

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1341

2005 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1341

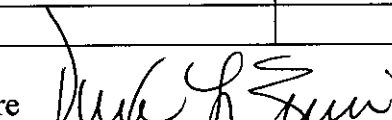
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1341

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 2/3/05

Tape Number	Side A	Side B	Meter #
3	x		25.9-54.9
4	x		0-12.2
Committee Clerk Signature 			

Minutes: HB 1341 Approved vendors for state commodities and service contracts.

9 members present, 5 absent.

Rep. Kasper is the sponsor on this bill.

Sherry Neas-Office of Management and Budget-For-Testimony Attached

Rep. Froseth: Can we ask Sherry to go through her amendments, this bill has a pretty big fiscal note on it. Do the amendments negate that fiscal note?

Sherry Neas: The amendments as O&B are proposing them would eliminate those physical impacts and as I said in my testimony, there would be no material physical impact, because the notice requirements would follow those that already exist for other procurements.

Chairman Haas: On your amendment you have a through k items that would be circumstances under which they could go through a noncompetitive or a limited competitive process. Are these new?

Sherry Neas: In my amendment, section 2 is new language and you see that is existing statute, so the a through k is existing statute. In the new amendment, O & B is recommending that we add the new language that would require O & B to adopt rules regarding sending notice, when an agency is using one of these provisions to avoid the full blown invitation for bid or rsp process.

Rep. Potter: I am not sure what we would be doing differently, if this bill is amended, what we would be doing differently.

Sherry Neas: What we are doing differently now, is that the current laws, regarding when you can do noncompetitive and limited competitive, what we are currently doing, procedurally, agency heads can approve noncompetitive and limited competitive purchases. There are no notice requirements. You can just enter into a contract. What we would be doing differently now is that we would put that justification out there publicly and allow it to be tested by the public. If the vendor felt they have something, a product, that might meet that need, they would be considered.

Chairman Haas: Sherry if we look at the language on the amendment, the underline language is something they would be doing that they are not doing now, correct?

Sherry Neas: Yes, if you look at the top half of the amendment and on page 3. We would send out notices, so we would use the bidder book, not just when we do bids, but also send out notice when we are not doing bids.

Chairman Haas: When you are considering not doing bids.

Sherry Neas: Yes, it would be before.

Chairman Haas: It would a part of the decision making process, order that we are going to do this on a noncompetitive basis.

Sherry Neas: Yes, Mr. Chairman.

Rep. Meier: Do you feel this process would take a lot more time?

Sherry: We actually have a procedure available to do this, we did a lot of research on this.

Chairman Haas: Did I hear you say that would go out on a hard copy and also be posted on the web site?

Sherry: Notice under normal bidding can be sent out electronically by paper, mail, you would have those options.

Rep. Klemin: This amendment requires you to adopt rules and there is some cost associated with rule making, isn't there.

Sherry: Thank you that is a very good suggestion and we can certainly do that.

Steve Shark-National Sales Director for DakTech Computers in Fargo-For

Rep. Klemin: Are your parts imported from a lot of foreign countries?

Steve: A lot of components are manufactured over seas. We are buying from companies here in the United States.

Rep. Klemin: So when you import these component parts from over seas, even though they are by American companies, do you have to pay any kind of tariff, or duty, or tax on it when you buy that here.

Steve: That I believe is built into Intels cost.

Rep. Klemin: That cost is built into the price you pay for the component part.

Steve: That is correct.

Rep. Klemin: So if you were in a free trade zone, like one here in Bismarck, maybe you wouldn't have that cost.

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House Government and Veterans Affairs Committee
Bill/Resolution Number HB 1341
Hearing Date 2/3/05

Steve: Small is a relative term.

Rep. Froseth: I believe your indication for a small town is a lot smaller then Bismarck. Do you do business with Canada?

Steve: At this time all of our sales are done in the United States.

Chairman Haas: Thank you very much. Any more questions on HB 1341.

Rep. Conrad- I move a DO Pass as Amended

Rep. Horter: I second the motion.

VOTE: YES 9 NO 0 ABSENT 5 DO PASS AS AMENDED

REP. KLEMIN WILL CARRY THE BILL.

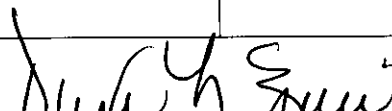
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1341

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 2/04/05

Tape Number	Side A	Side B	Meter #
4	x		0-4.4
Committee Clerk Signature 			

Minutes: HB 1341 Approved vendors for state commodities and service contracts.

9 members present, 5 absent.

Discussion and voting.

Chairman Haas: This is the bill that had to do with sending invitations to bid to vendors in different states. I talked to Rep. Kasper this morning and he worked very closely with Linda and Sherry as the amendment was prepared. I asked him if he wanted us to hold it until he got back, he said no, if you put the amendment on it, I am happy with it and it is good to go. The chair would entertain a motion at this time to attach the amendment submitted by Sherry Ness.

Rep. Grande: Mr. Chairman what I read from these amendments, this is actually clarifying what is being requested here, but it also narrows that field down, those who are qualified should receive these.

Chairman Haas: On the approved vendors list. The chair will entertain a motion to attach the amendments submitted by Sherry Ness.

Page 2

House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1341

Hearing Date 2/04/05

Rep. Grande: I move to attach the amendments to the bill.

Chairman Haas: Moved by Rep. Grande, is there a second, seconded by Rep. Amerman, all in favor of the motion, please signify by saying I, oppose no. Amendment is attached. We do have the amended bill before us.

Rep. Conrad: I move a DO PASS as AMENDED on HB 1341.

Chairman Haas: DO PASS AS AMENDED by Rep. Conrad, is there a second to that motion, seconded by Rep. Horter, is there any further discussion. If not I will ask the clerk to take the roll.

VOTE: YES 9 NO 0 ABSENT 5 DO PASS AS AMENDED ON HB 1341

REP. KLEMIN WILL CARRY THE BILL.

FISCAL NOTE

Requested by Legislative Council
02/08/2005

Amendment to: HB 1341

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

HB 1341 as amended will have minimal fiscal impact. There will be an additional cost of about \$1,600 for promulgating rules and some additional cost for sending notices to approved vendors for limited competitive, noncompetitive, and cooperative procurements. It would cost an estimated \$2,775 to mail notices for alternate procurements of \$25,000 or more. We are unable to estimate the cost for sending notice for procurements under \$25,000 since agencies have authority to make those procurements without the involvement of the State Procurement Office. These additional costs would not affect 05/07 appropriations.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Linda Belisle	Agency:	OMB, Central Services Division
Phone Number:	328-3494	Date Prepared:	02/09/2005

FISCAL NOTE
Requested by Legislative Council
01/12/2005

Bill/Resolution No.: HB 1341

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$1,460,312	\$0	\$0	\$0
Appropriations	\$0	\$0	\$1,460,312	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This bill, if it were enacted as written, would require the OMB State Procurement Office to mail all bids and proposals to approved vendors who are located in the State. There are currently 2,125 approved vendors on the State Procurement Office bidders' list, of which 1,307 are North Dakota vendors. Approximately 1,460 solicitations for commodities and services are issued each year. Assuming each document can be mailed at \$.37 each, the additional postage alone would cost \$706,041 per year or \$1,412,082 per biennium.

It is further estimated that the increased workload would necessitate the hiring of an additional FTE to meet this requirement. That would add an additional \$48,230 for an FTE at an entry-level position. The fiscal note does not include the cost of additional paper, envelopes, or equipment required to meet this requirement.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

General fund appropriations for the OMB State Procurement Office would need to be increased by the amount of the estimated expenditures.

Name:	Linda Belisl	Agency:	OMB

Phone Number: 328-3494

Date Prepared: 01/17/2005

February 4, 2005

**House Amendments to HB 1341 - Government and Veterans Affairs Committee
02/07/2005**

Page 1, line 1, after "reenact" insert "subsection 2 of section 54-44.4-05 and"

Page 1, line 2, after "to" insert "purchasing contracts and"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Subsection 2 of section 54-44.4-05 of the North Dakota Century Code is amended and reenacted as follows:

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 office of management and budget shall adopt rules related to sending notice of intent to make limited competitive, noncompetitive, and negotiated purchases in accordance with this chapter. The notice must describe the needed commodity or service and the intended procurement method and must state that vendors are permitted to submit bids or proposals for contracts to be awarded under this section. 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.
 - c. The commodity or service is to be purchased for experimentation or trial.
 - d. No acceptable bid or proposal was received pursuant to a competitive bidding or competitive proposal process.
 - e. Commodities are being purchased for over-the-counter resale.
 - f. Acceptable commodities or services are produced or provided by correctional institutions or other government agencies.
 - g. The anticipated cost of purchasing specified commodities or services is less than an amount determined by the office of management and budget which would justify the expense of a competitive bidding or competitive proposal process.
 - 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.

- k. The agency provides documentation indicating that the services or the circumstances are of such a nature that deviation from the procurement procedure is appropriate."

Page 1, line 13, replace "shall send an invitation to bid or a" with "or the purchasing agency shall use the list when sending notice of intent to make cooperative, limited competitive, noncompetitive, and negotiated purchases."

Page 1, remove lines 14 through 16

Renumber accordingly

Date: 2/4/05
Roll Call Vote #: /

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1341

House House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 50587. 0101

Action Taken

Do Pass As Amended

Motion Made By

Rep Conrad

Seconded By

Rep. Horter

Representatives	Yes	No	Representatives	Yes	No
Chairman C.B. Haas	✓		Rep. Bill Amerman	✓	
Bette B. Grande - Vice Chairman	✓		Rep. Kari Conrad	✓	
Rep. Randy Boehning	✓		Rep. Louise Potter	AB	
Rep. Glen Froseth	✓		Rep. Sally M. Sandvig	AB	
Rep. Pat Galvin	✓				
Rep. Stacey Horter	✓				
Rep. Jim Kasper	AB				
Rep. Lawrence R. Klemin	✓				
Rep. Lisa Meier	AB				
Rep. Margaret Sitte	AB				

Total (Yes)

9

No

0

Absent

5

Floor Assignment

Rep Klemin

If the vote is on an amendment, briefly indicate intent:

Rep. Conrad - move amendments
Rep. Horter - second
voice vote carried

REPORT OF STANDING COMMITTEE

HB 1341: Government and Veterans Affairs Committee (Rep. Haas, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (9 YEAS, 0 NAYS, 5 ABSENT AND NOT VOTING). HB 1341 was placed
on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "subsection 2 of section 54-44.4-05 and"

Page 1, line 2, after "to" insert "purchasing contracts and"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Subsection 2 of section 54-44.4-05 of the North
Dakota Century Code is amended and reenacted as follows:

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 office of management and budget shall adopt rules related to sending notice of intent to make limited competitive, noncompetitive, and negotiated purchases in accordance with this chapter. The notice must describe the needed commodity or service and the intended procurement method and must state that vendors are permitted to submit bids or proposals for contracts to be awarded under this section. 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.
 - c. The commodity or service is to be purchased for experimentation or trial.
 - d. No acceptable bid or proposal was received pursuant to a competitive bidding or competitive proposal process.
 - e. Commodities are being purchased for over-the-counter resale.
 - f. Acceptable commodities or services are produced or provided by correctional institutions or other government agencies.
 - g. The anticipated cost of purchasing specified commodities or services is less than an amount determined by the office of management and budget which would justify the expense of a competitive bidding or competitive proposal process.
 - 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.
- k. The agency provides documentation indicating that the services or the circumstances are of such a nature that deviation from the procurement procedure is appropriate."

Page 1, line 13, replace "shall send an invitation to bid or a" with "or the purchasing agency shall use the list when sending notice of intent to make cooperative, limited competitive, noncompetitive, and negotiated purchases."

Page 1, remove lines 14 through 16

Renumber accordingly

2005 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1341

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1341**

Senate Government and Veterans Affairs

Business and Conference Committee

Hearing Date March 3, 2005

Tape Number	Side A	Side B	Meter #
1	x		0-1465
Committee Clerk Signature <i>Diane Davis</i>			

Chairman Krebsbach opens hearing on **HB 1341**

Relating to purchasing contracts and approved vendors for state commodities and services contracts.

Representative Jim Kasper - Introduced the bill and discussed the bidding process for state contracts. Said that the purpose of this bill is to let ND companies who want to bid on state contracts would have the opportunity and would be notified properly.

(meter #290)

Sherry Neas - Office of Management and Budget, State Procurement Office. See written testimony.

Senator Syverson - Asked if she had any way of categorizing vendors.

(meter #1465)

Neas - Said that the bidders list is categorized by vendors. This bill would validate and put it out there so others could bid.

Senator Syverson - Asked if those vendors were broken down into geographic areas.

Neas - Replied that on the state web site you can pull up specific vendors geographically.

Senator Brown - Asked how a vendor gets on the list.

Neas - Said the company or individual must be registered with the Secretary of State. Also they need to fill out a bidders list application with OMB.

Senator Krebsbach - Asked how they do this, by mail or by e-mail etc.

Neas - Said that currently administrative rules allow you to send notice by mail or electronically. There is a bill out there, 2018, that would give OMB funding to establish a web site so it could be posted to the web.

(meter #870)

Deana Wiese - Assistant to Executive Director of the IT Council of ND - See written testimony. In favor of do pass.

(meter #1020)

Steve Shark - National Sales Director for DakTech Computers in Fargo - See written testimony. In support of bill.

(meter #1200)

Closed hearing on 1341

Senator Syverson - Moved for do pass

Senator Nelson - Seconded

Senator Syverson will carry

(meter #1465)

Date: 3/3/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1341

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken No Pass

Motion Made By Sen. Syverson Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Karen K. Krebsbach, Chairman	X		Carolyn Nelson	X	
Richard L. Brown, Vice Chairman	X				
Judy Lee	X				
John O. Syverson	X				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Senator Syverson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 3, 2005 9:56 a.m.

Module No: SR-39-4043
Carrier: Syverson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1341, as engrossed: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends DO PASS (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1341 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1341



NORTH DAKOTA PROUD!

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e-mail: sshark@daktech.com

Mr. Chairman and members of the House Government and Veterans Affairs Committee:

My name is Steve Shark and I am the National Sales Director for DakTech® Computers in Fargo.

DakTech® was founded in 1990 and we are members of the Greater North Dakota Chamber of Commerce and the ITCND (Information Technology Council of North Dakota). In 2004 alone, DakTech® manufactured and shipped over 18,000 computers ranging from desktop PC's to enterprise grade servers, all backed by our unmatched 7-Year warranty. 85% of our business is conducted out-of-state, so we have the opportunity to promote North Dakota on a daily basis.

We believe that the passage of bill #1341 would create a win-win situation for both in-state companies like DakTech®, as well as the state itself. In-state companies that win bids for state business, benefit from increased revenue. In return, the state would acquire a certified, nationally distributed product with a proven track record that is backed by the industry's longest warranty. And since DakTech® is an in-state company, North Dakota also benefits from increased state income and sales taxes from DakTech® employees.

Bob Hegg, our President and CEO, is committed to supporting North Dakota. If we generate enough in-state business, Bob is willing to expand DakTech® into a small North Dakota town by opening a satellite manufacturing facility.

On behalf of the DakTech® team, we urge all of you to support and vote bill #1341 into law. Thank you for the opportunity to provide input into the legislative process.

Steve Shark
National Sales Director



House Bill No. 1341

Government and Veterans Affairs Committee

February 3, 2005

Chairman C.B. Haas

Testimony

Good afternoon, Chairman Haas and members of the committee, I am Sherry Neas of the Office of Management and Budget, State Procurement Office.

HB 1341 as introduced requires the office of management and budget to send an invitation for bid or request for proposal to North Dakota vendors on the state bidders list and give them an opportunity to submit a bid or proposal on that contract. The existing law already requires OMB to send notice to all vendors on the state bidders list (North Dakota vendors and otherwise) when soliciting competitive bids or proposals. Sending a copy of each solicitation to all North Dakota vendors approved would be onerous.

In speaking to Representative Kasper, one of the sponsors of the bill, the issue is ensuring that vendors receive notice and an opportunity to submit a bid or proposal on all state contracts. OMB supports the intent of this bill, and we are proposing an amendment that we believe will accomplish what the sponsors intended.

Under current North Dakota law (N.D.C.C. 54-44.4-05), there are many circumstances under which state agencies can enter into contracts using limited competition, no competition or negotiation. Examples include sole sourcing (contracting with the only vendor that can meet your needs) and purchases from another entity's contracts (buying from a Minnesota contract). These types of purchases are commonly called "Alternate Procurements" because the state agency is deviating from the normal competitive procedures.

OMB promulgated rules related to what justifications and approvals are needed, and OMB is the "procurement police" for alternate requests over \$25,000. During the 6-month period from July through December 2004, OMB State Procurement Office received alternate procurement requests totaling over \$10 million dollars. The laws are very accommodating for agencies that request alternate procurements, and an agency can justify not competing a contract if they "provide documentation indicating that the services or circumstances are such a nature that deviation from the procurement procedure is appropriate." There is currently no requirement to send vendors notice.

OMB studied the topic of limited and noncompetitive purchases during the interim study on procurement practices (see HB 1180, 2003); OMB found that many government entities require public notice before entering into a noncompetitive

contract. Requiring public notice before entering into a limited competitive or noncompetitive contract gives vendors an opportunity to submit comparable products and services. The State of North Dakota benefits because it may identify alternate products or solutions, better pricing, and most importantly—public notice protects the integrity of the procurement process. The State of North Dakota will have a very transparent procurement process by disclosing instances when it deviates from the procurement process allowing vendors who may have alternatives to be considered. If no viable commodities or service providers are identified during the public notice process, the alternate procurement is validated and the agency can proceed with the contract.

The notice would be accomplished through existing means, so there would be no material fiscal impact. Agencies would send notice to approved vendors on the bidders list for the needed commodities or services. SB 2032, Section 9, if successful, would create a website where these notices could be posted.

If this bill is amended, OMB will promulgate rules allowing state agencies, vendors, and the public to have input.

This concludes my testimony, Mr. Chairman and members of the committee. I would be happy to answer your questions at this time.

Amendment to House Bill No. 1341

Amend House Bill No. 1341 as follows:

Page 1, line 13, after "section." Overstrike "The office of management and budget shall send an invitation for bid or a"

Page 1, overstrike lines 14-16.

Page 1, line 13, after "section." Insert "The office of management and budget or purchasing agency shall use the list when sending notice of intent to make cooperative, limited competitive, noncompetitive and negotiated purchases.

Create a new section as follows:

Section 2. Amendment. Section 54-44.4-05 of the North Dakota Century Code is amended and enacted 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 office of management and budget shall adopt rules related to sending notice of intent to make limited competitive, noncompetitive, and negotiated purchases in accordance with this chapter. Such notice shall describe the needed commodity or service, the intended procurement method, and allow vendors to submit bids or proposals for contracts to be awarded under this section. 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.
- c. The commodity or service is to be purchased for experimentation or trial.
- d. No acceptable bid or proposal was received pursuant to a competitive bidding or competitive proposal process.
- e. Commodities are being purchased for over-the-counter resale.
- f. Acceptable commodities or services are produced or provided by correctional

institutions or other government agencies.

g. The anticipated cost of purchasing specified commodities or services is less than an amount determined by the office of management and budget which would justify the expense of a competitive bidding or competitive proposal process.

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.

k. The agency provides documentation indicating that the services or the circumstances are of such a nature that deviation from the procurement procedure is appropriate.

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 3 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.

Amendment to Section 1 of House Bill No. 1341

A BILL for an Act to amend and reenact subsection 1 of section 54-44.4-09 of the North Dakota Century Code, relating to approved vendors for state commodities and services contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-44.4-09 of the North Dakota Century Code is amended and reenacted as follows:

1. The office of management and budget shall establish and maintain current lists of persons that desire to provide commodities or services to the state. Every person that desires to bid or submit a proposal on contracts for commodities or services awarded under this chapter must be an approved vendor in order to be placed on the bidders list. The office of management and budget or the purchasing agency shall use the list when issuing invitation for bids or request for proposals over the amount established for small purchases, except as otherwise provided in this section. ~~The office of management and budget shall send an invitation to bid or a request for proposals to each vendor that is domiciled in this state and which meets the requirements of this section, and shall allow any person domiciled in this state to submit a proposal for any contract to be awarded under this chapter.~~ The office of management and budget or the purchasing agency shall use the list when sending notice of intent to make cooperative, limited competitive, noncompetitive and negotiated purchases.

Testimony of Deana Wiese

**Information Technology Council of North Dakota Assistant Executive Director
on HB 1341**

February 3, 2005

Mr. Chairman and members of the House Government and Veterans Affairs Committee:

My name is Deana Wiese and I am the assistant executive director of the Information Technology Council of North Dakota (ITCND). I am here today to testify in support of HB 1341.

ITCND was formed in 2000 by North Dakota business, government, and university leaders who recognized the need to strengthen the state's information technology infrastructure and reposition the state as a national leader in IT. ITCND has more than 100 members and continues to grow every day. The members of ITCND believe in a stronger North Dakota through information technology excellence and development.

One of the 2005 ITCND legislative agenda items, which are determined by a public policy committee, is to encourage state procurement opportunities for North Dakota IT professional service providers. HB 1341 helps advance that goal. The ITCND members who are professional service providers would like to have the additional opportunity to enhance and grow their business by participating in and bidding on service contract opportunities for the State of North Dakota. ITCND supported the centralized posting of state procurement opportunities in 2003, and this bill is an opportunity for professional service providers to benefit from centralized posting.

A number of ITCND's member companies would be positively impacted by the passing of this bill. With me today is the National Sales Director for DakTech Computers, Steve Shark. Mr. Shark will be providing testimony from a professional service provider's perspective.

We thank you for your support of business development in the past, and we encourage you to give HB 1341a DO PASS recommendation.

Wiese testimony in support of HB 1341.

Testimony on House Bill No. 1341

**Government and Veterans Affairs
Chairman K. Krebsbach
March 3, 2005**

Chairman Krebsbach and members of the committee, I am Sherry Neas of the Office of Management and Budget, State Procurement Office.

Under current law (N.D.C.C. 54-44.4-05), there are many circumstances under which state agencies can enter into contracts using limited competition, no competition or negotiation. Examples include sole sourcing and purchasing from another entity's contracts. The purchases are called "Alternate Procurements" because the agency is deviating from the competitive bidding process.

The law is very accommodating in that it allows it allows agencies to limit or waive competition if they "provide documentation indicating that the services or circumstances are such a nature that deviation from the procurement procedure is appropriate." OMB approves alternate procurement requests over \$25,000. During the 6-month period from July through December 2004, OMB State Procurement Office received alternate procurement requests totaling over \$10 million dollars.

During the interim study on procurement practices (see HB 1180, 2003), OMB studied "noncompetitive purchases" and found that many government entities require public notice before entering into a noncompetitive contract.

If HB 1341 is passed, OMB will promulgate rules to require that notice be sent to approved vendors when an agency intends to purchase goods or services over a certain dollar amount from a specific vendor, in lieu of a competitive process. The notice will describe the intended purchase and invite vendors who may have alternative products or services to respond within a certain time. The State may discover alternate products, other service providers or better pricing. If no viable commodities or service providers are identified, the noncompetitive decision is validated and the agency can proceed with the contract. This will create a very transparent procurement process—protecting the integrity of the State. A sample notice is attached to my testimony.

Requiring OMB to promulgate rules will allow state agencies, vendors, and the public to have input.

This concludes my testimony, Chairman Krebsbach and members of the committee. I would be happy to answer your questions at this time.

EXAMPLE

STATE OF NORTH DAKOTA
AGENCY OR INSTITUTION NAME
ADDRESS
CITY, STATE, ZIP
TELEPHONE AND FAX NUMBER

DATE

Notice of Intent

To Make a (SELECT ONE - Limited Competitive OR Noncompetitive) Purchase

The State of North Dakota intends to purchase a commodity or service for which we believe (SELECT ONE - only one known provider OR only limited competition) exists. This document contains the specifications and justification for the (SELECT ONE - limited competitive or noncompetitive) procurement. Any vendor who does not agree that this commodity or service is available only from the source described in this document must contact the procurement officer listed below within seven days after the posting of this notice.

Requestor: Provide name of agency, institution, division, district, or office, as appropriate.

Purchase Description: Describe needed commodity or service, intended use or scope of work, including the quantity to be purchased.

Intended Source: If a noncompetitive purchase, provide the name of the vendor and address. If a limited competitive, describe how competition is being limited (e.g. brand name product, geographic area, etc.).

Price: Provide the actual or estimated total price and describe any relevant price factors.

Justification for the (SELECT ONE - limited competitive or noncompetitive) procurement:
Describe what is necessary and unique about the product, service or source, as appropriate.
Describe steps taken to confirm that competition must be limited or is not possible.

Response Deadline: (Date issued plus 14 days)

Procurement Officer:	Name
	Address
	City, State, Zip
	Phone
	E-mail
	Fax

Enclosure

EXAMPLE

ND STATE PROCUREMENT OFFICE
Office of Management and Budget, Central Services Division
14th Floor Capitol Tower, 600 East Boulevard Ave, Dept. 012
Bismarck, ND 58505-0310
Telephone: (701) 328-2683, Fax (701) 328-1615

**Notice of Intent
To Make a Noncompetitive Purchase**

The State of North Dakota intends to purchase a commodity or service for which we believe only one known provider exists. This document contains the specifications and justification for the noncompetitive procurement. Any vendor who does not agree that this commodity or service is a sole source must contact the procurement officer listed below within fourteen days after the posting of this notice.

Requestor: ND State Procurement Office

Purchase Description: Software for distributed network security management console and active network vulnerability scanner for the State of North Dakota IT network as per attached specifications.

Intended Source: Tenable Network Security

Price: \$250,000

Justification for the noncompetitive procurement: The Tenable Network Security is the only known software product that is compatible with the state's information technology infrastructure that can provide the needed functionality for a network as large as the State network.

Date Posted: May 1, 2004

Response Deadline: May 15, 2004

Procurement Officer: Sherry Neas
14th Floor, Capitol Tower
Bismarck, ND 58505-0310
Phone: 701-328-1726
E-mail: sneas@state.nd.us
Fax: 701-328-1615

EXAMPLE

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SPECIFICATIONS

High Speed, Low Impact Scanning

The console must allow multiple scanners to be used in parallel and at different points within a network to allow for faster scans with less impact on the network and firewalls. Multiple scanners can be used to scan the large networks in maintenance or outage windows. By completing the scans in a weekend, an evening or even a few hours, we should be able to scan often enough to identify subtle trends, or overnight vulnerabilities. Must be able to scan at scheduled intervals, and set for repeat/follow-up scans.

Asset Management

Must be able to allow users to assign asset values to systems. These values indicate an asset type (like a web server), its location and its more detailed description. Asset values can be used when performing analysis such that a user could list all of their vulnerabilities, and then filter the analysis for selected asset types.

Distribution of Security Information to Multiple Users

Must be able to distribute both IDS and vulnerability information across many logical and political groups, straight to the system administrators who need this information. For example, a DNS administrator in a remote office will only be able to see IDS and vulnerability information for their specific servers.

Vulnerability Remediation Facilitation

The console must allow a security group to prioritize the detected vulnerabilities so that system administrators can focus their resources to fixing them. The console must help the security group make recommendations for how to handle the serious vulnerabilities, and then distribute this information to just the system administrators who have these vulnerabilities. As administrators mitigate their vulnerabilities, all of this information is tracked such that high-level recommendation and remediation activity can be monitored by individual organizations.

IDS Event and Vulnerability Correlation

The console must be able to receive IDS events from multiple sources, check to see if the target of an event is vulnerable to the attack and then distribute this information to the affected system administrators. When an IDS event targets a vulnerable system, the console must be able to send an email message to the affected users as well.

Organizational Executive Reporting

The console must be able to produce a variety of reports that capture not only the trends of vulnerability and IDS activity, but also each organization's efforts to minimize their security profile. This information can allow an executive to see what their organizations are doing with their security activity, and also capture the amount of work that they are doing per resource.

IDS Technology

The console must be able to work with many of the network IDS solutions that are available today, including Snort, and Enterasys' Dragon and ISS Real Secure.

Testimony of Deana Wiese

**Information Technology Council of North Dakota Assistant Executive Director
on HB 1341**

March 3, 2005

Madam Chair and members of the Government and Veterans Affairs Committee:

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A number of ITCND's member companies would be positively impacted by the passing of this bill. With me today is the National Sales Director for DakTech Computers, Steve Shark. Mr. Shark will be providing testimony from a professional service provider's perspective.

We thank you for your support of business development in the past, and we encourage you to give HB 1341a DO PASS recommendation.

Wiese testimony in support of HB 1341.



NORTH DAKOTA PROUD!

DakTech, Inc.
3502 36th St SW
Fargo, ND 58104
P: (888)325-3238 F: (701)282-9690
<http://www.daktech.com>
e-mail: sshark@daktech.com

Mr. Chairman and members of the Senate Government and Veterans Affairs Committee:

My name is Steve Shark and I am the National Sales Director for DakTech® Computers in Fargo.

DakTech® was founded in 1990 and we are members of the Greater North Dakota Chamber of Commerce and the ITCND (Information Technology Council of North Dakota). In 2004 alone, DakTech® manufactured and shipped over 18,000 computers ranging from desktop PC's to enterprise grade servers, all backed by our unmatched 7-Year warranty. 85% of our business is conducted out-of-state, so we have the opportunity to promote North Dakota on a daily basis.

We believe that the passage of bill #1341 would create a win-win situation for both in-state companies like DakTech®, as well as the state itself. In-state companies that win bids for state business, benefit from increased revenue. In return, the state would acquire a certified, nationally distributed product with a proven track record that is backed by the industry's longest warranty. And since DakTech® is an in-state company, North Dakota also benefits from increased state income and sales taxes from DakTech® employees.

Bob Hegg, our President and CEO, is committed to supporting North Dakota. If we generate enough in-state business, Bob is willing to expand DakTech® into a small North Dakota town by opening a satellite manufacturing facility.

On behalf of the DakTech® team, we urge all of you to support and vote bill #1341 into law. Thank you for the opportunity to provide input into the legislative process.

Steve Shark
National Sales Director

