

2025 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1122

2025 HOUSE STANDING COMMITTEE MINUTES

GOVERNMENT VETERANS AFFAIRS COMMITTEE

PIONEER ROOM, STATE CAPITOL

HB 1122

1/9/2025

State purchasing practices

1:45 p.m. Chairman Schauer opened the hearing.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, Brown, Christy, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff

Discussion Topics:

- Purchases of office equipment for at home workers.
- Future employment for the formerly incarcerated.
- State competes with private disadvantages.
- Bids and proposals.
- Clarity on how the requirements apply.
- Exemptions and open records.
- Tiebreakers for a bid.
- Contract awards.
- Protests.
- Cooperative purchasing.

1:47 p.m. Representative Nelson testified in favor.

2:12 p.m. Representative Koppelman provided neutral testimony.

2:14 p.m. Representative Koppelman suggested an amendment to the procurement law.

2:17 p.m. Sherry Neas, Shared Services Division Director with the Office of Management and Budget, testified in favor and submitted testimony #28228.

2:26 p.m. Rick Gardner, Director of Rough Rider Industries, testified in favor and submitted testimony #28126.

2:39 p.m. Grant Schmeichel testified in favor.

2:44 p.m. Andrea Fettig, GNDC, testified in opposition.

2:51 p.m. Denise Harvey, Director of Program Services for Protection and Advocacy, testified in favor, and submitted testimony in favor #28348.

3:09 p.m. Sherry Neas, OMB, testified in favor.

3:52 p.m. Chairman Schauer appointed representatives Vetter and Steiner to meet with Fettig, Gardner, and Neas.

3:54 p.m. Chairman Schauer closed the meeting.

Jackson Toman, Committee Clerk



Management
and Budget

Testimony in Support of
House Bill No. 1122
House Government and Veterans Affairs
January 9, 2025

TESTIMONY OF

Sherry Neas, Director, Shared Services Division

Good afternoon, Chairman Schauer and members of the committee. My name is Sherry Neas, Shared Services Division Director with the Office of Management and Budget (OMB).

This bill was introduced by Representative Jon Nelson. OMB supports this bill. This bill makes several changes to statutes related to state procurement practices. This bill was developed through a collaborative process involving Rep. Nelson, OMB, the Procurement Advisory Council, North Dakota University System (NDUS), North Dakota Information Technology Department (NDIT), Department of Corrections and Rehabilitation (DOCR), Department of Health and Human Services (DHHS), and several other state agencies.

Section 1, Page 1, is related to purchases from prison industries by state officials and employees. The bill amends North Dakota Century Code (N.D.C.C.) section 12-48-03.1 to give OMB authority to make a determination that prison industry products may be made available for personal purchase by state officials and employees. This change was collaborated between Rep. Nelson, OMB, representatives of DOCR, in consultation with legal counsel.

There is another bill related to state employees making personal purchases from Rough Rider Industries. SB 2066, introduced by the Industry and Business Committee at the request of DOCR also amends this section to read:

"Prison industries-made products may be sold to state employees within the state for personal use." (Note: There was a SB 2066 hearing on Jan. 8, 2025 in the Senate Industry and Business committee.)

Last session, a similar bill was also introduced. In 2023, HB 1065 received a "do pass" from House Government and Veterans Affairs Committee, however, failed to pass the house (yeas 38, nays 55).

HB 1122 is different than SB 2066. Section 13 of HB 1122 (Page 13) enacts a new section in N.D.C.C. Chapter 54-44.4 State Purchasing practices requiring OMB to adopt rules related to circumstances under which it is in the best interest of the state to authorize state officials and employees to make personal purchases of prison industries made products. Section 13 will be discussed in more detail later in my testimony.

Section 2, Pages 1-2, amends N.D.C.C. section 44-04-18.4 related to when bids and proposals received by a public entity in response to a procurement process are exempt and subject to open records laws. This change was coordinated with legal counsel for OMB.

The bill amends the law to delete subdivision 3(c) which states, "Records included with any bid or proposal naming and generally describing the entity submitting the proposal are open." This subsection is problematic because an entity could make an open records request to learn which vendors submitted bids or proposals. The section to be deleted also conflicts with laws in Chapter 44-04 and Chapter 54-44.4 provide that bids are exempt records until open date and time, and proposals are exempt records until a notice of intent to award is issued.

Over the 20 years since this language was enacted, vendors have become more versed in studying their competition in order to draft bids and proposals to give themselves an advantage. One primary method used by vendors to hone their bids and proposals is to submit an open records request after a Notice of Intent to Award a public contract has been issued or bids have been opened. This gives vendors the opportunity to review the details of their competitors' bids or proposals. The OMB State Procurement Office has seen these records requests increase exponentially over the past 20 years. OMB proposes this change in law to ensure that vendors are not able to identify their competitors prior to the Notice of Intent to Award is published, or bids are opened. This change helps to ensure that competition for public contracts remains fair.

Section 3, Pages 2-3, amends N.D.C.C. Chapter 54-44.4-01 related to state purchasing practices definitions. This section adds a definition for "Information Technology" referencing N.D.C.C. Chapter 54-59 and rennumbers the section.

Section 4, Pages 3-4, amends N.D.C.C. section 54-44.4-02 related to OMB purchasing services and exemptions from purchasing requirements. The changes are to add clarity related to what requirements do and do not apply to agencies, institutions, commodities, and services listed in this section.

- Page 3, Lines 14-16. The sentence related to the International Peace Garden participating in procurements is deleted from N.D.C.C. section 54-44.4-02. In Section 11 of this bill, the International Peace Garden language is added to N.D.C.C. section 54-44.4-13 related to Cooperative Purchasing. This amendment is a needed correction. The International Peace Garden sentence was added several sessions ago and placed in N.D.C.C. section 54-44.4-02 which describes exemptions from procurement. This

proposed change ensures the International Peace Garden is specifically included as eligible for cooperative purchases.

- Page 3, Lines 16-18. New language is added to specify that contracts for use by multiple state agencies and institutions must be established as state contracts by OMB or as cooperative purchases under N.D.C.C. section 54-44.4-13.
- Page 3, Lines 18-20. New language is added to clarify that information technology procurements, including those exempted from competitive requirements of Chapter 54-44.4, are subject to the information technology requirements of Chapter 54-59. This change was collaborated with NDIT representatives.
- Page 3, Lines 23-24. Subsection 1 is changed to add statutes related to leasing of space (N.D.C.C. section 54-21-24.1) and new building construction cost-benefit analysis (N.D.C.C. section 54-44.1-16).
- Page 3, Lines 29-30. Subsection 5 related to exemptions for the Industrial Commission restructures the sentence to clarify that the exemption applies to energy-related procurements for the referenced statutory programs. This change was discussed with representatives of the Industrial Commission.
- Page 5, Lines 15-21. Subsection 15 related to exemptions for contracts by the DHHS is amended to strike the current language specific to suicide prevention training. The new language was developed in collaboration with DHHS to provide an exemption for training and related materials for individuals receiving assistance or services, contractors, or professionals providing assistance or services under programs administered by or under the direction of DHHS.
- Page 5, Lines 22-24. A new subsection 16 is added related to an exemption for expenditures for direct media placement. OMB has a procurement advisory council. State law also requires collaboration between NDUS and OMB on procurement policy. This change has been strongly recommended in meetings with those groups. This section does not create any exemption from the competitive purchase of media placement services from individuals or firms providing those services.

Section 5, Pages 5-8, amends N.D.C.C. section 54-44.4-05 related to competitive, limited competitive, noncompetitive, and negotiated purchases – Exempt records.

- Page 6, Lines 3-12. Subsection 1 amends the language related to competitive bidding and competitive proposal process to be clear and concise.
- Page 6, Lines 19-22. Subsection 3 related to bids and proposals being exempt from open records laws is amended to delete language and reference N.D.C.C. section 44-04-18.4 (which was also amended in Section 2 of this bill). This change eliminates contradiction between the Chapter 54-44.4 and Chapter 44-04 related to when bids and

proposals are exempt records and when they become open records. This change was coordinated with legal counsel for OMB.

- Page 7, Lines 8-10. Section 4, subsection e. Adds a statutory reference for prison industries.
- Page 7, Lines 27-28. Section 4, subsection k. This was a new section last session related to noncompetitive purchase of recurring costs associated with implemented information technology. A new sentence is added related to recurring costs related to software or firmware required for proper functioning of currently owned equipment. This addition was requested by state agencies and the language was coordinated with NDIT. Many types of equipment now have associated software or firmware.
- Page 7, Line 31. Section 4, subsection l. Last session an exemption was added for specialized equipment for the State Mill and Elevator. In North Dakota Administrative Code, the State Mill and Elevator and Rough Rider Industries have had the same exemption from competition for materials. This change moves the Rough Rider Industries exemption into statute with the same scope as the State Mill and Elevator.
- Page 8, Lines 4-5. Last session an exemption from competition for the State Library was added. NDUS institutions and other agencies also have libraries, so this amendment applies the exemptions to other entities that make purchases for libraries.

Section 6, Page 8, amends N.D.C.C. section 54-44.4-05.1 related to tie bids or proposals. The amendment provides that if a bid or proposal submitted by prison industries operated by DOCR is one of the tie bids or proposals, preference will be given to prison industries. In the event of a tie between a resident bidder and nonresident bidder, preference must be given to the resident bidder.

Section 7, Page 8, amends N.D.C.C. section 54-44.4-07 related to preference for soybean-based ink to remove the reference to the North Dakota Soybean Council and the Agricultural Commissioner. This change was discussed with those entities. The preference for soybean-based ink is unchanged.

Section 8, Page 8-9, amends N.D.C.C. section 54-44.4-09 related to the Bidders List. A sentence was added, "A person may be required to register for the bidders list before the person may submit a response to a solicitation." This change was recommended by OMB legal counsel. Law requires the bidders list be used for purchases over the amount established for small purchases. OMB and NDUS are implementing a new procurement automation system with improved cyber security measures. The bidder list registration will be accomplished within the new system, and bidders will be required to be registered prior to submitting a solicitation in the system.

Section 9, Page 9, amends N.D.C.C. section 54-44.4-09.1 related to Secretary of State registration. This was a new section enacted last session. The law requires contractors who have a Secretary of State registration requirement to become registered before contract award. The current language has caused confusion about when the vendor must complete the registration process. The amendment changes the wording from “contract award” to “contract execution.” The change makes it clear that an agency or institution can announce the contract award and require the vendor to be registered before the contract is signed.

Section 10, Page 9-10, amends N.D.C.C. section 54-44.4-12 related to resolution of protested solicitations and awards.

The current law requires the agency, institution, and OMB to send determination letters to the protestor by certified mail. State agencies, institutions, and OMB have experienced situations when the certified mail was significantly delayed. The amendment allows the state agencies, institutions and OMB to use electronic mail communication and other commercial delivery services to send notice to the protest.

OMB and NDUS also collaborated to incorporate language related to protests and appeals received by NDUS institutions, and cited the law related to NDUS procurement policy.

The section was also amended to provide for a seven-day extension if additional time is needed for the purchasing agency or deciding authority to make the protest and appeal determination, with written notice to the protestor. Current North Dakota Administrative Code provides an extension option for the purchasing agency considering the protest, but there is no authority for OMB to extend the seven-calendar day period to render an appeal determination. An appeal of a complex, high dollar procurement decision requires significant reading, analysis, and legal review. Providing an ability to extend the appeal period is needed.

Section 11, Pages 10-12, amends N.D.C.C. section 54-44.4-13 related to Cooperative Purchasing.

The amendment to this section was coordinated with NDUS and legal counsel to create authority for a NDUS institution to establish a cooperative purchasing contract for use by other NDUS institutions.

This section is also amended to move the language related to the International Peace Garden with its authorizing statute into the list of entities eligible to use cooperative purchasing contracts, as previously discussed in Section 4.

Section 12, Page 12, amends N.D.C.C. section 54-44.4-14 related to the Procurement Information – Website. This law requires OMB to maintain a procurement information website to provide current information about procurement opportunities. This website can be used for procurement of goods and services, and other types of solicitations not subject to state procurement, such as public improvements, architect, engineering, and land surveying, and concessions. The amendment makes it clear that the entities must comply with any other notice requirements required by law.

Subsection 4 under this section adds new language stating OMB may make the procurement information website available to other government entities for issuing solicitation notices in addition to any other notice requirements provided by law.

Section 13, Page 13, adds to N.D.C.C. chapter 54-44.4 this is a new section related to purchases from state contracts and prison industries by state officials and employees. I had previously mentioned this section when discussing Section 1 related to state employee personal purchases of prison industry-made products. OMB strongly urges your support of this sections that requires OMB, in consultation with the Attorney General, to adopt rules related to circumstances under which it is determined to be in the best interested to the state to authorize state officials and employees to make personal purchases from state contracts and prison industries products. At times, state officials and state employees use personal resources to conduct state business. There are a few state contracts that do allow employee purchases, such as Microsoft Home Use rights and state logo clothing contract. There is a need for guidance on employee purchases from government sources of supplies.

Section 14, Page 13-14, adds to N.D.C.C. chapter 54-44.4 this is a new section related to purchase of prison industries products encourages OMB, NDUS institutions, and purchasing agencies to purchase from prison industries when products are comparable to commercially available products, meet specifications, delivery time requirements, and can be purchased at fair market price. The new section also allows prices for prison industries products to be negotiated between the parties.

Purchasing from prison industries is a best practice in public procurement. The Federal Acquisition Regulation (FAR) requires government entities to prioritize purchases from Federal Prison Industries when the supplies are comparable in price, quality and delivery time to

supplies available from private sector companies. Many states have preferences or set-asides for prison industries.

The mission of Rough Rider Industries is "to provide adult individuals job skills training necessary for successful reentry while providing quality good and services in a self-sustaining manner... Rough Rider builds quality products and prepares quality people."

This language in the new section is similar to an existing section that encourages purchases of environmentally preferable products. It isn't mandated, but it is the right thing to do. OMB is required to promulgate rules related to this chapter, and we are prepared to work diligently in a highly collaborative manner to develop the rules, guidelines, and communications to implement the sections of this bill.

Mr. Chairman and committee members, this concludes my testimony. I ask your support for HB 1122. I would be happy to answer any questions.

HOUSE GOVERNMENT & VETERANS AFFAIRS COMMITTEE**REPRESENTATIVE AUSTEN SCHAUER, CHAIR****JANUARY 9, 2025**

**RICK GARDNER, DIRECTOR, ROUGH RIDER INDUSTRIES
NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION
PRESENTING TESTIMONY IN SUPPORT OF HOUSE BILL 1122**

Good morning, Chairman Schauer and members of the Government and Veterans Affairs Committee. My name is Rick Gardner, and I am the Director of Rough Rider Industries (RRI). I am here on behalf of the North Dakota Department of Corrections and Rehabilitation (DOCR) to provide testimony in support of House Bill 1122.

Twenty-eight states provide their prison industries programs with the authority to sell directly to government employees.

House Bill 1122 allows state employees to have access to the same quality office products at home as they have in their offices, without incurring any additional costs to the state. This benefits state employees and supports the reduction of costs to state government for work injuries sustained due to inadequate office furniture.

Increased sales of RRI products resulting from House Bill 1122 would help sustain necessary projects relied upon by the residents of the NDDOCR for job skills training in our correctional industries program. RRI's program objective is to provide adults in custody the opportunity to develop employability skills that increase their chances of obtaining meaningful employment upon reentry. Employability skills include technical skills training such as welding, metal and wood fabrication, sewing and

upholstery, as well as instilling soft skills or people skills which are mannerisms individuals learn, practice, and improve upon throughout a lifetime. Soft skills learned would include dependability, effective communication, problem solving, and teamwork to name a few.

So how does employment for incarcerated individuals impact public safety and reduce state government costs? Listed below are some employment statistics:

1. A study of formerly incarcerated found that employment was the single most important factor in decreasing recidivism.
2. 85%-89% of the formerly incarcerated who are rearrested are unemployed.
3. Recidivism rates were nearly cut in half for returning citizens with a full-time job compared to similar residents who are unemployed.
4. Nationwide, recidivism rates range from about 31% to 70%, but the recidivism rates for formerly incarcerated people who found employment shortly after their release is less than 9%.
5. The NDDOCR's recidivism rate is 37.6%. RRI's recidivism rate is 8.6%.

RRI's job skills training program provides many benefits to the state to include:

1. Increasing the learning and work rehabilitative opportunities for incarcerated individuals. Teaching and instilling valuable job skills to this population has been proven to lessen the cost of incarceration. Correctional Industry programs report significant reductions in recidivism rates for participants. A 2015 study conducted by the Washington State Institute for Public Policy found for every \$1 spent on correctional

industries, \$4.77 is saved in future criminal justice costs attributable to the reduction in recidivism.

2. Fewer work opportunities make for a less safe prison environment, along with having an increase in cost to the state government. RRI's training programs offset the need to spend additional taxpayer dollars for offender supervision and alternative programming costs.
3. Providing work opportunities allow RRI participants to send a portion of their earnings home to support their families, offsetting the need for additional taxpayer public assistance programs. It also increases the participant's ability to contribute to their financial obligations from their earnings.

Sales to governmental agencies make up 52% of RRI's total revenue. Our furniture and seating revenue from governmental agency sales is 55%. RRI has limited access to eligible clientele. Giving state employees the opportunity to purchase directly from RRI not only provides a benefit to state workers, but it also helps sustain RRI training programs while developing essential employability skills to incarcerated individuals.

Mr. Chairman and committee members, I ask that you support House Bill 1122.

Mr. Chairman, I would be happy to answer any questions at this time. Thank you.

House Government and Veterans Affairs

Senate Bill HB 1122 – January 9, 2025

Testimony of Denise Harvey, P&A Director of Program Services

Chairman Schauer and members of the Government and Veterans Affairs Committee. I am Denise Harvey, Director of Program Services for Protection & Advocacy (P&A). P&A protects the human, civil and legal rights of people with disabilities. The agency's programs and services seek to make positive changes for people with disabilities where we live, learn, work and play.

Protection & Advocacy supports the employment of incarcerated individuals, many of which have disabilities, P&A further recognizes the many positive benefits that come from working. While the focus of this bill is on purchases for prison industries, the bill also opens up century code that addresses state purchasing practices and allows for government offices and state employees to purchase goods from work activity centers. Of interest to P&A is NDCC 54-44.4-05(4) which details the role of the office of management and budget in regard to 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. Specifically, P&A is concerned about NDCC 54-44.4-05(4)(e), p. 7

- e. Acceptable commodities or services are produced or provided by ~~correctional institutions or~~ prison industries under section 12-48-03.1, other government agencies or a work activity center as defined in section 25-16.2-01.

Work activity centers pay below minimum wage to persons with disabilities with 49% of individuals earning \$3.50 per hour or less in segregated work settings. Employment opportunities and rights for persons with disabilities have dramatically expanded since 1938 when employers were initially authorized to have 14(c) certificates that allowed for sub-minimum wage. The number of employees paid subminimum wages has fallen by about 90% since 2002, according to Government Accountability Office data. 90% of these workers have intellectual and developmental disabilities.

The US Department of Labor announced on 12/02/24, a proposed rule that would phase out the issuance of certificates allowing employers to pay some workers with disabilities less than the federal wage, currently \$7.25 per hour for the work they perform and establish a three-year-phase out period for employee.

To keep in line with the intentions of the US Department of Labor and to support integrated employment opportunities for all individuals with disabilities, "work activity centers" must be stricken from this bill.

I am glad to answer any questions.

Denise Harvey, Director of Program Services

Protection & Advocacy

2025 HOUSE STANDING COMMITTEE MINUTES

GOVERNMENT VETERANS AFFAIRS COMMITTEE

PIONEER ROOM, STATE CAPITOL

HB 1122
1/10/2025

Relating to state purchasing practices
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11:14 a.m. Chairman Schauer called the meeting to order.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, Brown, Christy, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff

Discussion Topics:

- Committee Work
- Roughrider Industries versus OMB changes

11:15 a.m. Chairman Schauer asked for any updates from the subcommittee.

11:20 a.m. Chairman Schauer closed the meeting.

Jackson Toman, Committee Clerk

2025 HOUSE STANDING COMMITTEE MINUTES

GOVERNMENT VETERANS AFFAIRS COMMITTEE

PIONEER ROOM, STATE CAPITOL

HB 1122

1/16/2025

State purchasing practices.

3:10 p.m. Chairman Schauer called the meeting to order.

Members present: Chairman Schauer, Representatives Bahl, Brown, Christy, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff

Members absent: Vice Chairman Satrom

Discussion Topics:

- Proposed Amendment

3:10 p.m. Report from Representative Vetter.

3:16 p.m. Sherry Neas, OMB, testified in favor of the proposed amendment to remove section 1 from the bill.

3:18 p.m. Representative Koppelman, testified in favor of the proposed amendment.

3:16 p.m. Sherry Neas, OMB, testified in favor of the proposed amendment.

3:45 p.m. Chairman Steiner closed the hearing.

3:46 p.m. Representative Vetter moved to adopt the amendment LC# 25.8115.01001.

3:46 p.m. Representative VanWinkle seconded the motion.

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	AB
Representative Landon Bahl	AB
Representative Collette Brown	Y
Representative Josh Christy	AB
Representative Karen Grindberg	Y
Representative Karen Karls	Y
Representative Carrie McLeod	Y
Representative Karen Rohr	Y

Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y
Representative Christina Wolff	Y

3:47 p.m. Motion passed 11-0-3.

3:48 p.m. Representative Grindberg moved Do Pass as Amended.

3:48 p.m. Representative VanWinkle seconded the motion.

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	AB
Representative Landon Bahl	AB
Representative Collette Brown	Y
Representative Josh Christy	AB
Representative Karen Grindberg	Y
Representative Karen Karls	Y
Representative Carrie McLeod	Y
Representative Karen Rohr	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y
Representative Christina Wolff	Y

3:49 p.m. Motion passed 11-0-3.

Representative Vetter will carry the bill.

3:51 p.m. Chairman Schauer adjourned the meeting.

Jackson Toman, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1122

Introduced by

Representative Nelson

AGM 1-16-25
1 of 14

1 A BILL for an Act to create and enact two new sections to chapter 54-44.4 of the North Dakota
2 Century Code, relating to purchases by state officials and employees and ~~purchases from~~
3 ~~prison industries~~ multiple award vendor pool contracts; and to amend and reenact ~~subsection 2~~
4 ~~of section 12-48-03.1~~, subsection 6 of section 44-04-18.4, sections 54-44.4-01, 54-44.4-02,
5 54-44.4-05, ~~54-44.4-05.1~~, subsection 1 of section 54-44.4-07, subsection 1 of section
6 54-44.4-09, sections 54-44.4-09.1, 54-44.4-12, 54-44.4-13, and 54-44.4-14 of the North Dakota
7 Century Code, relating to state purchasing practices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

9 **~~SECTION 1. AMENDMENT.~~** ~~Subsection 2 of section 12-48-03.1 of the North Dakota~~
10 ~~Century Code is amended and reenacted as follows:~~

11 ~~2. All products made in prison industries may be purchased directly by governmental~~
12 ~~agencies, including federal, state, and tribal agencies and political subdivisions, for~~
13 ~~use in official business, and by nonprofit organizations, excluding trade associations,~~
14 ~~fraternal organizations, co-ops, and health insurance companies. Prison industries~~
15 ~~may sell commissary items and prison industries-made clothing to inmates. Prison~~
16 ~~industries-made products may also be sold through wholesale or retail outlets that~~
17 ~~possess a valid sales tax permit, and if the products are manufactured under the~~
18 ~~prison industries enhancement certification program under Public Law No. 96-157 [93~~
19 ~~Stat. 1215; 18 U.S.C. 176(e)], in interstate commerce and through export firms for sale~~
20 ~~to international markets. If determined to be in the best interest of the state by the~~

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~~office of management and budget under chapter 54-44.4, prison industries products
may be made available for personal purchase by state officials and employees.~~

SECTION 1. AMENDMENT. Subsection 6 of section 44-04-18.4 of the North Dakota
Century Code is amended and reenacted as follows:

6. Unless made confidential under subsection 1 or made exempt under subsection 5:
 - a. Bids received by a public entity in response to an invitation for bids by the public entity are exempt until all of the bids have been received and opened by the public entity.
 - b. Proposals received by a public entity in response to a request for proposals are exempt records until a notice of intent to award is issued.
 - c. ~~Records included with any bid or proposal naming and generally describing the entity submitting the proposal are open.~~

SECTION 2. AMENDMENT. Section 54-44.4-01 of the North Dakota Century Code is
amended and reenacted as follows:

54-44.4-01. Declaration of policy - Definitions.

It is state policy to provide comprehensive purchasing services based upon sound procurement practices and principles wherein, through full competition with fair and equal opportunity to all qualified persons to sell to the state, each state agency and institution shall obtain its necessary commodities and services at competitive cost, consistent with quality, time, and performance requirements, except as otherwise provided by law. As used in this chapter, unless the context requires otherwise:

1. "Commodities" means all property, including equipment, supplies, materials, printing, insurance, and leases of equipment.
2. "Information technology" has the same meaning as provided in section 54-59-01.
3. "Procurement officer" means an individual duly authorized to enter and administer purchasing contracts and make written determinations with respect thereto and also includes an authorized representative acting within the limits of authority.
- ~~3.4.~~ "Professional services" means those services requiring special knowledge, education, or skills when the qualifications and experience of the individual rendering the services are of primary importance and the individual is required to exercise professional judgment. Professional services providers include appraisers, attorneys, accountants,

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psychologists, physicians, dentists, planners, analysts, and consultants. The term includes human services under which a person provides direct health or social welfare services to the citizens on behalf of the state. The term does not include services defined in section 54-44.7-01.

4-5. "Purchasing agency" means a governmental entity in the executive branch of government other than the office of management and budget which is authorized by this chapter, rules adopted under this chapter, written policy of the office of management and budget, or by way of delegation from the office of management and budget to enter purchasing contracts for commodities and services.

5-6. "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance. The term includes professional services.

SECTION 3. AMENDMENT. Section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-02. Office of management and budget purchasing services.

The office of management and budget shall purchase or lease or otherwise arrange for the procurement, for all state agencies and institutions in the executive branch of state government, all materials, furniture, fixtures, printing, insurance, services, and other commodities. ~~The International Peace Garden may participate in the procurement authorized by this section.~~ Contracts for use by multiple state agencies and institutions, including purchases under this section, must be established as a state contract by the office of management and budget or as a cooperative purchasing contract under section 54-44.4-13. Information technology procurements, including purchases under this section, are subject to the requirements of chapter 54-59 and policies, standards, and guidelines established pursuant to section 54-59-09. The following commodities and services, ~~however,~~ are not subject to the competitive procurement requirements of this chapter:

1. Land, buildings, space, or the rental thereof, in accordance with sections 54-21-24.1 and 54-44.1-16.
2. Telephone and telegraph service and electrical light and power services.
3. Public books, maps, periodicals, resource materials, and technical pamphlets.

- 1 4. Department of transportation materials, equipment, and supplies in accordance with
2 section 24-02-16.
- 3 5. ~~Procurements~~Energy-related procurements by the industrial commission for
4 ~~energy-related~~ programs under chapters 17-05, 54-17.5, 54-17.6, 54-17.7, 54-63, and
5 54-63.1 and under those statutes in title 38 authorizing the industrial commission to
6 perform well and hole pluggings, reclamation work, equipment removal, leak
7 prevention, and similar work.
- 8 6. Services for the maintenance or servicing of equipment by the manufacturer or
9 authorized servicing agent of that equipment when the maintenance or servicing can
10 best be performed by the manufacturer or authorized service agent, or when such a
11 contract would otherwise be advantageous to the state.
- 12 7. Emergency purchases the office of management and budget or a purchasing agency
13 cannot make within the required time and which involve public health or public safety,
14 or when immediate expenditures are necessary for repairs of state property to protect
15 it against further loss or damage, or to prevent or minimize serious disruption in state
16 services.
 - 17 a. Emergency purchases made under this subsection must treat all bidders fairly
18 and promote competition as is practicable under the circumstances;
 - 19 b. The procurement file must contain a written determination of:
 - 20 (1) The basis for the emergency; and
 - 21 (2) The basis for the selection of the particular contractor.
 - 22 c. If the emergency circumstances warrant a noncompetitive purchase, the office of
23 management and budget or the purchasing agency shall document within the
24 procurement file a written determination of the basis for the noncompetitive
25 purchase, including the circumstances that justified the noncompetitive purchase.
 - 26 d. If the emergency purchase is subject to federal funding reimbursement, the office
27 of management and budget or the purchasing agency shall ensure the
28 procurement procedures and documentation are adequate to satisfy
29 requirements for federal reimbursement.

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- 1 e. If time allows, emergency purchases for commodities under this subsection may
2 require a sample for use in determining whether an offered product meets
3 specifications.
- 4 8. Commodities and services costing less than a specified amount as determined by
5 written directive by the director of the office of management and budget.
- 6 9. Specified commodities and services as determined by written directive by the director
7 of the office of management and budget.
- 8 10. Employee benefit services, trust-related services, and investment management
9 services obtained by an agency with a fiduciary responsibility regarding those
10 services. Nothing in this subsection may be construed to allow an agency to create or
11 renew a contract perpetually and without limitation.
- 12 11. Services to extract, tow, store, and dispose of abandoned or submerged vehicles as
13 defined in chapter 23.1-15.
- 14 12. Contracts by the agriculture commissioner for agricultural market news services under
15 cooperative agreements with the United States department of agriculture, ombudsmen
16 for pipeline restoration under section 4.1-01-17, environmental impact mitigation
17 services under section 4.1-01-21.1, ombudsmen for wind property issues under
18 section 4.1-01-23, weed control inspection agents under section 4.1-14-02, and hemp
19 testing under section 4.1-18.1-04.2.
- 20 13. Contracts by the state auditor for audits of computer systems under section 54-10-29.
- 21 14. Contracts by the attorney general with experts under section 10-33-145.
- 22 15. Contracts by the department of health and human services for ~~online virtual mental~~
23 ~~health and suicide prevention simulation-based training programs, under~~
24 ~~subsection 28 of section 50-06-05.1 and brain injury informal supports, and other~~
25 ~~under section 50-06-4-07~~ training and related materials for individuals receiving
26 assistance or services and employees, contractors, or professionals providing
27 assistance or services under programs administered by or under the supervision and
28 direction of the department of health and human services.
- 29 16. Expenditures by a state agency or institution for direct media placement, including a
30 billboard or signage, with a newspaper or newspaper industry association, magazine
31 or other publication, radio or television station, digital media provider, or venue.

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1 All purchases made by the office of management and budget or a state agency or institution to
2 which authority to purchase has been delegated by the office of management and budget must
3 be made in accordance with this chapter, rules adopted under this chapter, and written policies
4 of the office of management and budget.

5 **SECTION 4. AMENDMENT.** Section 54-44.4-05 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **54-44.4-05. Competitive, limited competitive, noncompetitive, and negotiated**
8 **purchases - Exempt records.**

- 9 1. Except as otherwise provided in sections 12-48-03.1 and 44-08-01, chapter 25-16.2,
10 and this chapter, purchasing contracts must be awarded through a competitive bidding
11 process to the lowest responsible bidder considering conformity with specifications;
12 and terms of delivery, and quality and serviceability, unless it is determined to be
13 advantageous to the state to select a contractor through a request for a competitive
14 proposal process pursuant to section 54-44.4-10 using other or additional criteria.
15 Notwithstanding this section, the director of the office of management and budget or
16 the director's designee may determine a different procurement process is in the best
17 interest of the state and shall document the circumstances, procurement process, and
18 basis for contract award in the procurement file.
- 19 2. The procurement officer may reject any or all bids or proposals or negotiate for a lower
20 price with a successful bidder or offeror. Each bid or proposal received, with the name
21 of the bidder or offeror, must be recorded. The office of management and budget may
22 enter into term contracts for the acquisition of commodities or services and may make
23 multiple awards for term commodity or service contracts when it deems a multiple
24 award to be in the best interests of the state.
- 25 3. All bids and proposals received under this chapter pursuant to a competitive sealed
26 bidsolicitation are exempt records under subsection 5 of section 44-04-17.1 until the
27 date and time the bids are opened except as otherwise provided under subsection 6 of
28 section 44-04-18.4.
- 29 4. The office of management and budget shall adopt rules specifying the circumstances
30 under which competition may be waived or limited, when negotiation may be used,
31 and specifying the required justifications and procedures for using those methods of

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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 persons 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 to be purchased for experimentation or trial.
- c. No acceptable bid or proposal was received pursuant to a competitive bidding or competitive proposal process.
- d. Commodities are being purchased for over-the-counter resale.
- e. Acceptable commodities or services are produced or provided by ~~correctional institutions or prison industries under section 12-48-03.1,~~ other government agencies, or a work activity center as defined in section 25-16.2-01.
- f. 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.
- g. A used commodity is advantageous to the state and the commodity is available only on short notice.
- h. 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.
- i. Compatibility with equipment currently owned by the state is essential to the proper functioning of that equipment.
- j. The agency provides documentation indicating that the services or the circumstances are of such a nature that deviation from the procurement procedure is appropriate.
- k. Recurring support costs associated with implemented information technology solutions, including licensing, service agreements, maintenance, and subscriptions for software as a service, platform as a service, and infrastructure

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as a service. This includes recurring costs for software or firmware required for proper functioning of currently owned equipment.

l. Contracts for specialized equipment, machinery, and materials required for manufacturing, production, and distribution by the North Dakota mill and elevator association under section 54-18-02 or prison industries under section 12-48-03.1.

m. Purchases of copyrighted printed and electronic books, periodicals, subscriptions to publications, subscriptions to information services, prerecorded audio and video materials, state library materials, and state library online resources, including purchases for libraries operated by state agencies, institutions of higher education, and other public libraries.

~~— **SECTION 5. AMENDMENT.** Section 54-44.4-05.1 of the North Dakota Century Code is amended and reenacted as follows:~~

~~— **54-44.4-05.1. Resolution of tie bids or proposals.**~~

~~— In the event that two or more bids or proposals contain identical pricing or receive identical evaluation scores, preference must be given to as follows:~~

~~— 1. If one of the tie bids or proposals was submitted by prison industries under section 12-48-3.1, preference must be given to prison industries.~~

~~— 2. If one of the tie bids or proposals was submitted by a resident North Dakota bidder, seller, vendor, offeror, or contractor as defined in section 44-08-02 and another of the tie bids or proposals was submitted by a nonresident bidder, seller, vendor, offeror, or contractor, preference must be given to the resident bidder, seller, vendor, offeror, or contractor.~~

SECTION 5. AMENDMENT. Subsection 1 of section 54-44.4-07 of the North Dakota Century Code is amended and reenacted as follows:

1. The office of management and budget, the institutions of higher education, and any other state agency or institution that has authority to purchase products are encouraged to purchase environmentally preferable products.
 - a. When practicable, specifications for purchasing newsprint printing services should specify the use of soybean-based ink. ~~The North Dakota soybean council and the agriculture commissioner shall assist the office of management and~~

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1 ~~budget in locating suppliers of soybean-based inks and in collecting data on the~~
2 ~~purchase of soybean-based inks.~~

3 b. When practicable, biobased products should be specified.

4 **SECTION 6. AMENDMENT.** Subsection 1 of section 54-44.4-09 of the North Dakota
5 Century Code is amended and reenacted as follows:

6 1. The office of management and budget shall establish and maintain a bidders list of
7 persons that desire to be informed of government procurement opportunities. The
8 office of management and budget or the purchasing agency shall notify those on the
9 list when issuing invitation for bids or request for proposals over the amount
10 established for small purchases, except as otherwise provided in this section. The
11 office of management and budget or the purchasing agency shall notify those on the
12 list when sending notice of intent to make cooperative, limited competitive,
13 noncompetitive, and negotiated purchases. A person may be required to register for
14 the bidders list before the person may submit a response to a solicitation.

15 **SECTION 7. AMENDMENT.** Section 54-44.4-09.1 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **54-44.4-09.1. Secretary of state registration.**

18 A person that has a registration requirement with the secretary of state must be registered
19 before the contract award execution and the registration must remain active for the duration of
20 the contract period.

21 **SECTION 8. AMENDMENT.** Section 54-44.4-12 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **54-44.4-12. Resolution of protested solicitations and awards.**

24 1. An interested party may protest the award of a contract, the notice of intent to award a
25 contract, or a solicitation for commodities or services by the office of management and
26 budget or purchasing agency under this chapter. The protest must be submitted in
27 writing or electronic mail communication to the procurement officer responsible for the
28 contract or solicitation within seven calendar days after the protestor knows or should
29 have known of the facts giving rise to the protest.
30 2. If a contract has been awarded, the procurement officer immediately shall give notice
31 of a protest to the contractor. In the case of pending award, a stay of award may be

- 1 requested. A stay must be granted unless a written determination is made that the
2 award of the contract without delay is necessary to protect the interests of the state.
- 3 3. If the protest is resolved by mutual agreement, the procurement officer shall send
4 written notice to the protestor confirming the mutually agreed upon resolution. If the
5 protest is not resolved by mutual agreement, the procurement officer promptly shall,
6 within seven calendar days, send by certified mail to the protestor a written decision
7 containing the basis for the decision and inform the protestor of the protestor's right to
8 appeal under subsection 5 of this section. The procurement officer may extend the
9 protest review period by no more than seven calendar days and shall send written
10 notice to the protestor of the extension.
- 11 4. The procurement officer shall promptly provide the office of management and budget
12 with a copy of the protest and the procurement officer's decision.
- 13 4.5. The protestor may file an appeal of the decision rendered by the procurement officer
14 with the director of the office of management and budget or designee. An appeal must
15 be filed in writing within seven calendar days after the protestor receives the decision
16 rendered by the procurement officer of the office of management and budget or the
17 purchasing agency. The appeal must include a copy of the decision being appealed
18 and the basis for the appeal. An appeal of a decision rendered by a procurement
19 officer of a state agency or an institution that is not under the jurisdiction of the state
20 board of higher education, must be filed with the office of management and budget. An
21 appeal of a decision rendered by a procurement officer of an institution under the
22 jurisdiction of the state board of higher education must be filed in accordance with
23 policy established under subsection 5 of section 15-10-17. Within seven calendar days
24 the director of the office of management and budget or the director's designee deciding
25 authority shall send by certified mail written notice of the appeal decision to the
26 protestor. The deciding authority may extend the appeal review period by no more
27 than seven calendar days. Notice of any extension shall be provided in writing to the
28 protestor.
- 29 6. Written notices required in this section may be accomplished by certified mail,
30 commercial delivery service with delivery confirmation, or by a delivery confirmation to
31 the electronic mail address used by the protestor to submit the protest.

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SECTION 9. AMENDMENT. Section 54-44.4-13 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-13. Cooperative purchasing.

1. The office of management and budget shall purchase commodities or services as requested by agencies and institutions ~~under the jurisdiction of the state board of~~ higher education and the legislative and judicial branches of state government.

2. The office of management and budget and the agencies and institutions ~~under the jurisdiction of the state board of~~ higher education shall make joint purchases of like commodities or services of high common usage when the office of management and budget and the state board of higher education determine it is in the best interest of the state.

3. An institution of higher education may establish a cooperative purchasing contract for use limited to other institutions of higher education.

~~3-4.~~ The director of the office of management and budget or the director's designee may agree to purchase commodities or services under contracts entered into by the United States general services administration or contracts of other government entities if it is determined to be in the best interest of the state after consideration of price, contractual terms and conditions, and the availability of competition.

4-5. The director of the office of management and budget or the director's designee may participate in, sponsor, or administer a cooperative purchasing agreement with one or more government entities or a nonprofit organization established on behalf of public entities for the procurement of commodities or services in accordance with an agreement entered into between the participants.

~~5-6.~~ The director of the office of management and budget or the director's designee may coordinate with the director of the department of transportation or the director's designee to establish or participate in contracts which may be made available to entities that have been determined by the department of transportation to be transportation providers under chapter 39-04.2 eligible to receive state funds or federal funds for public transportation.

~~6-7.~~ Cooperative purchasing may include open-ended contracts that are available to other government entities, nonprofit organizations established on behalf of public entities,

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1 tribal agencies, or transportation providers determined to be eligible under this section,
2 or the International Peace Garden established under chapter 55-05.

3 ~~7-8.~~ Before entering into a cooperative purchasing agreement under this section, the office
4 of management and budget must determine that the contracts were awarded through
5 full and open competition or source selection methods specified in section 54-44.4-05
6 and shall send notice to the bidders list of the office's intent to make a cooperative
7 purchase in accordance with this chapter.

8 **SECTION 10. AMENDMENT.** Section 54-44.4-14 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **54-44.4-14. Procurement information - Website.**

11 1. The office of management and budget shall establish and maintain a procurement
12 information website on the internet. This procurement information website must
13 provide current information regarding North Dakota government procurement
14 opportunities in order to inform potential vendors of the commodities and services
15 sought by state agencies and institutions. Notwithstanding section 54-44.4-09, for
16 each purchase of services or commodities over the amount established for small
17 purchases, the office of management and budget and every purchasing agency shall
18 provide procurement information on the website. The time period and manner of
19 providing procurement information on the website must be in accordance with rules
20 adopted by the office of management and budget. The office of management and
21 budget may contract with a third party to assist in providing or maintaining the
22 procurement information website.

23 2. Aln addition to other notice requirements provided by law, a state agency or institution
24 may elect to ~~use the~~issue solicitation notices on the procurement information website
25 for the purchase of services and commodities that are not subject to the procurement
26 requirements of this chapter, including:

- 27 a. Commodities and services exempted under section 54-44.4-02;
28 b. Public improvements under title 48;
29 c. Architect, engineer, construction management, and land surveying services
30 under chapter 54-44.7; and
31 d. Concessions under chapter 48-09.

- 1 3. The office of management and budget shall establish and maintain a standardized
2 procedure for the submission of electronic bids and proposals through the
3 procurement information website. The office of management and budget, in
4 consultation with the office of the attorney general, shall develop standardized
5 solicitation documents. The documents must be made available on the procurement
6 information website. When drafting a solicitation, the office of management and budget
7 and purchasing agencies shall use their best efforts to minimize the length of the
8 solicitation by ensuring only those sections from the standardized solicitation
9 documents applicable to the procurement are included.
- 10 4. The office of management and budget may make the procurement information website
11 available to government entities, including political subdivisions of the state and public
12 schools, for the purpose of issuance of solicitation notices that are in addition to any
13 other notice requirements provided by law.

14 **SECTION 11.** A new section to chapter 54-44.4 of the North Dakota Century Code is
15 created and enacted as follows:

16 **Purchases from state contracts and prison industries by state officials and**
17 **employees.**

18 The office of management and budget, in consultation with the office of the attorney
19 general, shall adopt rules related to circumstances under which it is determined to be in the best
20 interest of the state to authorize state officials and employees to make personal purchases from
21 state contracts and prison industries products under section 12-48-03.1.

22 **SECTION 12.** A new section to chapter 54-44.4 of the North Dakota Century Code is
23 created and enacted as follows:

24 **Purchase of prison industries products.**

25 ~~The office of management and budget, institutions of higher education, and purchasing~~
26 ~~agencies are encouraged to purchase prison industries products under section 12-48-03.1~~
27 ~~when the products are comparable to commercially available products, meet specifications,~~
28 ~~delivery time requirements, and can be purchased at a fair market price. Prices for prison~~
29 ~~industries products may be negotiated between the parties.~~

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Multiple award vendor pool contracts - Indefinite-delivery, indefinite-quantity -

Multistep competition

1. The office of management and budget, in coordination with the state board of higher education and the information technology department, shall develop guidelines for establishing multiple award vendor pool contracts, including cooperative purchasing contracts under section 54-44.4-13. Multiple award vendor pool contracts establish indefinite-delivery, indefinite-quantity primary contracts with service providers including hourly rates for various services, unit prices for deliverable products, and provisions for price adjustments. The guidelines must establish thresholds at which a purchasing agency or institution may purchase directly from a service provider within the vendor pool or must obtain secondary competition by soliciting bids or proposals limited to service providers within the vendor pool. A purchasing agency or institution establishing a multiple award vendor pool contract or making a purchase from a vendor pool contract shall comply with guidelines established under this section.
2. A multiple award vendor pool primary contract term may not exceed a total contract length of five years, including renewals and extensions, unless prior written approval is obtained as set forth in the guidelines. The work performed under an awarded secondary contract must be completed within the contract term of the primary vendor pool contract.
3. The purchasing agency or institution making a purchase from a vendor pool contract shall prepare a statement of work for the entire project describing the needed services to determine the level of competition required. The purchasing agency or institution may not artificially fragment requirements or make serial noncompetitive purchases from service providers within the vendor pool to circumvent competition requirements.

**REPORT OF STANDING COMMITTEE
HB 1122**

Government and Veterans Affairs Committee (Rep. Schauer, Chairman) recommends **AMENDMENTS (25.8115.01001)** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1122 was placed on the Sixth order on the calendar.

2025 SENATE STATE AND LOCAL GOVERNMENT

HB 1122

2025 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee Room JW216, State Capitol

HB 1122
3/7/2025

Relating to purchases by state officials and employees and multiple award vendor pool contracts; and to state purchasing practices.

9:06 a.m. Chair Roers called the hearing to order.

Members Present: Chairman Roers; Vice Chair Castaneda; Senators: Barta, Braunberger, Lee and Walen.

Discussion Topics:

- New section regarding cooperative purchasing
- Amends open records law
- Fair competitive bidding
- Requirement clarification
- Bidder registration
- Removes Soybean Council
- Mailing options
- Procurement information website

9:06 a.m. Sherry Neas, Director of the Shared Services Division Office of Management and Budget, introduced the bill and submitted testimony #39160.

9:25 a.m. Sherry Neas, Director of the Shared Services Division Office of Management and Budget, answered questions from the committee.

9:45 a.m. Chair Roers closed the hearing.

Susan Helbling, Committee Clerk



Management
and Budget

Testimony in Support of
House Bill No. 1122
Senate State and Local Government
March 7, 2025

TESTIMONY OF

Sherry Neas, Director, Shared Services Division

Good afternoon, Chairman Roers and members of the committee. My name is Sherry Neas, Shared Services Division Director with the Office of Management and Budget (OMB).

This bill was introduced by Representative Jon Nelson. OMB supports the engrossed bill. This bill makes several changes to statutes related to state procurement practices. This bill was developed through a collaborative process involving Rep. Nelson, OMB, the Procurement Advisory Council, North Dakota University System (NDUS), North Dakota Information Technology Department (NDIT), Department of Corrections and Rehabilitation (DOCR), Department of Health and Human Services (DHHS), and several other state agencies.

The bill was amended in the House to address concerns raised during the first hearing. Sections related to purchases from prison industries were removed. A new section was added related to vendor pool contracts at the recommendation of Rep. Ben Koppelman.

Section 1, Page 1 amends N.D.C.C. section 44-04-18.4 related to when bids and proposals received by a public entity in response to a procurement process are exempt and subject to open records laws. This change was coordinated with OMB's legal counsel.

The bill amends the law to delete subdivision 3(c) which states, "Records included with any bid or proposal naming and generally describing the entity submitting the proposal are open." This subsection is problematic because an entity could make an open records request to learn which vendors submitted bids or proposals. The section to be deleted also conflicts with laws in Chapter 44-04 and Chapter 54-44.4 which provide that bids are exempt records until open date and time, and proposals are exempt records until a notice of intent to award is issued.

Over the 20 years since this language was enacted, vendors have become more versed in studying their competition in order to draft bids and proposals to give themselves an advantage. One primary method used by vendors to hone their bids and proposals is to submit an open records request after a Notice of Intent to Award a public contract has been issued or bids have been opened. This gives vendors the opportunity to review the details of their competitors' bids or proposals. The OMB State Procurement Office has seen these records requests increase exponentially over the past 20 years. OMB proposes this change in law to ensure that vendors are not able to identify their competitors prior to the Notice of Intent to

Award is published, or bids are opened. This change helps to ensure that competition for public contracts remains fair.

Section 2, Pages 1-2, amends N.D.C.C. Chapter 54-44.4-01 related to state purchasing practices definitions. This section adds a definition for "Information Technology" referencing N.D.C.C. Chapter 54-59 and rennumbers the section.

Section 3, Pages 2-5 amends N.D.C.C. section 54-44.4-02 related to OMB purchasing services and exemptions from purchasing requirements. The changes are to add clarity related to what requirements do and do not apply to agencies, institutions, commodities, and services listed in this section.

- Page 3, Lines 1-3. The sentence related to the International Peace Garden participating in procurements is deleted from N.D.C.C. section 54-44.4-02. In Section 9, Page 10, of this bill, the International Peace Garden language is added to N.D.C.C. section 54-44.4-13 related to Cooperative Purchasing. This amendment is a needed correction. The International Peace Garden sentence was added several sessions ago and placed in N.D.C.C. section 54-44.4-02 which describes exemptions from procurement. This proposed change ensures the International Peace Garden is specifically included as eligible for cooperative purchases.
- Page 3, Lines 3-5. New language is added to specify that contracts for use by multiple state agencies and institutions must be established as state contracts by OMB or as cooperative purchases under N.D.C.C. section 54-44.4-13.
- Page 3, Lines 5-7. New language is added to clarify that information technology procurements, including those exempted from competitive requirements of Chapter 54-44.4, are subject to the information technology requirements of Chapter 54-59. This change was developed in collaboration with NDIT representatives.
- Page 3, Lines 10-11. Subsection 1 is changed to add statutes related to leasing of space (N.D.C.C. section 54-21-24.1) and new building construction cost-benefit analysis (N.D.C.C. section 54-44.1-16).
- Page 3, Lines 16-17. Subsection 5, related to exemptions for the Industrial Commission, restructures the sentence to clarify that the exemption applies to energy-related procurements for the referenced statutory programs. This change was discussed with representatives of the Industrial Commission.
- Page 5, Lines 2-8. Subsection 15, related to exemptions for contracts by the DHHS for suicide prevention training and brain injury informal supports, is amended to add new language. This change was developed in collaboration with DHHS, to provide an exemption for training and related materials for individuals receiving assistance or

services, contractors, or professionals providing assistance or services under programs administered by or under the direction of DHHS. This change will materially reduce the number of noncompetitive justifications called "Alternate Procurements" processed by OMB and DHHS.

- Page 5, Lines 9-11. A new subsection 16 is added related to an exemption for expenditures for direct media placement. OMB has a procurement advisory council. State law also requires collaboration between NDUS and OMB on procurement policy. This change has been strongly recommended in meetings with those groups. This section does not create any exemption from the competitive purchase of media placement services from individuals or firms providing those services.

Section 4, Pages 5-7, amends N.D.C.C. section 54-44.4-05 related to competitive, limited competitive, noncompetitive, and negotiated purchases – Exempt records.

- Page 5 Line 20-29. Subsection 1 amends the language related to competitive bidding and competitive proposal process to be clear and concise.
- Page 6, Lines 5-8. Subsection 3 related to bids and proposals being exempt from open records laws is amended to delete language and reference N.D.C.C. section 44-04-18.4 (which was also amended in Section 1 of this bill). This change eliminates contradiction between the Chapter 54-44.4 and Chapter 44-04 related to when bids and proposals are exempt records and when they become open records. This change was coordinated with legal counsel for OMB.
- Page 6, Lines 24-25. Section 4, subsection e. Adds a statutory reference for prison industries.
- Page 7, Lines 12-13. Section 4, subsection k. This was a new section last session related to noncompetitive purchase of recurring costs associated with implemented information technology. A new sentence is added related to recurring costs related to software or firmware required for proper functioning of currently owned equipment. This addition was requested by state agencies and the language was coordinated with NDIT. Many types of equipment now have associated software or firmware.
- Page 7, Line 16. Section 4, subsection l. Last session an exemption was added for specialized equipment for the State Mill and Elevator. In North Dakota Administrative Code, the State Mill and Elevator and Rough Rider Industries have had the same exemption from competition for materials. This change moves the Rough Rider Industries exemption into statute with the same scope as the State Mill and Elevator.
- Page 7, Lines 20-21. Last session an exemption from competition for the State Library was added. NDUS institutions and other agencies also have libraries, so this amendment applies the exemptions to other entities that make purchases for libraries.

Section 5, Page 7-8, amends N.D.C.C. section 54-44.4-07 related to preference for soybean-based ink to remove the reference to the North Dakota Soybean Council and the Agricultural Commissioner. This change was discussed with those entities. The preference for soybean-based ink is unchanged.

Section 6, Page 8, amends N.D.C.C. section 54-44.4-09 related to the Bidders List. A sentence was added, "A person may be required to register for the bidders list before the person may submit a response to a solicitation." This change was recommended by OMB legal counsel. Law requires the bidders list be used for purchases over the amount established for small purchases. OMB and NDUS are implementing a new procurement automation system with improved cyber security measures. The bidder list registration will be accomplished within the new system, and bidders will be required to be registered prior to submitting a solicitation in the system.

Section 7, Page 8, amends N.D.C.C. section 54-44.4-09.1 related to Secretary of State registration. This was a new section enacted last session. The law requires contractors who have a Secretary of State registration requirement to become registered before contract award. The current language has caused confusion about when the vendor must complete the registration process. The amendment changes the wording from "contract award" to "contract execution." The change makes it clear that an agency or institution can announce the contract award and require the vendor to be registered before the contract is signed.

Section 8, Page 8-9, amends N.D.C.C. section 54-44.4-12 related to resolution of protested solicitations and awards.

The current law requires the agency, institution, and OMB to send determination letters to the protestor by certified mail. State agencies, institutions, and OMB have experienced situations when the certified mail was significantly delayed. The amendment allows the state agencies, institutions and OMB to use electronic mail communication and other commercial delivery services to send notice to the protest.

OMB and NDUS also collaborated to incorporate language related to protests and appeals received by NDUS institutions, and cited the law related to NDUS procurement policy.

The section was also amended to provide for a seven-day extension if additional time is needed for the purchasing agency or deciding authority to make the protest and appeal

determination, with written notice to the protestor. Current North Dakota Administrative Code provides an extension option for the purchasing agency considering the protest, but there is no authority for OMB to extend the seven-calendar day period to render an appeal determination. An appeal of a complex, high dollar procurement decision requires significant reading, analysis, and legal review. Providing an ability to extend the appeal period is needed.

Section 9, Pages 9-11, amends N.D.C.C. section 54-44.4-13 related to Cooperative Purchasing.

The amendment to this section was coordinated with NDUS and legal counsel to create authority for a NDUS institution to establish a cooperative purchasing contract for use by other NDUS institutions.

This section is also amended to move the language related to the International Peace Garden with its authorizing statute into the list of entities eligible to use cooperative purchasing contracts, as previously discussed in Section 3.

Section 10, Page 11, amends N.D.C.C. section 54-44.4-14 related to the Procurement Information – Website. This law requires OMB to maintain a procurement information website to provide current information about procurement opportunities. This website can be used for procurement of goods and services, and other types of solicitations not subject to state procurement, such as public improvements, architect, engineering, and land surveying, and concessions. The amendment makes it clear that the entities must comply with any other notice requirements required by law.

Subsection 4 under this section adds new language stating OMB may make the procurement information website available to other government entities for issuing solicitation notices in addition to any other notice requirements provided by law.

Section 11, Page 12, adds to N.D.C.C. chapter 54-44.4 this is a new section related to purchases from state contracts. OMB, in consultation with the Attorney General, will adopt rules related to circumstances under which it is determined to be in the best interested to the state to authorize state officials and employees to make personal purchases from state contracts and prison industries products. At times, state officials and state employees use personal resources to conduct state business. There are a few state contracts that do allow employee purchases, such as Microsoft Home Use rights and state logo clothing contract. This section will ensure guidance on employee purchases from government sources of supplies.

Section 12, Pages 12-13. This is a new section in the engrossed bill. During the House Government and Veteran Affairs hearing, Rep. Ben Koppelman testified with concerns related to vendor pool state contracts being awarded for a long period, resulting in other vendors not having an opportunity to compete for a state contract. OMB had also identified inconsistent practices for vendor pool contract and supported the amendment. A working group, including Rep. Koppelman, OMB, North Dakota Information Technology, and North Dakota University System (NDUS) collaborated on new section. Section 12 requires the OMB, in coordination with NDIT and NDUS, to develop guidelines related to multiple award vendor pool contracts. The guidelines must establish thresholds for direct purchase from vendors within the pool, and a threshold for requiring a purchasing agency or institution to get competition between vendors. The new section also limits vendor pool contracts to a total of five years, unless a prior approval is obtained as set forth in the guidelines. Work under secondary contracts awarded under vendor pools must be accomplished within the term of the contract.

Chairman Roers and committee members, this concludes my testimony. I ask your support for HB 1122. I would be happy to answer any questions.

2025 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee Room JW216, State Capitol

HB 1122
3/7/2025

Relating to purchases by state officials and employees and multiple award vendor pool contracts; and to state purchasing practices.

9:53 a.m. Chair Roers called the hearing to order.

Members Present: Chairman Roers; Vice Chair Castaneda; Senators: Barta, Braunberger, Lee and Walen.

Discussion Topics:

- Committee Action

9:53 a.m. Senator Walen moved Do Pass.

9:53 a.m. Senator Lee seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jose L. Castaneda	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Judy Lee	Y
Senator Chuck Walen	Y

Motion Passed 6-0-0

Senator Barta will carry the bill.

9:55 a.m. Chair Roers closed the hearing.

Susan Helbling, Committee Clerk

**REPORT OF STANDING COMMITTEE
ENGROSSED HB 1122 ([25.8115.02000](#))**

State and Local Government Committee (Sen. Roers, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). HB 1122 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.