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Testimony in Support of
Senate Bill No. 2042
Senate State and Local Government
January 12, 2023

TESTIMONY OF
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Good morning, Chair Roers and members of the committee. My name is Sherry Neas. I am the Central Services Division Director of the Office of Management and Budget (OMB). I appear today in support of SB 2042.

This legislation came out of the Governor's Red Tape Reduction Working Group. It is intended to simplify state procurement laws. OMB also has a proposed amendment which is attached to my testimony.

Section 1 – Page 1
Section 1 repeals the reciprocal preference law found in N.D.C.C. § 44-08-01, which is a very broad, complicated law that impacts state entities and political subdivisions that make many types of procurements.

Many states have a reciprocal preference law to discourage in-state preference laws and encourage open competition.

The current North Dakota law requires that when evaluating bids or proposals from an out-of-state vendor, the procurement officer must determine if that bidder's state of residence has in-state preference laws and apply the same rate of preference to the North Dakota bidders.

The current law complicates procurement because each of the 50 states has different preference laws. Some have preferences for certain goods or services. Others have preferences for certain businesses in certain geographical regions or for businesses that fall into a special category. The National Association of State Procurement Officials provides information on their website about the preference laws of all 50 states, and OMB procurement templates have instructions for applying reciprocal preference when evaluating bids and proposals.

Here are a few examples of state preference laws:

- Ohio: 5% in-state preference, so the procurement officer must adjust the Ohio bid by 5% for evaluation purposes.
- South Dakota: no in-instate preference, so the procurement officer makes no adjustment.
- Minnesota: preference applies only to all-terrain vehicles, so the procurement officer must adjust Minnesota all-terrain vehicle bids only.

Applying reciprocal preference complicates procurement with little benefit for North Dakota businesses. Having been the OMB State Procurement Manager since 2000, I have never seen reciprocal preference change the outcome of an award. Repealing this law will simplify procurement for all government entities and vendors that participate in government bids.

Section 2 - Page 2, Lines 13-20
Section 2 removes the reference to the reciprocal preference statute being repealed in Section 1. The term "Resident North Dakota bidder" is used in other statutes, and this amends the definition to be consistent with the other laws.

Section 3 – Pages 3 - 4
Section 3 of this bill adds two new exemptions from N.D.C.C. § 54-44.4 State Purchasing Practices, suggested from the Governor's Red Tape Reduction Working Group.

- Page 3, line 1, adds "resource materials" to "Public books, maps, periodicals, and technical pamphlets."
- Page 4, lines 11-12, adds a new subsection for "Services to extract, tow, store, and dispose of abandoned or submerged vehicles as defined in chapter 23.1-15." The Department of Environmental Quality (DEQ) collaborated with OMB on this exemption. This exemption allows for quick response by DEQ or any state agency to a situation involving an abandoned or submerged vehicle.

Section 4 – Pages 4 - 6
Section 4 amends the laws related to competitive, limited competition, noncompetitive, and negotiated purchase.

- Page 4, line 21, adds a reference to existing law related to authority for government entities to directly purchase from the Department of Correction and Rehabilitation prison industry.
- Page 4, line 26, adds a reference to existing law related to Request for Proposals.
- Page 4, lines 27-30, is a change from a Red Tape Reduction Working Group suggestion to give OMB authority to determine a different procurement process if determined to be in the best interest of this state with documentation requirements.
- Page 6, lines 11-14, creates a new justification for non-competitive purchases for "recurring support costs associated with implemented information technology solutions, including licensing, service agreements, maintenance, and subscriptions for software as a service, platform as a service, and infrastructure as a service." OMB collaborated with North Dakota Information Technology Department and the North Dakota University System on this section.

Section 5 - Page 6, Lines 17-20

Section 5 is a new section related to tie bid or proposal preference for resident North Dakota bidders. Tie bid preference was previously in N.D.C.C. § 54-44.4-09 Approved vendors.

Section 6 - Page 6, Line 23
Section 6 implements the Governor's Red Tape Reduction Working Group suggestion to simplify the bidders list application process for businesses and individuals desiring to be notified of bidding opportunities. OMB collaborated with the North Dakota Secretary of State, Office of the Attorney General, and North Dakota University System on this section.

Current law requires interested parties to register with the North Dakota Secretary of State to be placed on the bidders list. This requirement significantly complicated the procurement process for vendors, procurement officers, and OMB.

The amended section creates a simple bidders list application process for vendors that want to receive notice of bidding opportunities. This change will encourage competition and save time for vendors, state agencies, and OMB.

Section 7 - Page 9, Lines 5-10
Section 7 is a new section that requires persons and businesses awarded state contracts to comply with North Dakota Secretary of State registration requirements for the duration of the contract period.

Section 8 - Page 9, Lines 26-27
Section 8 removes the reference to the previous "approved vendor" statute amended in Section 6.

Section 9 - Page 10, Lines 19-20
Section 9 was a Governor's Red Tape Reduction Working Group suggestion related allowing notice on the OMB statewide bidding opportunity website to suffice in lieu of advertising public improvements and concessions in the newspaper.

OMB is proposing an amendment to this bill to remove section 9 in its entirety. OMB met with representatives of general contractors, architects, engineers, and building construction associations discuss their concerns about section 9.

Public notice is very important in government procurement. A good procurement system requires effective methods to notify the public and potential bidders. OMB is committed to continue its work with the newspaper industry, government entities, and bidder community to explore the Red Tape Reduction Working Group suggestions regarding improving notice of government bids.

Proposed Amendment
The amendment adds new exemption from other bills. OMB collaborated with the Department of Agriculture (HB 1099) and State Mill and Elevator (HB 1062). This amendment adds references to those other laws to make the exemption list in this chapter more complete.

Section 3 of the bill contains the list of situations that exemption from this chapter of law and not subject to state purchasing practices. The amendment adds:

- Two new exemptions for the Department of Agriculture.
- References to existing law with exemptions for the Department of Agriculture, State Auditors, Attorney General, and Department of Health and Human Services.

Section 4 of the bill contains a list of procurements that are subject to this chapter of law, but the circumstances permit limited competition, noncompetitive, or negotiated purchases.

- Subsection l is a new subsection for the State Mill and Elevator. This moves an existing administrative rule regarding State Mill and Elevator authority into law and expands the description to include specialized equipment and machinery.

- Subsection m is a new section to implement a suggestion from the Governor's Red Tape Reduction Working Group related to State Library online resources. Current administrative rule allows noncompetitive purchase of printed and electronic books, publications, and periodicals. This amendment moves that noncompetitive purchase authority into law and modernizes the language to include electronic and online materials.

This bill is intended to simplify the procurement process for businesses and government entities to reduce administration and increase competition. We need suppliers who sell the goods, services, and equipment needed by government entity. These changes will make "doing business with the state" easier while saving time and money for state agencies.

Mr. Chairman and committee members, this concludes my testimony. I ask your support for SB 2042 and the proposed amendment. I would be happy to answer any questions.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2042

Page 4, after line 12, insert:

"12. Contracts by the agriculture commissioner for agricultural market news services under cooperative agreements with the United States department of agriculture, ombudsmen for pipeline restoration under section 4.1-01-17, environmental impact mitigation services under section 4.1-01-21.1, ombudsmen for wind property issues under section 4.1-01-23, weed control inspection agents under section 4.1-14-02, and hemp testing under section 4.1-18.1-04.2.

13. Contracts by the state auditor for audits of computer systems under section 54-10-20.

14. Contracts by the attorney general with experts under section 10-33-145.

15. Contracts by the department of health and human services for online virtual mental health and suicide prevention simulation-based training programs under subsection 28 of section 50-06-05.1 and brain injury informal supports under section 50-06.4-07."

Page 6, after line 14, insert:

"l. Contracts for specialized equipment, machinery, and materials required for manufacturing, production, and distribution by North Dakota mill and elevator association under 54-18-02.

m. Purchases of copyrighted printed and electronic books, periodicals, subscriptions to publications, subscriptions to information services, prerecorded audio and video materials, state library materials, and state library online resources."

Page 10, remove lines 17 through 27.

Renumber accordingly