

**CHAPTER 4-12-06**  
**SPECIFICATIONS FOR COMMODITIES AND SERVICES**

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**4-12-06-01. Purpose of specifications.**

1. The purpose of a specification is to serve as a basis for obtaining a commodity or service suitable for the state's needs in a cost-effective manner.
2. Commodities and services will be specified at the proper level of utility and quality for the purpose intended in order to promote overall economy for the purpose intended.
3. All required functional, performance, physical, design, and other characteristics of a commodity or service and any other requirements such as certification, licensing, insurance, delivery, installation, inspection, testing, training, maintenance, and service support must be included in the specification.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-06

**4-12-06-02. Restrictive specifications to be avoided.**

1. Specifications should encourage competition in meeting the state's needs and may not be restrictive. Restrictive specifications are contrary to the policy of the state and should be avoided.
2. Standard commercial commodities will be specified whenever possible.
3. A specification is restrictive when the specifications, requirements, restrictions, or conditions have the effect of limiting responses to only one brand, make, source of supply, or service provider and have no reasonable relation to the actual needs of the purchasing agency.
4. When only one brand, make, source of supply, or service provider can meet the specifications in a competitive solicitation, the procurement officer must make a determination regarding whether the specification was restrictive.
5. Award is subject to the approval requirements for limited and noncompetitive procurements in chapter 4-12-09.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 44-08-01, 54-44.4-01, 54-44.4-04, 54-44.4-06

**4-12-06-03. Use of brand name in specifications.**

1. Specification may include brand name, make, or source of supply, but in those cases it will be clearly indicated that equivalent products may be acceptable.

2. If a commodity or service put forth as equivalent is rejected by an agency or institution as not being equivalent, the procurement officer must make a written determination and notify the bidder or offeror of the rejection.
3. Whenever an agency specifies products or services exclusive to a particular individual, company, manufacturer, or brand name to the exclusion of competitive products or services, the proprietary product or service will be procured competitively, unless it is available only from one source of supply or emergency circumstances exist. When competition is limited or restricted by the use of a brand name or proprietary specification, a written determination for a limited competitive or noncompetitive procurement must be made in accordance with North Dakota Century Code section 44-08-01 and North Dakota Administrative Code chapter 4-12-09.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 44-08-01, 54-44.4-01, 54-44.4-04, 54-44.4-06

#### **4-12-06-04. Qualified products list.**

1. If testing or examination of the commodities or services is desirable or necessary to best satisfy state requirements, a qualified products list may be developed with approval of the state procurement office.
2. When developing a qualified products list, a representative group of vendors must be solicited, in writing, to submit products for testing and examination to determine acceptability for inclusion on the qualified products list.
3. Inclusion on a qualified products list must be based on results of tests or examinations conducted in accordance with state requirements and the product specification.
4. The existence of prequalified products on a qualified products list does not constitute prequalification of any prospective vendor.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-06

#### **4-12-06-05. Equipment leases and lease-purchases.**

1. Specifications for equipment leases and lease-purchases will include the total term of the lease, including all provisions for extensions or renewals of the lease agreement. If the purchasing agency will purchase insurance for the equipment being leased from the lessor, those requirements will be stated in the specifications.
2. The purchasing agency will prepare a written analysis documenting the decision to lease or lease-purchase, in accordance with North Dakota Century Code section 54-27-21.1.
3. The state agency or institution will notify the office of the insurance commissioner, fire and tornado fund division, if the equipment being leased or lease-purchased will be insured under that fund.
4. The purchasing agency must comply with the requirements of North Dakota Century Code section 54-27-21 related to fixed asset reporting when the equipment lease or lease-purchase is determined to be a fixed asset acquisition.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-27-21.1, 54-44.4-02, 54-44.4-06

**4-12-06-06. Specifications prepared by non-state personnel.**

1. The requirements of these rules regarding the purpose and nonrestrictiveness of specifications applies to all specifications prepared by someone other than a state employee or official.
2. When a purchasing agency has specifications prepared by someone other than a state employee or official on behalf of the state, that person or business entity must be excluded from submitting bids or proposals.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-06

**4-12-06-07. Request for information.**

A noncompetitive solicitation may be issued to obtain information, data, comments, or reactions from possible vendors preceding the issuance of solicitation for bids or proposals or a multistep bidding procedure. Information obtained as a result of a request for information is subject to the state open records law.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04, 54-44.4-06

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-06

**4-12-06-08. Specification meeting.**

Prior to issuing a solicitation, the procurement officer may hold a specification meeting to seek information necessary to prepare a suitable specification and competitive solicitation. The procurement officer will provide adequate notice to potential bidders or offerors. The meeting is open to the public. Attendance at such meeting may not be made mandatory as a condition for submitting a bid or proposal.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-06