

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED 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 for an Act to create and enact a new section to chapter 54-44.4 of the North
2 Dakota Century Code, relating to office of management and budget standards and guidelines
3 for the acquisition of services; and to amend and reenact subsection 7 of section 54-44.4-02,
4 section 54-44.4-05, and subsections 1 and 4 of section 54-44.4-09 of the North Dakota Century
5 Code, relating to justification for emergency purchases, variations on competitive bidding, and
6 exemptions from vendor registration.

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

8 **SECTION 1. AMENDMENT.** Subsection 7 of section 54-44.4-02 of the 1999
9 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

18 **SECTION 2.** A new section to chapter 54-44.4 of the North Dakota Century Code is
19 created and enacted as follows:

20 **Contracts for services - Office of management and budget to establish guidelines**
21 **- Agencies to comply - Exemptions - Definition.**

22 1. The office of management and budget shall develop and publish, and may amend
23 from time to time, standards and guidelines for the procurement of contracts for
24 services. Unless the director of the office of management and budget, or the

1 director's designee, grants an exemption, or unless the standards and guidelines
2 of the office of management and budget are directly contrary to the specified terms
3 of a statute, all state agencies, boards, bureaus, commissions, and institutions
4 shall comply with the standards and guidelines for all contracts for services.

5 Exemptions may be granted on an agency basis or for specific services or service
6 contracts. The standards and guidelines adopted under this section are
7 administrative rules and must be adopted under chapter 28-32.

- 8 2. As used in this chapter, "services" includes any work performed by an independent
9 contractor for this state when the service rendered does not consist primarily of the
10 acquisition of commodities, equipment, or materials, or the rental of commodities,
11 equipment, or materials.

12 **SECTION 3. AMENDMENT.** Section 54-44.4-05 of the 1999 Supplement to the North
13 Dakota Century Code is amended and reenacted as follows:

14 **54-44.4-05. Competitive ~~bidding~~ on, limited competitive, noncompetitive, and**
15 **negotiated purchases - Other government purchasing contracts - Exempt records.**

- 16 1. Except as otherwise provided in ~~section~~ sections 44-08-01 and ~~section~~ 25-16.2-02,
17 and in this section, purchasing contracts must be awarded to the lowest
18 responsible bidder considering conformity with specifications, terms of delivery,
19 and quality and serviceability. The office of management and budget may reject
20 any or all bids or negotiate for a lower price with a successful bidder. Each bid
21 received, with the name of the bidder, must be recorded. The office of
22 management and budget may enter into term contracts for the acquisition of
23 commodities or services, and may make multiple awards for term commodity or
24 service contracts when it deems a multiple award to be in the best interests of the
25 state. Until the date and time set for receiving and opening bids and proposals
26 pursuant to a request for bids or proposals, all bids and proposals received under
27 this chapter are exempt records under subsection 5 of section 44-04-17.1.
- 28 2. The office of management and budget shall adopt rules specifying the
29 circumstances under which competition may be waived or limited, when
30 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 is available from only one supplier.
- b. The commodity is available from another governmental entity's contract.
- c. The commodity 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 are produced or provided by correctional institutions or other government agencies.
- g. The anticipated cost of purchasing specified goods 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.

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

SECTION 4. AMENDMENT. Subsections 1 and 4 of section 54-44.4-09 of the 1999

Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. Every person or business entity that desires to bid or submit a proposal on contracts for commodities 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.

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; or
- c. The commodity to be purchased is a one-time purchase for which at least two approved vendors are not available and the director of the office of management and budget, or the director's designee, determines consideration of bids or proposals from unregistered vendors is in the best interest of the state. In the event of a tie bid or proposal, the registered vendor must be given preference.