

Fifty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1125

Introduced by

Government and Veterans Affairs Committee

(At the request of the Office of Management and Budget)

1 A BILL for an Act to amend and reenact sections 54-44.4-01, 54-44.4-02, 54-44.4-03,
2 54-44.4-04, and 54-44.4-05 and subsections 1 and 4 of section 54-44.4-09 of the North Dakota
3 Century Code, relating to authorizing the office of management and budget to procure contracts
4 for services to be provided to state agencies.

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

6 **SECTION 1. AMENDMENT.** Section 54-44.4-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **54-44.4-01. Declaration of policy.** It is hereby declared to be state policy to provide
9 comprehensive purchasing services based upon sound procurement practices and principles
10 wherein, through full competition with fair and equal opportunity to all qualified persons and
11 firms to sell to the state, each state agency and institution shall obtain its necessary supplies,
12 services, and equipment at competitive cost, consistent with quality, time, and performance
13 requirements.

14 **SECTION 2. AMENDMENT.** Section 54-44.4-02 of the 1999 Supplement to the North
15 Dakota Century Code is amended and reenacted as follows:

16 **54-44.4-02. Office of management and budget purchasing services.** The office of
17 management and budget shall purchase or lease or otherwise arrange for the procurement, for
18 all state agencies and institutions in the executive branch of state government, all materials,
19 furniture, fixtures, printing, insurance, ~~and~~ other commodities, and services, except the
20 following:

- 21 1. Land, buildings, space, or the rental thereof.
- 22 2. Telephone and telegraph service, and electrical light and power services.
- 23 3. Public books, maps, periodicals, and technical pamphlets.

4. Department of transportation materials, equipment, and supplies in accordance with section 24-02-16.

~~5. Professional services, unless the office of management and budget agrees to procure professional services in response to an agency's written request.~~
Contracts for services provided under section 24-02-07.3 and chapter 54-44.7.

~~6. Services for the maintenance or servicing of equipment by the manufacturer or authorized servicing agent of that equipment where the maintenance or servicing can best be performed by the manufacturer or authorized service agent, or where such a contract would otherwise be advantageous to the state.~~

~~7.~~ Emergency purchases the office of management and budget cannot make within the required time and which involve public health or public safety, or where immediate expenditures are necessary for repairs of state property to protect it against further loss or damage, or to prevent or minimize serious disruption in state services. Emergency purchases must be made with the level of competition practicable under the circumstances, and a written determination of the basis for the emergency and for the selection of the particular contractor must be included in the contract file and reported to the office of management and budget.

~~8. 7. Such~~ The specific items goods or items costing less than a specified amount as determined and services indicated by written directive by the director of the office of management and budget, or the director's designee. The director, or the director's designee, 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.

The office of management and budget shall purchase ~~items~~ goods or services, or both, as requested by agencies and institutions under the jurisdiction of the state board of higher education and the legislative and judicial branches of state government. The agencies and institutions under the jurisdiction of the state board of higher education, with the office of management and budget, shall make such joint purchases of like ~~items~~ goods or services, or both, of high common usage as determined jointly by the agencies and institutions under the jurisdiction of the state board of higher education and the office of management and budget as will result in less cost to the state. In this chapter, "services" means any work performed by an

independent contractor when the service rendered does not consist primarily of the acquisition of commodities, equipment, or materials, or the rental of commodities, equipment, or materials.

The office of management and budget, pursuant to terms and conditions imposed by it, may agree with political subdivisions that have organized a purchasing group pursuant to a joint powers agreement under chapter 54-40.3 to cooperatively purchase certain specific ~~items~~ goods or services, or both, designated by the office of management and budget if the cooperative purchase will result in a benefit to the state and to the political subdivisions participating in the joint powers agreement.

SECTION 3. AMENDMENT. Section 54-44.4-03 of the 1999 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~~ goods or services, or both, 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 4. AMENDMENT. Section 54-44.4-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.4-04. Office of management and budget - Rules. The office of management and budget shall adopt, pursuant to chapter 28-32, rules necessary to administer this chapter. Unless another statute provides otherwise, all agencies in the executive branch of state government must acquire goods or services, or both, in accordance with the rules adopted under this section.

SECTION 5. AMENDMENT. Section 54-44.4-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.4-05. Competitive ~~bidding~~ on, limited, noncompetitive, and negotiated purchases - Other government purchasing contracts - Exempt records.

1. Except as otherwise provided in ~~section~~ sections 44-08-01 and ~~section~~ 25-16.2-02, and in this section, 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 for goods or services, or both, 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.

2. The office of management and budget shall adopt rules specifying the circumstances under which competition may be waived or limited, when negotiation may be used, and specifying the required justifications and procedures for using those methods of purchasing. The circumstances that may permit limited competitive, noncompetitive, or negotiated purchases include:
- a. The commodity or service is available from only one supplier.
 - b. The commodity is available from another governmental entity's contract.
 - c. The commodity or service is to be purchased for experimentation or trial.
 - d. Competitive bidding has failed to produce a bidder.
 - e. Commodities are being purchased for over-the-counter resale.
 - f. Acceptable goods or services are produced or provided by correctional institutions or other government agencies.
 - g. The anticipated cost of purchasing specified goods or services, or both, is less than an amount determined by the office of management and budget which would justify the expense of competitive bidding.
 - h. A used commodity is advantageous to the state and the commodity is available only on short notice.
 - i. The commodity is a component or replacement part for which there is no commercially available substitute and which can be obtained only from the manufacturer.
 - j. Compatibility with equipment currently owned by the state is essential to the proper functioning of that equipment.

- 1 3. If the director of the office of management and budget determines it to be in the
2 best interests of the state, the office of management and budget may agree to
3 purchase according to contracts entered into by the United States general services
4 administration, or may enter into cooperative purchasing agreements with a
5 cooperative purchasing group of other state governments.

6 **SECTION 6. AMENDMENT.** Subsections 1 and 4 of section 54-44.4-09 of the 1999
7 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 8 1. Every person or business entity that desires to bid or submit a proposal on
9 contracts for goods or services, or both, awarded under this chapter must be an
10 approved vendor in order to receive a request for bids or proposals. Unless
11 waived by the director of the office of management and budget, or the director's
12 designee, a bid or proposal may not be considered under this section from any
13 vendor that is not approved.
- 14 4. The director of the office of management and budget, or the director's designee,
15 may waive the requirements for registration with the secretary of state as provided
16 in this section and authorize receipt of a bid or proposal from a vendor that
17 unqualifiedly refuses to register as provided in this section if the director or the
18 director's designee makes a written determination that:
- 19 a. A commodity is so unique and possesses such specific characteristics
20 essential to the government program in question that it is available only from
21 one source and not through wholesalers or retailers; ~~or~~
- 22 b. An emergency as defined in subsection ~~7~~ 6 of section 54-44.4-02 exists; ~~or~~
- 23 c. The goods or services, or both, to be purchased are a one-time purchase for
24 which at least two approved vendors are not available and the director of the
25 office of management and budget, or the director's designee, determines
26 consideration of bids or proposals from unregistered vendors is in the best
27 interests of the state. In the event of a tie bid or proposal, the registered
28 vendor must be given preference.