

Presented by: Christy Smith, Procurement Officer II
OMB, State Procurement Office

Before: Administrative Rules Committee
Representative Kim Koppelman, Chairman

Date: September 13, 2012

Chairman Koppelman and members of the committee, my name is Christy Smith. I am a procurement officer in the Office of Management and Budget, Central Services Division.

With respect to the rules published in the October 2012 supplement, I understand that the committee is interested in the following matters:

1. One section of the rules resulted from statutory changes made by the Legislative Assembly.
 - Page 9, Section 4-12-09-06, was created as the result of SB 2265. It provides some definitions for purchasing agencies to better understand how to apply the new law, North Dakota Century Code (NDCC) Section 25-16.2.
2. The rules are not related to any federal statute or regulation.
3. A description of the rulemaking procedure followed in adopting the rules follows:
 - On March 15, 2012, the agency:
 - Sent Full Notice of Intent and one copy of the rules to the Legislative Council.
 - Sent a copy of the full notice to any sponsor and co-sponsor and committee chair of legislation enacted by rule.
 - Faxed and e-mailed the Abbreviated Notice of Intent to NDNA.
 - Placed Notice of Intent, copy of rules, and summary of changes on OMB/CSD website: Laws, Rules, & Guidelines page.
 - Notified groups that a copy of the rules and full notice to Legislative Council is available online.
 - On April 24, 2012, the agency:
 - Conducted the public hearing.
 - After the conclusion of the hearing, allowed a comment period of 13 days during which data, views, or arguments concerning the proposed rulemaking would have been received and made a part of the rulemaking record to be considered by agency.
 - On May 10, 2012, the agency gathered all written comments, prepared a written summary of each oral comment (including comments by telephone), and prepared a written record of the agency's consideration of all comments.
 - On May 11, 2012, the agency submitted proposed rules and related materials to the Attorney General for an opinion on their legality.
 - On July 20, 2012, the Attorney General approved the proposed rules as to their legality.

- On July 25, 2012, the agency submitted the Attorney General's Opinion, the rules, any written comments, and summary of oral comments to the Legislative Council.
 - On August 8, 2012, the agency notified interested parties of the date and place the rules will be reviewed by the Administrative Rules Committee.
4. No person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. No person offered comments at the public hearings on these rules; however, the agency received public comments through May 7, 2012 ("OMB - EXHIBIT A").
- One question and one comment were received related to Section 4-12-09-01 (3).
 - The question was not expressed to change the proposed rule.
 - The public comment was considered and the proposed rule was revised.
 - One question was received related to Section 4-12-09-06.
 - The question was not expressed to change the proposed rule.
5. The approximate cost of giving public notice was \$1,814. There was no cost (not including staff time) of developing and adopting the rules.
6. An explanation of the subject matter of the rules and the reasons for adopting those rules follows:
- Changes were largely made to clarify existing sections and to make the language more modern due to technological changes. Specifically:
 - Page 4, Section 4-12-09-01(3)(l) was intended to clarify services and commodities restricted to vocational rehabilitation in any agency rather than restricted to the department of human services.
 - Page 4, Section 4-12-09-01(3)(o) was intended to move and expand the list from N.D. Admin. Code § 4-12-09-02(1)(b) to include heating fuels, ready mix cement, sand, gravel, road oil, and bituminous mix which can be procured using limited competition to bidders or offerors within a specific geographic area.
 - Page 5, Section 4-12-09-01(3)(p) was intended to add contracts for insurance placed through a broker or agent when the broker or agent was hired through a competitive or limited competitive process.
 - Page 6, Section 4-12-09-02(5) was moved to Section 4-12-09-05 with more detail.
 - Page 6, Section 4-12-09-03(6) was moved to Section 4-12-09-05 with more detail.
 - Two new sections were added: 4-12-09-05 and 4-12-09-06.
 - Page 8, Section 4-12-09-05 was created from sections 4-12-09-02 and 4-12-09-03 into this new section, to add more detail to make it clear that OMB has authority to require a purchasing agency to issue a notice; to tie in the other applicable sections of law, such as the bidders list; to clarify the minimum period for issuing the notice; and what happens if the purchasing agency receives a response to a notice.
 - Page 9, Section 4-12-09-06, which was created as the result of SB 2265 and the new law, North Dakota Century Code (NDCC) Section 25-16.2.
7. No regulatory analysis was required as the proposed rules are not expected to have an impact on the regulated community in excess of \$50,000 and neither the Governor nor any member of the Legislative Assembly requested a regulatory analysis.

8. Central Services prepared a Small Entity Regulatory Analysis before adopting proposed rules ("OMB – EXHIBIT B"). The Small Entity Regulatory Analysis was included with the Full Notice of Intent that was sent to the Legislative Council on March 15, 2012, and to the Attorney General on May 11, 2012.
9. The proposed rules will not have an effect on state revenues or expenditures, or on funds controlled by OMB.
10. A constitutional takings assessment was not required because the rules do not limit the uses of private real property.
11. These rules were not adopted as emergency (interim final) rules under NDCC Section 28-32-03.

This concludes my testimony. I will be happy to answer any questions you may have.