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**Public Comments Through May 7, 2012, on Proposed Rules Relating to
Limited Competition and Noncompetitive Procurements, N.D. Admin. Code Chapter 4-12-09**

1. Notifications on the public hearing and availability of proposed rules were publicized in 52 official ND newspapers, beginning 3/23/12 and ending 3/29/12, and sent to the Legislative Council; sponsors, co-sponsors, and the committee chair of legislation enacted by the rule; State Procurement Advisory Committee Members; state procurement staff and procurement liaisons; agency contacts; and the OMB Director.
2. The proposed rules were provided to the public on request and made available on the Central Services Division website at www.nd.gov/spo/legal.
3. The public hearing was conducted on Tuesday, April 24, 2012, in the Missouri River Room, Ground Floor of the Capitol with only staff from the North Dakota State Procurement Office in attendance. No one testified.

Written Comments:

Attachment 1 – Electronic mail from Kathy Larson, ND DHS, ND Developmental Center, Grafton.

Attachment 2 – Electronic mail from Sue Seminary, Bank of North Dakota.

Legend to Status – Considerations by the Central Services Division:

A – The public comment was considered and the proposed rule was revised or a recommended new rule was adopted in ‘acceptance’ of the comment or recommendation.

P – The public comment was considered and the proposed rule was ‘partially’ revised or a recommended new rule was ‘partially’ adopted to reflect the comment or recommendation.

N – The public comment was considered, but the proposed rule was ‘not’ revised or a recommended new rule was ‘not’ adopted to reflect the comment or recommendation.

NA – The public comment, such as a question or remark, was not expressed to change a proposed rule or the comment is ‘not applicable’ due to other action taken on that rule or another rule.

Note: Some public comments have been clarified or paraphrased.

Section	Change	Oral and/or Written Comments	Status/Disposition
N.D. Admin. Code. Ch. 4-12-09			
N.D. Admin. Code § 4-12-09-01 Competition may be waived or limited	<p>o The rule change of N.D. Admin. Code § 4-12-09-01(1) is intended to clarify the reference to subsection 2 of North Dakota Century Code section 54-44.4-05 by moving the reference up from N.D. Admin. Code § 4-12-09-01(3).</p> <p>o The rule change of N.D. Admin. Code § 4-12-09-01(3) is intended to clarify the language used.</p> <p>o The rule change of N.D. Admin. Code § 4-12-09-01(3)(d) is intended to replace a list of medical specialist types with the term “medical specialists.”</p> <p>o The rule change of N.D. Admin. Code § 4-12-09-01(3)(e) is intended to remove references to specific types of subscriptions and to update the rule by adding “copy-righted printed and electronic works” and “pre-recorded audio and video materials, when only available from the publisher or producer.”</p>	<p>Question 1: In section 4-12-09-01(3)(d), does taking out those specifics warrant competitively bidding doctor, dentist & psych staff or does the wording broaden the encompassment to include these and other medical specialties? –<i>Kathy Larson, ND DHS, ND Developmental Center, Grafton.</i></p>	<p>Answer 1 [NA]: The rule change of N.D. Admin. Code § 4-12-09-01(3)(d) is intended to broaden the encompassment to include doctors, dentist, psychologists, and all other medical specialists by referring to “medical specialists”.</p>

	<p>o The rule change of N.D. Admin. Code § 4-12-09-01(3)(f) is intended to remove the rule and consolidate it with N.D. Admin. Code § 4-12-09-01(3)(e).</p> <p>o The rule change of N.D. Admin. Code § 4-12-09-01(3)(l) is intended to clarify services and commodities restricted to vocational rehabilitation in any agency rather than restricted to the department of human services.</p> <p>o The rule change of N.D. Admin. Code § 4-12-09-01(3)(m) is intended to remove the “and” to allow for additional clauses “o” and “p”.</p> <p>o The rule change of N.D. Admin. Code § 4-12-09-01(3)(n) is intended to add medical devices to the list of items as prescribed by health care professionals for patients of a state facility or clients of a state program.</p>		
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	<p>o The rule change of N.D. Admin. Code § 4-12-09-01(3)(o) is 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.</p> <p>o The rule change of N.D. Admin. Code § 4-12-09-01(3)(p) is 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.</p>	<p>Question 2: I have a comment on the proposed rule change for 4-12-09-01 Competition may be waived or limited, (3)(p).</p> <p>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, competition may be waived or limited without a written determination, include: ...</p> <p>p. Contracts for insurance placed through a broker or agent when the broker or agent was hired through a competitive or limited competitive process.</p> <p>I agree with removing the acquisition of insurance from the procurement process because it is an application process and it just does not fit the normal bid process. However, I believe the word "independent" should be added in front of the word broker because in the financial institution insurance industry there are many brokers who will sell their insurance with no apparent fee, however, the fee is part of the premium. I also think the word</p>	<p>Answer 2 [A]: The comment was considered and the proposed rule was revised in acceptance of the recommendation, as follows:</p> <p>p. Contracts for insurance placed through an independent broker, agent, or consultant when the independent broker, agent, or consultant was hired through a competitive or limited competitive process.</p>
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<p>N.D. Admin. Code § 4-12-09-02 Limited competitive procurements</p>	<p>o The rule change of N.D. Admin. Code § 4-12-09-02(1)(b) is intended to remove references to specific types of commodities or services provided by bidders or offerors within a specific geographic area and consolidate it with N.D. Admin. Code § 4-12-09-01(3)(o).</p> <p>o The rule change of N.D. Admin. Code § 4-12-09-02(2) is intended to move the reference to maintaining a written determination to 4-12-09-02(6) for the correct sequence of events. This rule change is also intended to correct “must” to “shall”.</p>		

	<p>o The rule change of N.D. Admin. Code § 4-12-09-02(3) is intended to correct “will” to “shall” and to correct “noncompetitive” to instead say “limited competitive,” which pertains to this section.</p> <p>o The rule change of N.D. Admin. Code § 4-12-09-02(4) is intended to correct “state procurement manager or designee” to “state procurement office”.</p> <p>o The rule change of N.D. Admin. Code § 4-12-09-02(5) is intended to remove reference to issuing a notice of intent to make a limited competitive purchase and consolidate it with N.D. Admin. Code § 4-12-09-05.</p> <p>o The rule change of N.D. Admin. Code § 4-12-09-02(6) is intended to add reference to maintaining a written determination from 4-12-09-02(2) for the correct sequence of events.</p>		
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<p>N.D. Admin. Code § 4-12-09-03 Noncompetitive procurements</p>	<ul style="list-style-type: none"> o The rule change of N.D. Admin. Code § 4-12-09-03(3) is intended to remove the reference to maintaining a written determination in the procurement file, because it is redundant to 4-12-09-03(7). This rule change is also intended to correct “must” to “shall”. o The rule change of N.D. Admin. Code § 4-12-09-03(4) is intended to correct “will” to “shall”. o The rule change of N.D. Admin. Code § 4-12-09-03(5) is intended to correct “state procurement manager or designee” to “state procurement office”. o The rule change of N.D. Admin. Code § 4-12-09-03(6) is intended to remove reference to issuing a notice of intent to make a noncompetitive award and consolidate it with N.D. Admin. Code § 4-12-09-05. 		
<p>N.D. Admin. Code § 4-12-09-04 Emergency procurements</p>	<ul style="list-style-type: none"> o The rule change of N.D. Admin. Code § 4-12-09-04(1) is intended to clarify reference to a determination to limit or waive competition. 		

	<ul style="list-style-type: none"> o The rule change of N.D. Admin. Code § 4-12-09-04(2) is intended to correct “shall” to “must”. o The rule change of N.D. Admin. Code § 4-12-09-04(4) is intended to correct “must” to “shall”. o The rule change of N.D. Admin. Code § 4-12-09-04(5) is intended to correct “must” to “shall”. 		
N.D. Admin. Code § 4-12-09-05 Notice of intent to make a limited competitive or noncompetitive purchase	<ul style="list-style-type: none"> o The rule creation of N.D. Admin. Code § 4-12-09-05 is intended move and expand references to issuing a notice of intent to make a limited competitive or noncompetitive purchase from N.D. Admin. Code § 4-12-09-02(5) and from N.D. Admin. Code § 4-12-09-03(6). 		
N.D. Admin. Code § 4-12-09-06 Work activity center contract awards	<ul style="list-style-type: none"> o N.D. Admin. Code § 4-12-09-06 is intended to define a process for implementing the new law included in N.D.C.C. ch. 25-16.2. SB2265 modified N.D.C.C. ch. 25-16.2, the law regulating work activity center contract awards. It added an updated definition of “work activity center,” a purpose statement, and a section related to non-competitive purchases from work activity centers. 	Question 1: What is a work activity center, and is there a list of work activity centers available from the State Procurement Office? – <i>DeAnn Steckler, ND Highway Patrol.</i>	Answer 1 [NA]: As used in N.D.C.C. § 25-16.2-01, “work activity center” means a facility, licensed by the department of human services, which is located in the state and operated by a nonprofit corporation organized for the primary purpose of employing and providing rehabilitative activities for individuals with physical disabilities, developmental disabilities, or chronic mental

			<p>illnesses. The State Procurement Office has added a link to new webpage related to Work Activity Centers. It can be found at www.nd.gov/spo/agency/work-activity-center.html. From our home page (www.nd.gov/spo), you'll see a link to "Work Activity Centers" in the list on the left-hand side of the page.</p>
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