3) subcontractors other than manual laborers; and (4) original contractors. NDC § 35-27-22. • An action to enforce a lien should be filed in the county in which the property is located. NDC § 35-27-24. • An owner that successfully contests the validity or accuracy of a lien must be awarded the full amount of the costs and reasonable attorneys' fees incurred by the owner in defending the action. NDC § 35-27-24.1. • The statute of limitations to bring an action for the foreclosure of a construction lien is 3 years. NDC § 28-01-17(3).
Notice Requirements	Yes	NDC §§ 35-27-02, -04, -13	<ul style="list-style-type: none"> • North Dakota lien law has one basic notice requirement: No claimant is entitled to a lien unless it first serves written notice by certified mail to the owner of the property at least 10 days prior to filing the claim of lien. NDC § 35-27-02.

Public Procurement Laws

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS
Is Competitive Bidding the Principal Vehicle for Public Construction?	Yes	NDC §§ 48-01.2-02.1, -04 to -07	<ul style="list-style-type: none"> • All public contracts estimated to cost in excess of \$100,000 are generally awarded by competitive bidding to the lowest responsible bidder. NDC § 48-01.2-02.1. • A contract may be made without competitive bidding in an emergency. NDC § 48.01.2-04(2). • A governing body for construction of a public improvement shall advertise for bids by publishing for at least 21 days if the estimated cost is over \$100,000. NDC § 48.01.2-04.
Is Negotiation an Available Delivery Vehicle for Public Construction?	Yes, but see comment	NDC §§ 48-01.2-18 to -21 (construction management)	<ul style="list-style-type: none"> • Negotiated CM Agency or CM at Risk contracts are authorized if the public body makes a determination that the use of one of those delivery methods is in the public's best interest. NDC § 48-01.2-18.
Does Any Statute Authorize Electronic Bidding ("E-Bids")?	Yes, but see comment	NDC § 24-02-17	<ul style="list-style-type: none"> • State DOT authorized to accept electronic bids.
Does Any Statute Authorize the Use of Reverse Auctions in the Award of Public Construction Contracts?	No		

Is There any Statutory Preference for In-State Contractors?	Yes	NDC § 44-08-01 (preference to North Dakota bidders, sellers, and contractors) NDC § 44-08-02 (definition) NDC § 43-07-20 (employment preference in contract)	<ul style="list-style-type: none"> The preference given to local bidders, sellers, and contractors by the Office of Management and Budget or any political subdivision of the State for the construction to build or repair any building, structure, or road must be equal to that preference given or required by the state of the non-resident bidder, seller, or contractor. NDC § 44-08-01. Residents must have a bona fide place of business in the state for at least 1 year prior to the date the contract was awarded. NDC § 44-08-02.
Is There any Statutory Preference for MBE, DBE, WBE or Other Identified Groups?	No		
Is There any Statute Expressly Prohibiting Preferences for Identified Classes of Contractors?	No		
Is There any Statutory Requirement for the Use of a Multi-Prime Delivery Vehicle on Public Projects?	Yes	NDC §§ 48-01.2-06, -17	<ul style="list-style-type: none"> Multiple prime bids for the general, electrical, and mechanical portions of a project are required when any individual general, electrical, or mechanical contract or any combination of individual contracts is in excess of the \$100,000 threshold. NDC § 48-01.2-06. If a general, mechanical, or electrical contract is estimated to be less than 25% of the threshold (\$25,000), the contract may be included in one of the other prime contracts. NDC § 48-01.2-06. Under NDC § 48-01.2-17, the public agency may assign the mechanical and electrical and any other trade contracts to the general contractor for coordination.
On Public Construction Projects, Does any Statute Distinguish Between CM Agency and CM/GC (CM at Risk)?	Yes	NDC §§ 48-01.2-01, -18 to -23	<ul style="list-style-type: none"> The definitions in NDC § 48.01.2-01 make a clear distinction between the types of CMs.
Is Construction Management an available Delivery Vehicle for Public Construction for "Water and Utility Infrastructure" Construction Projects?	See Comment		<ul style="list-style-type: none"> No statute specifically authorizes or prohibits the use of construction management for water or utility infrastructure construction projects. See generally NDC § 48-01.2-01.
Is Construction Management an available Delivery Vehicle for Public Construction for "Transportation" Construction Projects?	See Comment		<ul style="list-style-type: none"> No statute specifically authorizes or prohibits the use of construction management for transportation projects. See generally NDC § 48-01.2-01.
Is Construction Management an available Delivery Vehicle for Public Construction for "Building" Construction Projects?	Yes	NDC §§ 48-01.2-18 to -23	<ul style="list-style-type: none"> The CM Agent must provide a bond (or bonds) for the entire value of its services. A CM at Risk must provide a bond equal to the GMP. NDC § 48-01.2-23.

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS
Is Design-Build Contracting Permitted on Public Projects for "Building" Construction Projects?	See Comment	NDC § 61-02-23.2	<ul style="list-style-type: none"> With the exception of a project authorized under NDC § 61-02-23.2, design-build has not been authorized by statute for vertical construction projects, nor has it been prohibited through any legislative action. It is defined but is not expressly authorized as an alternative delivery method under Chapter 48-01.2-01, et seq. of the North Dakota Code.
Is Design-Build Contracting Permitted on Public Projects for "Transportation" Construction Projects?	No		
Is Design-Build Contracting Permitted on Private Projects?	Yes, but see comment		<ul style="list-style-type: none"> Design-build has not been specifically prohibited by statute.
Is Design-Build Expressly Prohibited by Statute?	Not Definitive		
Is Design-Build Expressly Prohibited by Statute on Public Projects?	No, but see comment		<ul style="list-style-type: none"> With the exception of a project authorized under NDC § 61-02-23.2, design-build has not been authorized or prohibited by statute. It is not authorized as an alternative delivery method under Chapter 48-01.2-01 of the North Dakota Code
Is Design-Build Expressly Prohibited by Statute on Private Projects?	No		<ul style="list-style-type: none"> Design-build has not been specifically authorized by statute, nor has it been prohibited through any legislative or case law actions.
Is There any Statute Requiring that the Design-Build Contractor Hold Either an Architect's or Engineer's License?	No, but see comment		<ul style="list-style-type: none"> North Dakota prohibits the unlicensed practice of architecture or engineering. NDC §§ 43-03-09 (architects), 43-19.1-14 (engineers). A partnership, limited liability company, or professional corporation may provide architectural services as long as a registered architect participates "substantially in all material aspects," there is written disclosure at the time of offering that the architect is engaged by and responsible to the firm; architect maintains responsible control of the work; and rendering of services conforms to North Dakota Century Code Chapter 43-03-09.
Is Design-Build Contracting Permitted on Public Projects for "Water and Utility Infrastructure" Construction Projects?	Yes, but see comment	NDC § 61-02-23.2	<ul style="list-style-type: none"> Design-build contracts may be allowed for construction projects involving Devils Lake. See NDC § 61-02-23.2(2).

Private-Public Partnerships ("P3s")

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS
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<p>Are P3s Permitted on Public Projects for "Building" Construction Projects?</p>	<p>Yes</p>	<p>NDC §§ 48-02.1-01 to -13</p>	<ul style="list-style-type: none"> • "Private operator" is defined in North Dakota as a private person, a corporation or partnership, a cooperative or unincorporated association, a joint venture or consortium that constructs, improves, rehabilitates, owns, leases, operates, or manages a fee-based facility. The term includes related parties and entities that together perform some or all of these functions for the same facility. NDC § 48-02.1-01(5). • NDC § 48-02.1-03 provides that a public authority may solicit or accept proposals from private operators for the constructing, improving, rehabilitating, operating, managing, and owning of a fee-based facility that will be situated in an area subject to the public authority's jurisdiction. After a hearing, the public authority may accept a proposal that it determines to be in the public interest. A public authority may negotiate and enter into a development agreement with any private operator.
<p>Are P3s Permitted on Public Projects for "Transportation" Construction Projects?</p>	<p>Yes</p>	<p>NDC §§ 48-02.1-01 to -13</p>	<ul style="list-style-type: none"> • NDC § 48-02.1-03 provides that a public authority may solicit or accept proposals from private operators for the constructing, improving, rehabilitating, operating, managing, and owning of a fee-based facility that will be situated in an area subject to the public authority's jurisdiction. After a hearing, the public authority may accept a proposal that it determines to be in the public interest. A public authority may negotiate and enter into a development agreement with any private operator. • "Fee-based facility" means a facility that provides a service in which the charge is based on the level of service by users or a rental fee paid by a public authority. The facility may be a library, city hall, and an appurtenant building, a water or sewage treatment plant, or other public improvement; land lying within applicable rights of way; and other appurtenant rights or hereditaments that together comprise a project for which a private operator is authorized to operate or own and impose fees or derive a rent as expressed in the development agreement. NDC § 48-02.1-01.
<p>Does any Statute Permit a Public Agency to Consider an Unsolicited P3 Proposal Without Seeking Competitive Proposals from Other Firms?</p>	<p>No, but see comment</p>	<p>NDC § 48-02.1-12</p>	<ul style="list-style-type: none"> • NDC § 48-02.1-12 provides that "the construction, improvement, rehabilitation, operation, and management of fee-based facilities by private operators under this chapter are subject to all competitive bidding and procurement requirements otherwise applicable under state and local laws, rules, and ordinances, if so determined by resolution of the governing body of the public authority."

<p>Are P3s Permitted on Public Projects for “Water and Utility Infrastructure” Construction Projects?</p>	<p>Yes</p>	<p>NDC §§ 48-02.1-01 to -13</p>	<ul style="list-style-type: none"> • NDC § 48-02.1-03 provides that a public authority may solicit or accept proposals from private operators for the constructing, improving, rehabilitating, operating, managing, and owning of a fee-based facility that will be situated in an area subject to the public authority's jurisdiction. After a hearing, the public authority may accept a proposal that it determines to be in the public interest. A public authority may negotiate and enter into a development agreement with any private operator. • “Fee-based facility” means a facility that provides a service in which the charge is based on the level of service by users or a rental fee paid by a public authority. The facility may be a library, city hall, and an appurtenant building, a water or sewage treatment plant, or other public improvement; land lying within applicable rights of way; and other appurtenant rights or hereditaments that together comprise a project for which a private operator is authorized to operate or own and impose fees or derive a rent as expressed in the development agreement. NDC § 48-02.1-01.
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Bond Requirements on Public Projects

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS
<p>Bid Bonds</p>	<p>Yes</p>	<p>NDC § 48-01.2-05 (contents of advertisement)</p>	<ul style="list-style-type: none"> • North Dakota requires that the prime bid be submitted with the contractor's license and a bid bond (in a separate envelope) in an amount equal to 5% of the full bid amount. NDC § 48-01.2-05(4). • In most cases the bidder must be licensed for the full amount of the bid. NDC § 48-01.2-05(5).
<p>Performance Bonds</p>	<p>Yes</p>	<p>NDC § 48-01.2-10 (bonds from contractors for public improvements)</p>	<ul style="list-style-type: none"> • On all contracts for the construction of a public project, a contractor must furnish a combination performance and payment bond equal to at least the price stated in the contract if the project is valued in excess of \$100,000.
<p>Payment Bonds (sometimes known as Little Miller Act)</p>	<p>Yes</p>	<p>NDC § 48-01.2-10 (bonds from contractors for public improvements)</p>	<ul style="list-style-type: none"> • On all contracts for the construction of a public project, a contractor must furnish a combination performance and payment bond equal to at least the price stated in the contract if the project is valued in excess of \$100,000.

Bid Mistake Relief on Public Projects

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS
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Is Bid Mistake Relief Available by Statute for Public Projects?	No, but see comment	NDC §§ 32-04-17, -22 (contract revision and rescission generally)	<ul style="list-style-type: none"> When, through fraud or mutual mistake of the parties, or through a mistake of one party which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, the contract may be revised by application of the party harmed to express the correct intentions so long as the change does not negatively impact any third parties which have acted in good faith and for value. NDC § 32-04-17. A contract cannot be rescinded for a mere mistake unless the other party can be restored to substantially the same position as if the contract had not been made. NDC § 32-04-22.
Is There any Statutory Provision Addressing the Consequences for Seeking Bid Mistake Relief?	No		
Is Bid Mistake Relief Available per any Court Decision?	Yes, but see comment		<ul style="list-style-type: none"> <i>City of Devils Lake v. St. Paul Fire & Marine Ins. Co.</i>, 497 F.Supp. 595 (D.N.D. 1980) (federal court applying North Dakota law).

Sole Source or Closed Specifications on Public Projects

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS
Is There any Statutory Restriction on Sole Source or Closed Specifications?	Yes	NDC § 44-08-01(3) (preference to North Dakota bidders, sellers, and contractors) NDC § 48-01.2-03 (specified brands, marks, names, or patented articles may not be specified)	<ul style="list-style-type: none"> Specification of brand name, sole source, or patented product must permit bids on other similar articles of "equal value, utility, and merit." NDC § 48-01.2-03

Bid Protests on Public Projects

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS

Is There any Administrative Body that Addresses Bid Protests?	No, but see comment	NDAC 4-12-01-04 (OMB applicability) NDAC 4-12-14-01 to -03 (OMB protest procedures)	<ul style="list-style-type: none"> The state Office of Management and Budget provides a solicitation and award protest and appeal process for "all procurements of commodities and services, regardless of the funding source, by each state agency," but the procedures do not apply to "[c]ontracts for public buildings and public improvement contract bids, pursuant to North Dakota Century Code title 48," nor "[c]ontracts for architect, engineer, and land surveying services, pursuant to North Dakota Century Code chapter 54-44.7. NDAC 4-12-01-04. For those contracts that do qualify, an aggrieved party may protest a solicitation or award to the procurement officer, and then appeal the officer's decision to the agency "director or designee". If the protest is not resolved, the party may pursue "judicial or administrative review, if any, as provided by the laws of North Dakota." NDAC 4-12-14-03.
Who May Assert a Bid Protest?	Not Definitive	NDC §§ 54-12-01, -02	<ul style="list-style-type: none"> The state (through the powers granted to the State Attorney General) or any interested citizen possesses the standing to sue in order to enjoin the letting or execution of any contracts that are in violation of the applicable competitive bidding statutes may assert a bid protest. Contractors lack the standing to bring suit.
Is Recovery of Bid Preparation Costs the Exclusive Remedy?	See Comment		<ul style="list-style-type: none"> A contractor cannot recover its bid preparation costs because the competitive bidding statutes are enacted in order to protect the public, not individual contractors.

Subcontracting on Public Contracts

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS
Listing Requirements	No		<ul style="list-style-type: none"> There is no specific statutory requirement to list subcontractors, but listing is a common practice in public contracting in North Dakota.
MBE/DBE/WBE Set-Asides	No		<ul style="list-style-type: none"> There are no specific set-asides, but the overall MBE/DBE participation goal for highway projects is 10% on 90% of these projects. These goals are determined on a job-by-job basis by the DBE Committee. Good faith efforts for MBE/DBE participation are also considered by other contracting entities.

Payment Terms

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS

Is There a Statute Addressing Prompt Payment on Public Projects?	Yes	NDC § 48-01.2-14 (Prompt payment to contractors) NDC §§ 3-01.1-01 to -06	<ul style="list-style-type: none"> Public bodies must pay approved estimates within 30 days of the date of approval or pay interest at a rate of 2% below the prime rate at the Bank of North Dakota. NDC § 48-01.2-14. Any interest that remains unpaid at the end of any 45 day period or that remains unpaid at the end of any specified period provided by contract must be added to the principal amount of the debt and must thereafter accumulate interest. NDC § 13-01.1-03 NDC § 13-01.1-06 provides that contractors shall make payment to subcontractors and suppliers within 45 days after receipt of payment from the contracting agency or pay interest as determined under NDC § 13-01.1-02.
Is There a Statute Addressing Prompt Payment on Private Projects?	No		
Is There a Statute Prohibiting Enforcement of a "Pay-if-Paid" clause on Public Projects?	No		
Is There a Statute Prohibiting Enforcement of a "Pay-if-Paid" clause on Private Projects?	No		
Are There Statutes Addressing the Escrow or Release of Retainage?	Yes	NDC §§ 43-07-23, 48-01.2-13	<ul style="list-style-type: none"> Retainage is limited to 10%, and only then until the project is 50% complete. After the project is 50% complete, no additional retainage is withheld, unless unsatisfactory progress or performance is documented. NDC § 43-07-23. Funds retained on contracts may be invested to earn interest or dividends for the benefit of the contractor. NDC § 48-01.2-13.
Is There a "Trust Fund" Statute Addressing Payment to the General Contractor for Subcontractors' Work?	No		

Other Contract Terms

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS
Is There a Statute Addressing No Damages For Delay Clauses?	No, but see comment	NDC § 9-08-04	<ul style="list-style-type: none"> North Dakota prohibits the fixing of damages (e.g., liquidated damages) for a breach unless it would be impracticable or extremely difficult to fix the actual damages. NDC § 9-08-04.
Is There a Statute Addressing Choice of Law Provisions in Subcontracts?	No		
Is There a Statute Addressing Forum or Venue Selection Clauses in Subcontracts?	No		

Immigration

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS
Are There state Statutes Obligating a Contractor or Subcontractor to Verify That it's Workers Are U.S. Citizens or Legally in the United States?	No		

Indemnity

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS
Are There Statutes Limiting the Scope of Permissible Indemnity Clauses as a Matter of Public Policy?	Yes	NDC § 9-08-02.1 NDC §§ 22-02-02, -03	<ul style="list-style-type: none"> Provisions of construction contracts that attempt to make the contractor liable for design errors or omissions are void. NDC § 9-08-02.1. North Dakota law provides that “[a]n agreement to indemnify a person against an act thereafter to be done is void if the act is known by such person at the time of doing it to be unlawful.” NDC § 22-02-02. However, “[a]n agreement to indemnify a person against an act already done is valid, even though the act was known to be wrongful, unless it was a felony.” NDC § 22-02-03.
Are There Statutes Establishing Certain Conditions Precedent on the Enforcement of Certain Indemnity Clauses?	No		
Are There Statutes Requiring Indemnity Provisions in Public Construction-Related Contracts?			

Claims

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS

<p>Is Sovereign Immunity Waived?</p>	<p>Yes, but see comment</p>	<p>ND Const., Art I, § 9 (declaration of rights) NDC § 32-12.1-02 (definitions) NDC § 32-12.1-03 (liability of political subdivisions – limitations) NDC § 32-12.2-02 (liability of the state – limitations – statute of limitations) NDC § 32-12.2-17 (state contracts) NDC § 11-10-01 (counties) NDC § 40-05-01 (municipalities) NDC § 58-03-01 (townships)</p>	<ul style="list-style-type: none"> • The State of North Dakota and its agencies may only be sued “in such manner and in such courts and in such cases, as the legislative assembly may lawfully direct.” Thus, contractors and other interested persons may not sue the state or its agencies to recover either contract damages or for the acts of the state or its employees except in extremely limited circumstances. ND Const., Art I., § 9. • If a contract for services requires a provision for indemnification, the contract must require the contractor to indemnify the State for vicarious liability, but may not require indemnification for the contributory negligence, comparative negligence, comparative degree of fault, sole negligence, or intentional misconduct of the State. NDC § 32-12.2-17. • Both tort and contract claims are permitted against political subdivisions of the State. NDC § 32-12.1-03. “Political subdivisions” include all counties, townships, park districts, school districts, cities, public nonprofit corporations, administrative or legal entities responsible for administration of joint powers agreements, and any other units of local government that are created either by statute or by the Constitution of North Dakota. NDC § 32-12.1-02(6)(a). • Each organized county is a body corporate for civil and political purposes only. As such, the county may sue and be sued, contract and be contracted with, and in all cases when lands have been granted to it for public purposes and any part thereof has been sold and the purchase money or any part thereof is due and unpaid, all proceedings necessary to recover possession of such lands or to enforce the payment of the purchase money shall be instituted in the name of the proper county. NDC § 11-10-01.
<p>Is There a Designated Forum for the Resolution of Disputes/Claims on Public Projects?</p>	<p>See Comment</p>	<p>NDC § 24-02-26.1 (condition precedent to contractor demand for highway construction arbitration – claims for extra compensation) NDC § 24-02-27 (arbitration demand – district court may appoint arbitrators if parties fail) NDC § 24-02-28 (procedure for arbitration)</p>	<ul style="list-style-type: none"> • Arbitration of disputes with the North Dakota D.O.T. proceeds through the Uniform Arbitration Act unless a party demands arbitration with the American Arbitration Association. NDC § 24-02-26.1 states certain condition precedents to filing a demand for arbitration.

<p>Is There a Statutory Provision Requiring the Use of an ADR Process to Resolve Claims on Public Projects?</p>	<p>Yes</p>	<p>NDC § 24-02-26 (controversies to be arbitrated – arbitrators – how named) NDC § 24-02-26.1 (condition precedent to contractor demand for arbitration) NDC § 24-02-32 (further arbitration permitted)</p>	<ul style="list-style-type: none"> • All construction contract claims related to North Dakota D.O.T. projects must be submitted to mandatory arbitration. NDC § 24-02-26. • For a claim less than \$100,000, only 1 arbitrator may be jointly selected. For claims greater than \$100,000, 3 arbitrators are required. NDC § 24-02-26. • If an arbitration award requires a contractor to perform additional work, any dispute arising between the parties regarding the extra work may be submitted back to the same arbitrators who rendered the award as long as 5 days' notice is provided. NDC § 24-02-32.
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Public Records Access

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS
<p>Public Records Access</p>	<p>Yes</p>	<p>NDC §§ 44-04-18 to 44-04-18.10</p>	<ul style="list-style-type: none"> • All records of governmental entities of the State or any political subdivision must be made available to the public for inspection. NDC § 44-04-18. • However, there are exceptions and limitations to what the public can access such as: (a) public employee personnel files (NDC § 44-04-18.1); (b) confidential trade secret, proprietary, commercial and financial information (NDC § 44-04-18.4); (c) computer software programs (NDC § 44-04-18.5); (d) legislative records and information (NDC § 44-04-18.6); (e) criminal intelligence information (NDC § 44-04-18.7); (f) financial account numbers (NDC § 44-04-18.9), etc. • A public entity is not permitted to deny the public access to a document just because it contains confidential or protected information. Instead, the public entity is to produce the parts of the records which are not protected or redact what is not available for public consumption. NDC § 44-04-18.10.

Other Statutes Affecting Construction Disputes

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS
<p>Is There a Statute of Repose Limiting the Length of Time Allowed to File a Legal Action Related to Construction Project?</p>	<p>Yes</p>	<p>NDC § 28-01-44(1)</p>	<ul style="list-style-type: none"> • North Dakota has a 10-year Statute of Repose running from substantial completion of the project. In the case of injury to property or a person or such an injury causing wrongful death, which injury occurred during the tenth year after substantial completion, an action in tort may be brought within 2 years after the date of the injury but no later than 12 years after substantial completion of the project.

State Occupational Safety & Health Plans

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS
1. Has a State OSHA Plan Been Approved?	No		
Are There State OSHA 10 Hour Training Laws?	No		

Other Statutes Governing Public Contracts

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS
1. Has the American Bar Association Model Procurement Code with Local Variations Been Adopted?	No		

Prevailing Wages

TOPIC	YES/NO	STATUTORY REQUIREMENTS	NOTES/COMMENTS
1. Is There a Statute Requiring Payment of a Prevailing Wage for Labor on State or State-Funded Public Projects?	No		
2. Is There a Statute Requiring Payment of a Prevailing Wage for Labor on State or State-Funded Public Projects that References Federal Law(the Davis-Bacon Act)?	No		

Statutes Key

NDC - North Dakota Century Code
 NDAC - North Dakota Administrative Code

Contact Information

- [Associated General Contractors of North Dakota](http://www.agcnd.org/)
www.agcnd.org/
- [Department of Transportation](http://www.dot.nd.gov/)
http://www.dot.nd.gov/
- [Department of Transportation/Construction Services](http://www.dot.nd.gov/)
http://www.dot.nd.gov/
- [Department of Transportation/Legal Division](http://www.dot.nd.gov/)
http://www.dot.nd.gov/
- [North Dakota State Procurement Office](http://www.nd.gov/spo/)
www.nd.gov/spo/
- [Secretary of State/Contractor Licensing](http://www.nd.gov/sos/licensing/)
www.nd.gov/sos/licensing/
- [Secretary of State/Corporation Filing](http://www.nd.gov/sos/businessserv/registrations/)
www.nd.gov/sos/businessserv/registrations/

- [State Board of Licensure of Architects](http://www.ndsba.net)
www.ndsba.net
- [State Board of Registration for Professional Engineers and Land Surveyors](http://www.ndpelsboard.org)
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