

Fifty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1170

Introduced by

Government and Veterans Affairs Committee

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

1 A BILL for an Act to create and enact a new section to chapter 54-44.4 of the North Dakota
2 Century Code, relating to cooperative purchasing by the office of management and budget; and
3 to amend and reenact sections 54-44.4-02 and 54-44.4-05 of the North Dakota Century Code,
4 relating to the office of management and budget's purchasing services and to competitive,
5 limited competitive, noncompetitive, and negotiated purchases.

6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

7 **SECTION 1.** A new section to chapter 54-44.4 of the North Dakota Century Code is
8 created and enacted as follows:

9 **Cooperative purchasing.**

- 10 1. The office of management and budget shall purchase commodities or services as
11 requested by agencies and institutions under the jurisdiction of the state board of
12 higher education and the legislative and judicial branches of state government.
- 13 2. The office of management and budget and the agencies and institutions under the
14 jurisdiction of the state board of higher education shall make joint purchases of like
15 commodities or services of high common usage when the office of management
16 and budget and the state board of higher education determine it is in the best
17 interest of the state.
- 18 3. The director of the office of management and budget or the director's designee
19 may agree to purchase commodities or services under contracts entered into by
20 the United States general services administration or contracts of other government
21 entities if it is determined to be in the best interest of the state.
- 22 4. The director of the office of management and budget or the director's designee
23 may participate in, sponsor, or administer a cooperative purchasing agreement
24 with one or more government entities or a nonprofit organization established on

behalf of public entities for the procurement of commodities or services in
accordance with an agreement entered into between the participants.

5. Cooperative purchasing may include open-ended contracts that are available to
other government entities or nonprofit organizations established on behalf of public
entities.

6. Before entering into a cooperative purchasing agreement under this section, the
office of management and budget must determine that the contracts were awarded
through full and open competition or source selection methods specified in section
54-44.4-05.

SECTION 2. AMENDMENT. Section 54-44.4-02 of the North Dakota Century Code is
amended and reenacted as follows:

54-44.4-02. Office of management and budget purchasing services. The office of
management and budget shall purchase or lease or otherwise arrange for the procurement, for
all state agencies and institutions in the executive branch of state government, all materials,
furniture, fixtures, printing, insurance, services, and other commodities. The following
commodities and services, however, are not subject to the procurement requirements of this
chapter:

1. Land, buildings, space, or the rental thereof.
2. Telephone and telegraph service and electrical light and power services.
3. Public books, maps, periodicals, and technical pamphlets.
4. Department of transportation materials, equipment, and supplies in accordance
with section 24-02-16.
5. Procurements through a contract or other instrument executed by the industrial
commission under chapter 54-17.5.
6. Services for the maintenance or servicing of equipment by the manufacturer or
authorized servicing agent of that equipment when the maintenance or servicing
can best be performed by the manufacturer or authorized service agent, or when
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 when
immediate expenditures are necessary for repairs of state property to protect it

1 against further loss or damage, or to prevent or minimize serious disruption in state
2 services. Emergency purchases must be made with the level of competition
3 practicable under the circumstances, and a written determination of the basis for
4 the emergency and for the selection of the particular contractor must be included in
5 the contract file.

6 8. Commodities and services costing less than a specified amount as determined by
7 written directive by the director of the office of management and budget.

8 9. Specified commodities and services as determined by written directive by the
9 director of the office of management and budget.

10 10. Employee benefit services, trust-related services, and investment management
11 services obtained by an agency with a fiduciary responsibility regarding those
12 services.

13 All purchases made by the office of management and budget or a state agency or institution to
14 which authority to purchase has been delegated by the office of management and budget must
15 be made in accordance with this chapter, rules adopted under this chapter, and written policies
16 of the office of management and budget. ~~The office of management and budget shall purchase~~
17 ~~commodities or services as requested by agencies and institutions under the jurisdiction of the~~
18 ~~state board of higher education and the legislative and judicial branches of state government.~~
19 ~~The agencies and institutions under the jurisdiction of the state board of higher education, with~~
20 ~~the office of management and budget, shall make such joint purchases of like commodities or~~
21 ~~services of high common usage as determined jointly by the agencies and institutions under the~~
22 ~~jurisdiction of the state board of higher education and the office of management and budget as~~
23 ~~will result in less cost to the state. The office of management and budget, pursuant to terms~~
24 ~~and conditions imposed by it, may agree with political subdivisions that have organized a~~
25 ~~purchasing group pursuant to a joint powers agreement under chapter 54-40.3 to cooperatively~~
26 ~~purchase certain specific commodities or services designated by the office of management and~~
27 ~~budget if the cooperative purchase will result in a benefit to the state and to the political~~
28 ~~subdivisions participating in the joint powers agreement.~~

29 **SECTION 3. AMENDMENT.** Section 54-44.4-05 of the North Dakota Century Code is
30 amended and reenacted as follows:

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

1. Except as otherwise provided in sections 44-08-01 and 25-16.2-02, and in this chapter, purchasing contracts must be awarded through a competitive bidding process to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability, unless it is determined to be advantageous to the state to select a contractor through a competitive proposal process using other or additional criteria. The procurement officer 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 enter into term contracts for the acquisition of commodities or services and may make multiple awards for term commodity or service contracts when it deems a multiple award to be in the best interests of the state. All bids received under this chapter pursuant to a competitive sealed bid are exempt records under subsection 5 of section 44-04-17.1 until the date and time the bids are opened.
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 source.
 - b. ~~The commodity or service is available from another governmental entity's contract.~~
 - e. The commodity or service is to be purchased for experimentation or trial.
 - ~~d.~~ c. No acceptable bid or proposal was received pursuant to a competitive bidding or competitive proposal process.
 - e. d. Commodities are being purchased for over-the-counter resale.
 - f. e. Acceptable commodities or services are produced or provided by correctional institutions or other government agencies.

- 1 ~~g.~~ f. The anticipated cost of purchasing specified commodities or services is less
2 than an amount determined by the office of management and budget which
3 would justify the expense of a competitive bidding or competitive proposal
4 process.
- 5 ~~h.~~ g. A used commodity is advantageous to the state and the commodity is
6 available only on short notice.
- 7 ~~i.~~ h. The commodity is a component or replacement part for which there is no
8 commercially available substitute and which can be obtained only from the
9 manufacturer.
- 10 ~~j.~~ i. Compatibility with equipment currently owned by the state is essential to the
11 proper functioning of that equipment.
- 12 ~~k.~~ j. The agency provides documentation indicating that the services or the
13 circumstances are of such a nature that deviation from the procurement
14 procedure is appropriate.
- 15 ~~3. If the director of the office of management and budget determines it to be in the~~
16 ~~best interest of the state, the office of management and budget may agree to~~
17 ~~purchase according to contracts entered into by the United States general services~~
18 ~~administration or may enter into cooperative purchasing agreements with a~~
19 ~~cooperative purchasing group of other state governments.~~