

**REPORT TO THE BUDGET SECTION  
ON  
SPECIFIC EXEMPT COMMODITIES AND SERVICES**

**Budget Section Meeting, December 8, 2010  
Senator Ray Holmberg, Chairman**

**Testimony**

Good afternoon, Chairman Holmberg and members of the committee, I am Sherry Neas of the Office of Management and Budget, Central Services Division. This is a report of the specific commodities and services that the Office of Management and Budget has exempted from state procurement requirements. (Ref. 58<sup>th</sup> Legislative Assembly, SB 2015, Section 42)

OMB did not exempt any additional commodities and services from state procurement requirements during this biennium. The current exemptions are listed in administrative rules attached to this testimony. Most of the exemptions are commodities and services that are subject to other statutes. For example, Title 48 governs public improvements, and a separate chapter in Title 54 governs the selection process for architects, engineers, and land surveying services. Other exemptions include grant programs and professional memberships.

OMB requires competition for purchases over \$2,500. Procurement laws and rules describe the circumstances under which purchases can be made without obtaining competition. Attached to my testimony is a section of OMB rules that list the specific commodities and services that can be purchased without competition.

If an agency intends to make a noncompetitive purchase of a good or service not listed in rules, the request is subject to an approval process. The agency must justify why competition is not possible or not in the best interest of the state. The agency head can approve requests up to \$25,000, and OMB approves requests over \$25,000. If the requestor does not provide sufficient justification, the agency head or OMB can require a notice to be issued to the state bidders list and posted to the state bid opportunities website. If viable alternate suppliers are identified, a competitive procurement process is conducted. If no objections to the noncompetitive purchase are received, the request is approved.

This concludes my testimony, and I welcome any questions you might have. Thank you.

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**North Dakota Administrative Code Article 4-12**  
**State Procurement Practices**

**Section**

**4-12-01-04. Applicability.**

1. These rules apply to all procurements of commodities and services, regardless of the funding source, by each state agency and institution in the executive branch of government, except this chapter does not apply to:

- a. Those agencies or institutions governed by the state board of higher education, which are exempt under subsection 5 of North Dakota Century Code section 15-10-17 and North Dakota Century Code section 54-44.4-02;
- b. Those commodities and services not subject to state procurement laws under North Dakota Century Code section 54-44.4-02;
- c. Those procurements costing less than a specified amount and those specific commodities or services as determined by the director's written directive, pursuant to North Dakota Century Code section 54-44.4-02;
- d. Contracts for services of legal counsel with attorneys who are not employed by the state, pursuant to North Dakota Century Code section 54-12-08;
- e. Contracts for public buildings and public improvement contract bids, pursuant to North Dakota Century Code title 48;
- f. Contracts for architect, engineer, and land surveying services, pursuant to North Dakota Century Code chapter 54-44.7;
- g. Contracts for concessions, pursuant to North Dakota Century Code chapter 48-09;
- h. Grant programs, not including procurements using grant dollars; or
- i. Professional memberships.

2. The office of management and budget may procure exempted commodities or services upon request by an agency or institution.

3. The office of management and budget may require state agencies or institutions to provide an annual report of commodities and services exempted by the director's written directive.

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

**General Authority:** NDCC 54-44-04, 54-44.4-04

**Law Implemented:** NDCC 54-44.4-02, 54-44.4-02.1, 54-44.4-04



**4-12-09-01. Competition may be waived or limited.**

1. A purchasing agency may request to limit or waive competitive solicitation requirements pursuant to North Dakota Century Code section 54-44.4-05.
2. Competition may not be limited or waived to satisfy preferences or for the convenience of the purchasing agency.
3. Circumstances under which a deviation from procurement procedures to limit or waive competition and procure through negotiations is appropriate pursuant to subsection 2 of North Dakota Century Code section 54-44.4-05, without a written determination, include:
  - a. Contracts for legal services, subject to the requirements of North Dakota Century Code section 54-12-08;
  - b. Contracts for professional witnesses to provide for professional services or testimony related to existing or probable lawsuits in which the state may become a party;
  - c. Contracts for temporary administrative law judges pursuant to North Dakota Century Code section 54-57-02;
  - d. Contracts for medical doctors, dentists, psychologists, and other medical specialists;
  - e. Purchases of books, newspapers, magazine subscriptions, and periodicals;
  - f. Prerecorded audiovisual materials, including records, tapes, cassettes, compact disks, slides, transparencies, films, and videotapes;
  - g. Purchases of materials required for manufacturing and production by a purchasing agency engaged in manufacturing and production operations;
  - h. When immediate expenditures are necessary to ensure the integrity of state records;
  - i. Purchases of livestock, fish, insects, and other animals;
  - j. Commodities for resale at state-operated concessions;
  - k. Purchases of items with cultural, historical, or archaeological significance for museums or archival purposes;
  - l. Purchases of works of art;
  - m. Contracts for residential and treatment services to ensure continuity of client care and vocational rehabilitation commodities for clients of the department of human services;
  - n. Contracts for performers, entertainers, and guest speakers, excluding contracts for education, instruction, or training; and
  - o. Medications, pharmaceuticals, metabolic foods, food supplements, food replacements, vitamins, and therapeutics, as prescribed by health care professionals for patients of a state facility or clients of a state program.
4. A prior written determination is required for all other requests for limited competitive and noncompetitive purchases subject to the provisions of this chapter and the terms of the purchasing agency's delegated purchasing authority.

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

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

**Law Implemented:** NDCC 54-44.4-02.1, 54-44.4-04, 54-44.4-05