

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

HOUSE BILL NO. 1170
(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

AN ACT to create and enact a new section to chapter 54-44.4 of the North Dakota Century Code, relating to approved vendors under state purchasing laws; to amend and reenact sections 12-48-07, 24-03-14, 46-01-02, 46-02-01, 46-02-09, 46-05-03, 54-23.2-02, 54-24-09, 54-44-04.5, 54-44-04.6, subsection 3 of section 54-44.2-02, subsections 4, 5, and 8 of section 54-44.4-02, sections 54-44.4-03, 54-44.4-05, 54-44.4-07, and 54-44.4-08 of the North Dakota Century Code, relating to state purchasing and printing practices and the responsibilities of the office of management and budget; to repeal section 54-44-09 of the North Dakota Century Code, relating to the requirement that state purchases comply with United States bureau of standards; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-48-07 of the North Dakota Century Code is amended and reenacted as follows:

12-48-07. Tools and equipment. The warden, under the direction of the director of the division of adult services, shall procure the machinery, tools, and equipment necessary to carry on and conduct the work and industries of the penitentiary. Procurement must be made by the warden according to chapter 54-44.4 and rules adopted under that chapter.

SECTION 2. AMENDMENT. Section 24-03-14 of the North Dakota Century Code is amended and reenacted as follows:

24-03-14. Authority to acquire buildings for equipment. ~~The office of management and budget has the authority to acquire buildings for equipment under its purchasing powers, however, the office of management and budget may delegate such authority to the director, and in such instances the director has authority to construct, rent, or purchase for the state the necessary land and buildings for the storage and housing of road materials, road machinery, equipment, and tools.~~

SECTION 3. AMENDMENT. Section 46-01-02 of the North Dakota Century Code is amended and reenacted as follows:

46-01-02. Printing duties of office of management and budget. The office of management and budget shall:

1. Bid all printing requisitions as requested and let all contracts.
2. ~~Examine all work to determine if it conforms to the contract.~~
3. ~~Examine all accounts let to contract to determine if the charges are correct.~~
4. Determine the price of any legal notice or publication when requested by any state agency or department, or by any political subdivision. Its decision on the proper fee for ~~such~~ the publication is binding and final, subject to review by the courts.

SECTION 4. AMENDMENT. Section 46-02-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

46-02-01. Printing and binding - Duties of the office of management and budget. The office of management and budget shall have charge of all the printing required to be done for ~~the~~

~~several departments of the all state government agencies except as otherwise provided by section 46-02-09. No printing required by any state officer as provided in this chapter may be paid for unless it was authorized by the legislative assembly or by the office of management and budget for seven hundred fifty dollars and over.~~

SECTION 5. AMENDMENT. Section 46-02-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

46-02-09. Sixth-class items - When bids or quotations required. All work on sixth-class items amounting to seven hundred fifty dollars or over, not done by the central duplicating service of the office of management and budget or by departments, institutions, or state offices, must be let by competitive bidding or by the solicitation of at least two quotations by the office of management and budget, or by the departments, institutions, or state offices authorized to bid their own printing needs. Printing items amounting to less than seven hundred fifty dollars may be given by the department head to a printer selected by the department head and accompanied by a purchase order of which one copy must be sent to the office of management and budget. ~~Where~~ If practical, all departments, institutions, or state offices authorized to do their own bidding shall take advantage of annual contracts established by the office of management and budget.

SECTION 6. AMENDMENT. Section 46-05-03 of the North Dakota Century Code is amended and reenacted as follows:

46-05-03. Legal notices - Fees. To effect uniformity, the office of management and budget may compute a standard price on those legal notices which are widely published such as ballots, insurance statements, and official proclamations. All newspapers must use the rates, type size, and column width as shown on its legal notice rate certification issued by ~~the state printing agent of the~~ office of management and budget. Certifications must be issued within fifteen days after samples are submitted.

The office of management and budget shall annually review and adjust rates to reflect changes in economic conditions within the newspaper industry and the general economy, and those adjustments become effective on each July first following the review. These annual changes may be percentage increases or decreases in the base rates, and they may incorporate revisions in the base rate structure. Whenever the office of management and budget considers an adjustment in the legal publication rates contained herein, it shall consult with representatives of the daily and weekly newspaper industry of the state and with representatives of state and local units of government.

SECTION 7. AMENDMENT. Section 54-23.2-02 of the North Dakota Century Code is amended and reenacted as follows:

54-23.2-02. State radio broadcasting system. The director may purchase the necessary apparatus and equipment to construct or establish a radio broadcasting system for the state of North Dakota, which system must be used solely for the transmission of state business and information. The director is further authorized and empowered to purchase shortwave radio receiving and transmitting sets in ~~such~~ quantities as may be most economical and to equip with shortwave radio receiving and transmitting sets all state-owned cars used in connection with law enforcement, ~~such~~ road maintainers as ~~he~~ the director shall determine advisable, the state penitentiary, and ~~such~~ any other places as may furnish the speedy transmission of messages and state information. Purchases must be made by the director according to chapter 54-44.4 and rules adopted thereunder. The director is charged with the operation and maintenance of said system.

SECTION 8. AMENDMENT. Section 54-24-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24-09. Distribution of certain state publications for certain libraries required. The ~~state purchasing and printing agent~~ office of management and budget shall arrange to deposit with the state library eight copies of all publications issued by all executive, legislative, and judicial agencies of state government intended for general public distribution. These publications must be provided to the state library without charge. If expense and limited supply of state publications, particularly audiovisual items, make compliance with the depository requirement impossible, the state library shall accept as

many copies as an agency can afford to provide. However, each agency shall provide no less than two copies to the state library. State publications refer to any informational materials regardless of format, method of reproduction, or source, originating in or produced with the imprint of, by the authority of, or at the total or partial expense of, any state agency. The definition incorporates those publications that may or may not be financed by state funds but are released by private bodies such as research and consultant firms under contract with or supervision of any state agency. In circumstances not directly involving the ~~state purchasing and printing agent~~ office of management and budget, a state agency shall comply with the depository requirement by arranging with the necessary parties for the printing and deposit of eight copies of any state publication issued. State publications are specifically defined as public documents appearing as reports, directories, statistical compendiums, bibliographies, laws or bills, rules, regulations, newsletters, bulletins, state plans, brochures, periodicals, committee minutes, transcripts of public hearings, other printed matter, audiotapes, videotapes, films, filmstrips, or slides, but not those administrative or training materials used only within the issuing agency. As the document acquisition and distribution agency, the state library shall retain for its document collection two copies of every state document received and transmit the remaining copies to the depository libraries. These are the libraries of the state historical board, the university of North Dakota, North Dakota state university, library of Congress, and two others to be designated by the state library. All nondepository North Dakota libraries may receive state documents under an optional selection program developed by the state library. The state library shall catalog state publications and arrange for their conversion to microfilm or to optical disk storage prescribed by the state records administrator and shall make available for distribution the same to the designated depository libraries.

SECTION 9. AMENDMENT. Section 54-44-04.5 of the North Dakota Century Code is amended and reenacted as follows:

54-44-04.5. Federal surplus property - Office of management and budget responsible for distribution - Powers and duties of director.

1. The office of management and budget is responsible for the fair and equitable distribution, through donation, of all federal surplus property transferred to the state in accordance with the Federal Property and Administrative Services Act of 1949, as amended [63 Stat. 378; 40 U.S.C. 484 (j)], hereinafter referred to as the federal Act.
2. The director of the office of management and budget, or ~~such subordinate officer as the director shall designate~~ director's designee:
 - a. May receive, investigate, and make recommendations on applications for federal surplus property available under the federal Act.
 - b. May acquire any federal surplus property transferred to the state under the federal Act.
 - c. May distribute any federal surplus property pursuant to the federal Act to:
 - (1) Any public agency for use in carrying out or promoting for the residents of a given political subdivision one or more public purposes; or
 - (2) Nonprofit educational institutions, public health institutions, or organizations which are exempt from taxation under section 501 of the federal Internal Revenue Code, for purposes of education or public health or research for those purposes.
 - d. May store the federal surplus property.
 - e. Shall develop, submit, and implement a state plan of operation for distribution of federal surplus property and comply with the federal Act and rules and regulations adopted thereunder. Provided, the director may continue the state plan of operation developed by the department of public instruction.

- f. May cooperate and enter into agreements with other surplus property agencies and federal agencies to screen and acquire surplus property and exchange property, facilities, personnel, and services.
 - g. May provide information and assistance for acquiring federal surplus property to entities listed in subdivision c.
 - h. May assess and collect service charges from participating recipients to cover direct and reasonable cost of services under this section. The service charges must be deposited with the state treasurer in a surplus property special fund and used pursuant to the federal Act. The state treasurer shall credit all interest earned to the fund if the director requests the state treasurer to invest portions of the fund.
 - i. Adopt rules and take other action necessary to distribute federal surplus property pursuant to the federal Act.
3. The director of the office of management and budget or the director's designee may purchase available federal property under applicable federal property management regulations for distribution according to this section.

SECTION 10. AMENDMENT. Section 54-44-04.6 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44-04.6. State surplus property - Department heads to inform director - Disposition of property - Proceeds - Exchange of property.

1. The person in charge of any department, agency, or institution of the state shall inform the director of the office of management and budget or the director's designee whenever that department, agency, or institution possesses property surplus to its needs, whether originally obtained with state or other funds.
2. Political subdivisions may provide their surplus property to the office of management and budget for disposition according to subsections 3, 4, and 5.
3. ~~State surplus~~ Surplus property must be transferred at fair market value to state agencies, political subdivisions, and nonprofit organizations eligible to receive federal surplus property under the Federal Property Administrative Services Act of 1949, as amended. Eligible organizations must be notified of the availability of property on a regular basis.
3. 4. If not disposed of under subsection 2 3, then by sale on sealed bids or at public auction to the highest and best bidder for property valued at more than three thousand dollars, with no money deposit required prior to sale, or by sealed bids, public auction, or negotiation at fair value for property valued at less than three thousand dollars.
4. 5. All proceeds received from the transfer or sale of state surplus property must be deposited into the state or political subdivision fund from which the property was originally purchased, less administrative expenses.
5. ~~No department, agency, or institution may exchange items as part of a purchase price of new items until a detailed statement of the value of the items to be exchanged and request for approval have been submitted to the director of the office of management and budget. The director shall approve the exchange only if the director has determined that the item has been valued at fair value.~~

SECTION 11. AMENDMENT. Subsection 3 of section 54-44.2-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Have the authority to purchase or lease equipment or replace, including by trade or resale, present equipment as may be necessary to carry out this chapter. Each executive branch department, agency, or institution, except the institutions under the control of the board of higher education, shall submit to the information services division and the legislative

council, or its designee, in accordance with guidelines established by the division, a written request for the lease, purchase, or other contractual acquisition of information technology services or equipment. The information services division shall review requests for conformance with the requesting organization's strategic plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the information services division may disapprove the request or require justification for the departure from the strategic plan or statewide policy or standard. The division shall inform the legislative council, or its designee, of any requests disapproved or additional justification received relating to a request. All acquisitions made by the division under this section must be done according to chapter 54-44.4 and rules adopted under that chapter.

SECTION 12. AMENDMENT. Subsections 4, 5, and 8 of section 54-44.4-02 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. Department of transportation materials, equipment, and supplies in accordance with ~~the provisions of chapters 24-02 and 24-03~~ section 24-02-16.
5. Professional services ~~pursuant to written contract,~~ unless the office of management and budget agrees to procure professional services in response to an agency's written request.
8. Such specific items or items costing less than a specified amount as determined and indicated by written directive by the director of the office of management and budget. The director may organize and administer, including by contract with a provider, a system of procurement for items agencies are authorized to purchase under this subsection which includes use of a procurement card.

SECTION 13. AMENDMENT. Section 54-44.4-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.4-03. Director of the office of management and budget may delegate purchasing authority. The director of the office of management and budget or the director's designee may delegate to state agencies and institutions the authority to make purchases of items not otherwise exempted by law. Any delegation of purchasing authority must be in writing and must specify what may be purchased by the agency or institution and the duration of the delegation.

SECTION 14. A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:

Approved vendors.

1. Every person or business entity that desires to bid or submit a proposal on contracts awarded under this chapter must be an approved vendor in order to receive a request for bids or proposals. Unless waived by the director of the office of management and budget, or the director's designee, a bid or proposal may not be considered under this section from any vendor that is not approved.
2. To become an approved vendor a person or business entity shall file an application with the office of management and budget. The application must contain information requested by the office of management and budget, including business and persons' names, phone numbers, addresses, federal tax identification numbers, type of business organization, other permits or licenses issued by this state and related numbers, the nature of the business and the products sold, the types of bids or proposals in which the applicant is interested, references, and other business information. The application must also contain a statement appointing the secretary of state as the applicant's agent for service of process pursuant to subsection 3. The application must be signed and certified by an owner, partner, or company officer authorized by company bylaws or other organizational document to bind the company. The office of management and budget may require proof of the signing person's authority by certified copy of appropriate company documents.

3. At the time of filing the application to become an approved vendor, the applicant, if organized as a corporation, limited liability company, limited liability partnership, or limited partnership, must be properly and currently registered with the secretary of state according to its type of business organization as a corporation under chapter 10-19.1, a limited liability company under chapter 10-32, a limited liability partnership under chapter 45-22, or a limited partnership under chapter 45-10.1. Any exemptions to registration under the above chapters that would otherwise apply to those entities organized as such do not apply to this section and registration must be made for the applicant to become an approved vendor. Applicants for approved vendor status using a trade name or a fictitious partnership name must be in full compliance with chapter 47-25 or chapter 45-11 at the time of making the application. Whenever any registration required by this section is cancelled, revoked, or not renewed, the vendor ceases to be an approved vendor.

By signing and filing the application, the vendor applicant appoints the secretary of state as its true and lawful agent for service of process in this state upon whom may be served all lawful process in any action or proceeding against the vendor if the vendor or its registered agent cannot be found for service of process in this state. The signed application is written evidence of the applicant's consent that any process served against the applicant that is so served upon the secretary of state is of the same legal force and effect as if served upon the applicant personally within this state. Within ten days after service of the summons upon the secretary of state pursuant to this subsection, notice of the service with the summons and complaint in the action must be sent to the defendant vendor at the vendor's last known address by certified mail with return receipt requested and proof of mailing must be attached to the summons. The secretary of state shall keep a record of all process served upon the secretary of state under this section showing the day and hour of service. When service of process is made as provided in this subsection, the court, before entering a default judgment, or at any stage of the proceeding, may order a continuance as may be necessary to afford the defendant vendor reasonable opportunity to defend any action pending against the vendor.

4. The director of the office of management and budget, or the director's designee, may waive the requirements for registration with the secretary of state as provided in this section and authorize receipt of a bid or proposal from a vendor that unqualifiedly refuses to register as provided in this section if the director or the director's designee makes a written determination that:
- a. A commodity is so unique and possesses such specific characteristics essential to the government program in question that it is available only from one source and not through wholesalers or retailers; or
 - b. An emergency as defined in subsection 7 of section 54-44.4-02 exists.

SECTION 15. AMENDMENT. Section 54-44.4-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.4-05. Competitive bidding on purchases - Exempt records. Except as otherwise provided in section 44-08-01 and section 25-16.2-02, purchasing contracts must be awarded to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability. The office of management and budget may reject any or all bids or negotiate for a lower price with a successful bidder. Each bid received, with the name of the bidder, must be recorded. The office of management and budget may make multiple awards for term commodity contracts when it deems a multiple award to be in the best interests of the state. Until the date and time set for receiving and opening bids and proposals pursuant to a request for bids or proposals, all bids and proposals received under this chapter are exempt records under subsection 5 of section 44-04-17.1.

SECTION 16. AMENDMENT. Section 54-44.4-07 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-07. Specification for paper products and inks. The office of management and budget, the institutions of higher education, and any other state agency or institution that has authority

to purchase products, are encouraged, whenever possible, when purchasing newsprint printing services, to specify the use of soybean-based ink. ~~By July 1, 1990, at least fifteen percent of the garbage can liners purchased by the office of management and budget, the institutions of higher education, or a state agency or institution to which authority to purchase has been delegated must be starch based. The percentage of starch-based garbage can liners purchased must increase by five percent annually until at least fifty percent of the garbage can liners purchased are starch based. The office of management and budget shall review the procurement specifications currently used by the state to eliminate, wherever possible, discrimination against the procurement of products manufactured with starch-based plastics and soybean-based inks. The North Dakota corn growers association and the commissioner of agriculture shall assist the office of management and budget in locating suppliers of starch-based plastics and in collecting data on the purchase of starch-based plastics. The North Dakota soybean council and the commissioner of agriculture shall assist the office of management and budget in locating suppliers of soybean-based inks and in collecting data on the purchase of soybean-based inks. In requesting bids for paper products, starch-based plastic products, and soybean-based inks, the office of management and budget must request information on the recycled content of such products.~~

SECTION 17. AMENDMENT. Section 54-44.4-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.4-08. Purchase of recycled paper products. The office of management and budget, and any state agency or institution that has authority to purchase products, shall ensure that beginning July 1, 1993, at least ten percent of the total volume of paper and paper products being purchased for state agencies and institutions contain at least twenty-five percent recycled material; beginning January 1, 1994, at least thirty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material; beginning January 1, 1996, at least forty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material; and beginning January 1, 1998, at least sixty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material; ~~and beginning January 1, 2000, at least eighty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material.~~

SECTION 18. REPEAL. Section 54-44-09 of the North Dakota Century Code is repealed.

SECTION 19. EMERGENCY. Section 15 of this Act is declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1170 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 95 Nays 0 Absent 3

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 48 Nays 0 Absent 1

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,
at _____ o'clock _____ M.

Secretary of State