

NORTH DAKOTA ADMINISTRATIVE CODE

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Prepared by the Legislative Council staff
for the
Administrative Rules Committee

TABLE OF CONTENTS

TITLE 4

ACCOUNTS AND PURCHASES, DEPARTMENT OF

Article

- 4-01 General Administration
- 4-02 Central Personnel Division
- 4-03 Purchasing Division

TITLE 45

INSURANCE, COMMISSIONER OF

Article

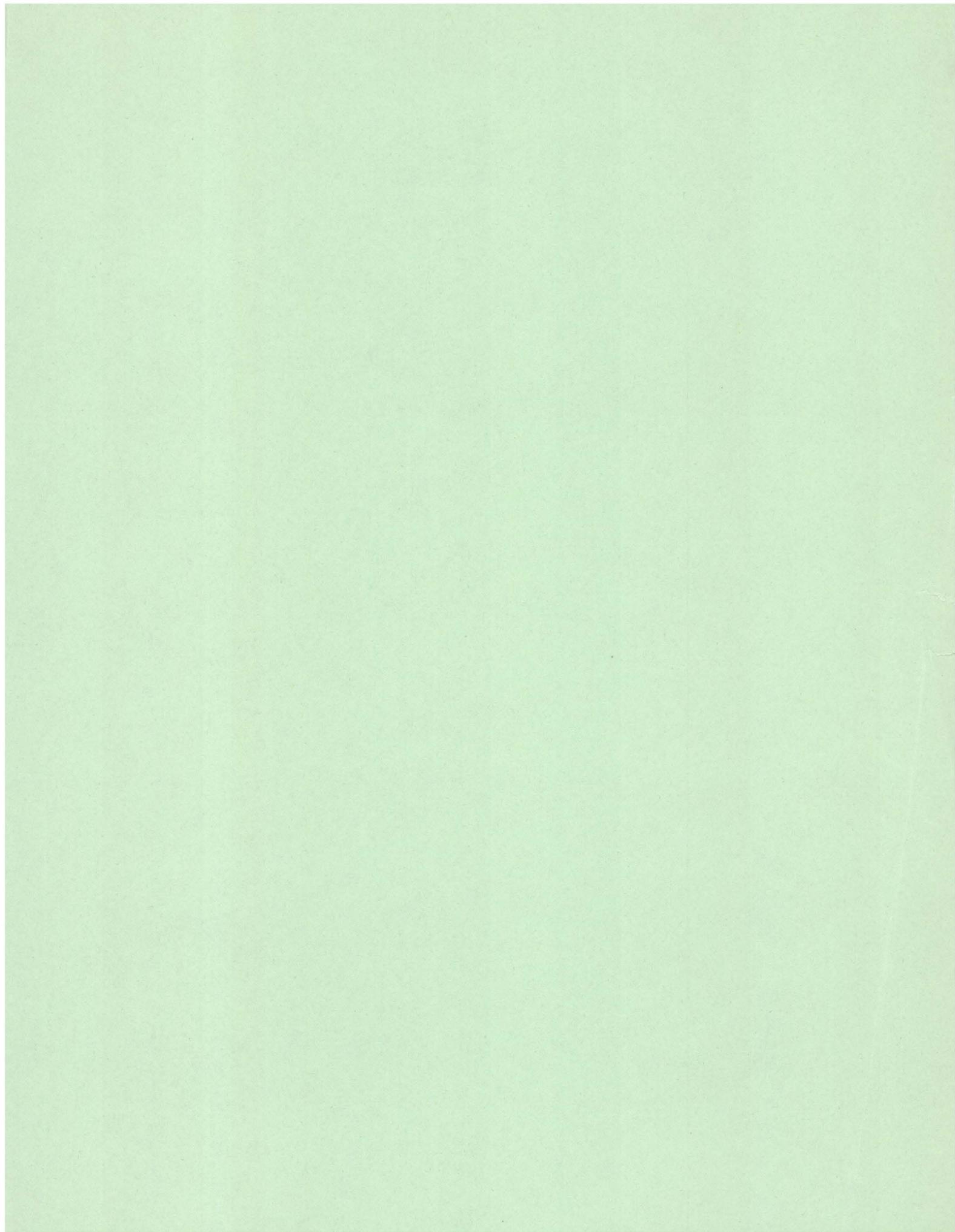
- 45-01 General Administration
- 45-02 Regulation of Insurance Companies, Agents, and Contracts
- 45-03 Regulation of Life Insurance

TITLE 69

PUBLIC SERVICE COMMISSION

Article

- 69-01 General Administration
- 69-02 Practice and Procedure
- 69-03 Motor Carrier Division
- 69-04 Traffic Division
- 69-05 Surface Coal Mining and Reclamation Operations [Superseded]
- 69-05.1 Surface Coal Mining and Reclamation Operations
- 69-05.2 Reserved
- 69-05.3 Abandoned Mine Land Reclamation
- 69-06 Energy Conversion and Transmission Facility Siting
- 69-07 Public Warehousing and Roving Grain and Hay Buyers Division
- 69-08 Auctioneers and Auction Clerks
- 69-09 Public Utility Division
- 69-10 Weights and Measures Division



TITLE 4

ACCOUNTS AND PURCHASES, DEPARTMENT OF

STAFF COMMENT: Article 4-03 contains all new material and thus it is not underscored. There is no statutory right of appeal from a departmental determination. Thus the department is not technically an administrative agency under NDCC Chapter 28-32. However, Section 54-44.4-04 requires the department to "promulgate" the rules pursuant to Chapter 28-32 and the Attorney General deemed it appropriate that the department comply with Sections 28-32-02 and 28-32-03.

TITLE 4

ACCOUNTS AND PURCHASES, DEPARTMENT OF

Article

- 4-01 General Administration
- 4-02 Central Personnel Division
- 4-03 Purchasing Division

ARTICLE 4-03

PURCHASING DIVISION

Chapter	
4-03-01	General Provisions
4-03-02	Eligibility to Bid
4-03-03	Solicitation of Bids
4-03-04	Submission of Bids
4-03-05	Samples
4-03-06	Handling of Bids
4-03-07	Awarding of Contracts
4-03-08	Grounds for Rejection of Bids
4-03-09	Acceptance of Contract by the State
4-03-10	Performance by Successful Bidder
4-03-11	Delivery
4-03-12	Assignments of Contract
4-03-13	Termination of Contract by the State
4-03-14	Payment for Goods
4-03-15	Appeal

CHAPTER 4-03-01
GENERAL PROVISIONS

Section	
4-03-01-01	Authority for These Rules and Regulations
4-03-01-02	Revision or Amendment of Rules
4-03-01-03	Effect of Purchasing Rules and Regulations - Binding Agreement
4-03-01-04	Other Procedures - When This Procedure May be Waived
4-03-01-05	Agency Purchasing - Purchase by Using Agency

4-03-01-01. AUTHORITY FOR THESE RULES AND REGULATIONS. Rules and regulations as set forth in this article are promulgated by the department of accounts and purchases, purchasing division, in accordance with North Dakota Century Code section 54-44-04. Also under authority vested in North Dakota Century Code sections 44-08-01, 44-08-02, 54-44-09, and other laws as contained in the North Dakota Century Code.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-04

4-03-01-02. REVISION OR AMENDMENT OF RULES. The right is reserved to rescind or amend these purchasing rules and regulations in whole or in part at any time without notice.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-04

4-03-01-03. EFFECT OF PURCHASING RULES AND REGULATIONS - BINDING AGREEMENT. All bids submitted to the purchasing division and all contracts awarded on such bids are subject to this article. When bids are submitted, the bidder certifies to this by signing the bid proposal in consideration of the undertaking by the state of North Dakota, to handle the bid and to make awards in accordance with this article. Nothing contained herein shall be construed to limit in any way the rights the state may have under any law.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-05

4-03-01-04. OTHER PROCEDURES - WHEN THIS PROCEDURE MAY BE WAIVED.

1. Commodities or equipment not subject to competition. The competitive bidding procedures set forth in this article shall not apply in those instances in which competitive bidding may not be required by the laws of the state of North Dakota.
2. Emergency makes unfeasible. This article may be waived in cases of emergencies involving public health, public safety, or where immediate expenditure is necessary for repairs to state property, to prevent or minimize serious disruption in state services or to ensure the integrity of state records.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-02

4-03-01-05. AGENCY PURCHASING - PURCHASE BY USING AGENCY. The using agency itself may make purchases in certain cases, if it obtains from the purchasing division (1) prior special written authorization, (2) prior blanket authorization, or (3) prior oral authorization with subsequent written confirmation.

The using agency will always try to obtain at least three bids, and shall make the award by applying the same rules and regulations as are applied by the purchasing division.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-02,
54-44.4-03

CHAPTER 4-03-02
ELIGIBILITY TO BID

Section	
4-03-02-01	Bidder List
4-03-02-02	Removal or Suspension From List

4-03-02-01. BIDDER LIST.

1. Preliminary approval as responsible bidder. If a vendor wants to receive invitations to bid on items the purchasing division is going to buy for the state of North Dakota, the vendor should apply to have the vendor's name placed on the mailing list or bidders' list for the kind of items the vendor sells.
2. How to apply to be placed on bidders' list. Bidders' lists are maintained for various commodity and equipment classifications established by the purchasing division. To apply to have a firm's name included on a bidders' list, a vendor should make a request in writing or in person, indicating the types of items they wish to bid on, to:

Department of Accounts and Purchases
Purchasing Division
State Capitol
Bismarck, North Dakota 58505

3. Application to be filled out. After receiving the vendor's request the purchasing division will send the applicant a "Bidders Mailing List Application" asking for the form of organization, years of business, financial status, and references. The vendor may also be asked to submit a financial statement.
4. Addition of name to list. If the application submitted gives sufficient evidence of the vendor's financial and business responsibility and no other reason is known why the vendor would not be a responsible bidder, the applicant's name will be placed on the bidders' list for the item classifications indicated. The bidder will be subject to continuous review based on the bidder's ability to fulfill the bidder's commitments.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-04

4-03-02-02. REMOVAL OR SUSPENSION FROM LIST.

1. Notice of removal or suspension. The purchasing division may remove any bidder from a bidders' list and suspend the firm's name from bidding for a specified period of time, not to exceed one year. The bidder will be given due notice of such removal or suspension action.
2. Cause for removal or suspension. The following shall be sufficient grounds for such removal or suspension:
 - a. Delivery of items which do not comply with the specifications of the vendor's contract with the state.
 - b. Failure to make delivery within the time specified in the contract or order.
 - c. Failure to keep offer firm for length of time specified by the bidder in the bidder's bid.
 - d. Failure to provide performance bond when required by invitation to bid.
 - e. Collusion with other bidders or prospective bidders to restrain competitive bidding.
 - f. Giving information in an application for inclusion on a bidder's list that is later found to be false or materially misleading.
 - g. Any substitution of an article, even though of the same quality, without first securing the written consent of the purchasing division.
 - h. Bankruptcy or other evidence of insolvency of the bidder.
 - i. Any other facts causing substantial doubt as to whether the bidder will continue to be a responsible bidder who can be relied upon to fulfill the bidder's obligations under this article and under any contract awarded to the bidder.
 - j. Any violation of the laws of the state of North Dakota which would make it inadvisable for the state to deal with such bidder.
 - k. Any other violation of this article.
3. Failure to respond. In addition to removal for the above causes, a bidder may be removed from a bidders' list for three consecutive failures to respond (either with a bid or an indication of "no bid") to invitations to bid.
4. Explanation by bidder. At any time after the bidder receives notice of removal or suspension, the bidder may submit in writing or in person an explanation of the circumstances which were the cause of the removal or suspension order, or may show that such circumstances have been

corrected. (Failure of a manufacturer or supplier to furnish the commodity or equipment bid upon or any part thereof to the bidder does not relieve the bidder of responsibility.) On the basis of such explanation or showing, the purchasing division may modify or rescind the removal or suspension. Any such modification or rescission in no way shall waive or otherwise affect any other remedies the state of North Dakota might have against such bidder.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-05

CHAPTER 4-03-03
SOLICITATION OF BIDS

Section

4-03-03-01

How Bids are Solicited by State

4-03-03-02

Policy Concerning Solicitation of Bids

4-03-03-01. HOW BIDS ARE SOLICITED BY STATE.

1. Invitations to bid. When the purchasing division is ready to buy a particular item, it will send out "Invitations to Bid" to persons on the bidders' list for the item. Such invitations will state:
 - a. The item to be bought.
 - b. The quantity of the item to be bought. (This may be a specified quantity, or all requirements up to a specified quantity during a certain period, or a specified quantity with the right reserved by the state to increase or decrease it.)
 - c. The specifications (and item number, if any) of the item.
 - d. Any installation, maintenance, or repair services to be provided with the item.
 - e. The name and location of the requisitioning agency to which delivery is to be made.
 - f. The date or dates when delivery is to be made, or the period during which deliveries will be ordered and must be made.
 - g. Any other terms and conditions which bids must meet.

Invitations to bid will be sent out by mail, except in cases of emergency. In such cases they may be sent out by telegram or made by telephone.

2. Bids sometimes individually requested. If the number of persons who are likely to bid in response to a particular invitation to bid may not be large enough to provide adequate competitive bidding, the purchasing division may also request bids from any other responsible persons who might submit bids advantageous to the state.

History: Effective February 1, 1980.

General Authority

NDCC 54-44-04,

54-44.4-04

Law Implemented

NDCC 54-44-04,

54-44.4-05

4-03-03-02. POLICY CONCERNING SOLICITATION OF BIDS.

1. Competition encouraged. Invitations to bid will be sent out in sufficient time and in such form as will permit the highest practicable degree of full and free competition. Specifications, restrictions, or conditions which have the effect of limiting bidding to only one brand, make, or source of supply and have no reasonable relation to the actual needs of the using agency are contrary to the policy of the state of North Dakota and will be avoided.
2. Invitations to bid. Invitations to bid will be sent to persons on the bidders' list for the commodity or equipment in question, except in the following cases:
 - a. When a bidder does not sell a particular commodity or equipment. If on three consecutive occasions a bidder returns the bid form marked "no bid" for a particular commodity or kind of equipment, an invitation to bid will not ordinarily be sent to the bidder on the next occasion when bids are invited for that particular commodity or equipment unless the bidder indicates a desire to bid on such items by a notation on the bid form or by a letter to the purchasing division.
 - b. When the number of bidders on a procurement classification is of such magnitude that optimum prices may reasonably be expected without inviting bids from the entire bidders' list, the purchasing division may, if it determines that the best interest of the state would be served, rotate the invitations to bid on any equitable basis, by using only part of the bidders' list when it sends out invitations to bid.
 - c. The invitations to bid may be confined to bidders in a limited geographical service area, when the purchasing division determines that the best interest of the state will be served by so doing, e.g., purchases of readymix concrete, perishables, and equipment requiring local service.
3. Bids by telephone or telegram. In cases of emergency, or need for expeditious handling, bids may be solicited and received by telephone or by telegram (written bid confirmation to follow).

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-05

CHAPTER 4-03-04
SUBMISSION OF BIDS

Section

4-03-04-01	Bid Form
4-03-04-02	Types of Bids
4-03-04-03	What Your Bid Must Contain
4-03-04-04	How and Where to Submit Your Bid
4-03-04-05	Acceptable Bid Security

4-03-04-01. BID FORM.

1. State bid form. Only bids submitted on the bid form furnished by the purchasing division will be accepted unless prior approval is obtained to substitute forms. This will provide a uniform type of bid, so that there can be accurate comparison of the various bids by the purchasing division, the bidders, and interested members of the public. The state reserves the right to waive form variances if economically advantageous or minor to the total bid procedure.
2. Use of typewriter, ink, or indelible pencil. Every bid should be typewritten or written in ink or indelible pencil. Every bid must be signed by the person submitting the bid or that person's duly authorized agent or representative. Signature should be in either ink or indelible pencil and the name and title of each person signing the bid should be typed or printed below the signature.
3. Alterations and erasures. Alterations and erasures in bid forms should be initialed in ink by the bidder.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-05

4-03-04-02. TYPES OF BIDS.

1. Sealed informal bids. If it is estimated that a proposed order is more than one thousand dollars but will not exceed five thousand dollars (except in emergencies) sealed informal bids will be requested. Sealed bids are publicly opened and read aloud on the specified date and hour. This type of bid usually does not contain bonding requirements.
2. Sealed formal bids. Purchases estimated to be in excess of five thousand dollars will be secured by use of a sealed formal bid. A five percent bid bond and a twenty-five percent performance bond is required

with this type of bid unless otherwise specified in the individual bid instructions.

3. Telephone negotiated bids. This type of bid may be used to negotiate purchases estimated not to exceed one thousand dollars. Written confirmation from vendor is required.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-05

4-03-04-03. WHAT YOUR BID MUST CONTAIN.

1. Specifications. The invitation to bid will state (or refer to) the specifications your items must meet. When trade names or catalog references are used in detailed specifications, the information is for identification purposes only and does not preclude bidding on some other items of comparable quality, nor shall it be deemed in any way as changing or supplementing the specifications as to quality or restricting the bidder to that particular item only; however, if no qualifying statement accompanies a bid, it is understood that the bidder is bidding on goods at least equal in or superior to the quality asked for and so guarantees it. Bidders may make explanations they wish below each item or on a separate memorandum attached to their bid. In the case of telephone bids, your bid or written confirmation must also incorporate the specifications of the invitation to bid by reference.
2. Terms and conditions of sale. The following terms and conditions shall apply to any contract resulting from the bidding procedure herein described:
 - a. These terms and conditions, together with the invitation to bid and such other sheets or documents as are made a part hereof, shall constitute the entire present agreement between the state and the bidder.
 - b. Each proposal will be received with the understanding that the acceptance in writing by the purchasing agent, of the offer to furnish any or all the materials, equipment, supplies, or services described therein, shall constitute a contract between the bidder and the state; and shall bind the bidder on the bidder's part to furnish and deliver at the prices, and in accordance with the conditions of said accepted proposal and detailed specifications and the state on its part to order from such contractor (except in the case of emergency) and to pay for at the agreed price, all materials, equipment, supplies or services specified and delivered. A contract shall be deemed executory only to the extent of funds available for payment of the amounts shown on the purchase orders issued by the state to the contractors.

- c. Unless otherwise specified in the detailed specifications, the quantities as listed in the proposal are subject to change as actually required by the state during the life of the contract.
- d. No alterations or variations of the terms of the contractor shall be valid or binding upon the state, unless made in writing and accepted by the state purchasing agent.
- e. Title to the goods herein described shall not pass until the goods have actually been received by the state or its consignee, notwithstanding an agreement to the contrary, including, but not by way of limitation, any agreement to pay freight, express, or other transportation or insurance charges. Risk of loss prior to such actual receipt by the state or its consignee shall be borne by the contractor.
- f. All material and workmanship shall be subject to inspection and test by the state. The state reserves the right to reject any goods which contain defects in material or workmanship or which fail to meet the specifications contained in the invitation to bid or sellers' warranties (express or implied). Rejected goods shall be removed at the expense of the seller, including transportation both ways. When materials, equipment, or supplies are rejected, the same must be removed within forty-eight hours of notification. Rejected items left longer than two days will be regarded as abandoned, and the state will have the right to dispose of them as its own property.
- g. All goods furnished must meet United States Government standards, the regulations of North Dakota food and drug laws, and the requirements of the institution receiving the goods, those using the merchandise to be the judge.
- h. Contracts will remain in force for the contract period specified or until all articles or services ordered before date of termination shall have been satisfactorily delivered or rendered and accepted and thereafter, until all terms and conditions have been met, unless terminated prior to expiration date by satisfactory delivery against orders on entire quantities, or extended upon written authorization of the purchasing agent and accepted by the contractor, and approved by the surety, to permit ordering of the unorderd balances or additional quantities at the contract price and in accordance with the contract terms.
- i. It is mutually understood and agreed that the contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this contract or contractor's right, title or interest therein, or the contractor's power to execute such contract, to any person, company, or corporation, without the previous consent, in writing, of the state purchasing agent.
- j. The contractor hereby guarantees to: (1) save the state, its agents, and employees harmless from liability of any nature or kind for the use of any copyrighted or uncoprighted composition, secret

process, patented or unpatented invention, article, or appliance furnished or used in the performance of the contract, of which the contractor is not the patentee, assignee, or licensee; (2) furnish adequate protection from damage for all work and to repair damages of any kind, for which the contractor or the contractor's workmen are responsible, to the building or equipment, to the contractor's own work or to the work of other contractors; (3) pay for all permits, licenses, and fees and give all notices and comply with all laws, ordinances, rules, and regulations of the city in which the installation is to be made, and to the state of North Dakota; (4) carry proper insurance to protect the state from loss in case of accident or fire, including compensation insurance in the event that the contract requires the employment of personnel in the state of North Dakota; and (5) the contractor warrants that the material to be furnished shall conform to the state's specifications and to all the provisions of the contract, and this warranty shall survive acceptance or use of any material so furnished.

- k. The contractor makes the following warranties to the state and its customers and the users of the goods herein described: (1) it will, at the date of delivery, have good title to any and all goods supplied hereunder, and said goods will be free and clear of any and all liens and encumbrances; (2) any and all goods supplied hereunder will be of fresh quality; (3) any and all goods supplied hereunder will be fit for the particular use intended, will be free from defects, whether patent or latent in material or workmanship, and will be in full conformity with the specifications contained herein. The contractor agrees that the foregoing warranties shall survive acceptance of the goods, and that the warranties shall be in addition to any warranties of additional scope given to the state by the contractor.
 - l. Payment by the state for goods supplied hereunder shall not constitute acceptance thereof if subsequent inspection discloses defects in material or workmanship or a failure to meet the specifications contained herein. In no event shall the state be charged a price higher than charged to the contractor's other customers for goods of like grade and quality and in substantially the same quantities.
 - m. All orders shall be filled by the contractor with reasonable promptness, but the contractor shall not be held responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any other acts not within the control of the contractor and which by the exercise of reasonable diligence, the contractor is unable to prevent.
- 3. Items must be new and current. Unless otherwise specified in the invitation to bid, commodities or equipment offered must be new and of the latest model and manufacture.
 - 4. Alternate bids. If bidding other than specified, alternates offered must be guaranteed equal or better than the originally specified. The

burden of proof is on the bidder. The alternate bid should be furnished with specifications, brand name, numbers or trademark, if any, and any other information pertinent to the identification.

5. Unit and total prices. The price for the units specified in the invitation to bid should be clearly shown for each separate item in the space provided on the bid form. Only one unit price should be quoted for each item and this unit price should be according to the unit of measure as shown in the bid invitation. The total price for the quantity requested should also be shown. If the group totals are requested in the bid invitation, bidders should show group totals on the space provided.
6. Acceptance of split award. Every attempt will be made to award orders on an overall low bid basis. However, the right is reserved to split the award if it is in the best interest of the state. If a split award is not acceptable to a bidder, it must be so stated in the bid.
7. Time prices will be firm. Bid prices shall be firm for a period of not less than thirty days. (Unless otherwise provided in the invitation to bid.)
8. Addition of escalator clauses (economic adjustment clause) by bidder barred. Unless the invitation to bid specifically permits it, a bid containing an "escalator clause" providing for an increase in price upon the happening of certain future contingencies (such as increases in the prices or wages which the bidder has to pay) will not be considered a firm bid.
9. Delivered price. Unless otherwise specified in the invitation to bid, YOUR BID PRICE MUST BE A DELIVERED PRICE, F.O.B. THE INSTITUTION OR OTHER USING AGENCY, WITH ALL TRANSPORTATION AND HANDLING CHARGES PAID BY THE BIDDER. In computing transportation costs, bidders should not include any federal transportation tax, because deliveries to the state are exempt from the tax.
10. Earliest delivery time. The bidder must make delivery upon receipt of order unless otherwise specified in the invitation to bid. The bidder must indicate time required for delivery on bid.
11. Tax. The state does not pay sales tax or federal excise tax. The state's sales tax exemption number is E-2001. The federal tax free transaction number is 45-70-0010K.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44-09,
54-44.4-05

4-03-04-04. HOW AND WHERE TO SUBMIT YOUR BID.

1. Return to. Unless otherwise instructed in the bid, all bids submitted must be addressed to:

Department of Accounts and Purchases
Purchasing Division
State Capitol Building
Bismarck, North Dakota 58505

2. Seal and mark envelope. Bids shall be sealed and envelope marked with time and date of bid opening as indicated in the bid instructions.
3. Late bids. Bids received after the time and date specified for bid opening will be rejected. However, telephone or telegraph bids received before the date and hour designated for bid opening will be considered provided adequate written confirmation of the offer is received within three days after the bid opening and is postmarked prior to the designated hour for the bid opening.
4. Bid and sample. Bids must not be wrapped in package with samples.
5. Copies of bid. Two copies of bid forms are supplied, one copy must be returned, and one copy retained by bidder.
6. Contract signature. Contract sheets must be completed and signed in ink or the bid will be rejected.
7. Change in or withdrawal of bid. A bidder may withdraw or change a bid if notice of the withdrawal or change is received by the purchasing division before the latest time specified for submission of bids. Any such changes may be made only by substitution of another bid, or by a letter or telegram stating that the bid shall be changed by a specified amount (such as the subtraction of seventy-five cents per hundredweight [45.36 kilograms]) without giving the final figure resulting from the change. Withdrawals of bids after bid opening will be allowed only in those cases in which it is found from clearly demonstrable evidence that the bidder has made a bona fide error in the preparation of the bid and that such error will result in a substantial loss to the bidder. The decision of the purchasing division is final.
8. Bid reservations. The state reserves the right to reject any or all bids or any part thereof, to waive immaterial technicalities in the bidding, and to accept the bids deemed most favorable to the interest of the state after all have been examined and evaluated.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-05

4-03-04-05. ACCEPTABLE BID SECURITY.

1. Bid bond or check may be required in invitation to bid. If the invitation to bid so specifies, a bidder must file with the state of North Dakota a "bid bond", certified check, cashier's check, or bank draft made payable to the state of North Dakota, in the amount specified in the invitation, or the bid will not be considered.
2. Surety required. In addition to signing any bid bond as principal, the bidder must have the bond signed by a surety company authorized to do business in the state of North Dakota. If the surety on a bond has its authority to do business in this state revoked or if for any reason it ceases to do business in the state, the bidder must promptly obtain another surety on the bond.
3. Condition of the bond. The bond shall be conditioned on full performance of all obligations imposed on the bidder, including the obligation to keep the price firm for as long a period as specified in the bid and the obligation to file a "performance bond" when required, if awarded a contract. The bond shall provide that upon failure to perform any of such obligations the state of North Dakota may recover from the bidder and the surety, or either, any and all damages suffered because of such failure.
4. May be continuing bond. If a bidder expects to submit bids from time to time and wants to file a continuing bond good for all bids made during a certain period of time up to a stated amount, the bidder may do so.
5. Form of bond. The bond, whether a single bid bond or continuing bid bond, must be in the form and substance satisfactory to the state of North Dakota.
6. Deposit agreement. If the bidder elects to deposit a certified check or bank draft it shall be security for full performance of all obligations referred to in subsection 4. If the bidder fails to perform any obligations, the department of accounts and purchases may endorse the check and retain as much of the proceeds as is necessary to compensate the state of North Dakota for any and all damages suffered because of such failure.
7. Return of check. If a bidder is not the successful bidder, the certified check, cashier's check, or bank draft will be returned to that bidder as soon as possible after the award is made. The successful bidder's check will be returned as soon as possible after the contract is awarded or as soon as such bidder has filed a performance bond, if one is required.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-05

CHAPTER 4-03-05
SAMPLES

Section
4-03-05-01 How to Submit Samples

4-03-05-01. HOW TO SUBMIT SAMPLES.

1. Samples. All specifications are minimum standards. Samples must be submitted in accordance with the terms of the proposal and detailed specifications. Each sample must be labeled clearly with the vendor's name, address, the commodity or equipment classification, the item (and item number, if any), and the latest time specified in the invitation for submission of bids, so the corresponding bid can be readily identified. Bids without samples, when samples are requested, will be rejected.
2. Transportation charges. No samples will be accepted by the purchasing division unless all transportation charges, including cartage, have been prepaid.
3. Representative sample. All samples submitted must be representative of the item which will be delivered if awarded a contract. Samples submitted by successful bidders will be retained for use in checking items delivered under the contract. Submission of samples which result in an award shall not limit the right of the state to insist that commodities or equipment delivered must also meet the specifications of the invitation to bid.
4. Disposition of samples. Award samples will be forwarded to the institution for which they are purchased and held, pending the receipt of the merchandise for comparison. No payment will be made for samples. However, samples not destroyed by examination or testing will be returned to bidders, at the bidder's expense, if so requested. When bidders desire samples to be returned they should mark sample "Please Return Sample".

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-05

CHAPTER 4-03-06
HANDLING OF BIDS

Section
4-03-06-01 Handling of Sealed Bids

4-03-06-01. HANDLING OF SEALED BIDS.

1. Where and when. All sealed bids received in the purchasing division by the specified time will be opened, read aloud, and the names of the bidders and their bid recorded, at the place, date, and hour specified in the invitation to bid. The bid opening will be conducted by a representative of the purchasing division.
2. Bidders may be present. Bidders (or their authorized representatives) are invited to be present at any such opening of a group of bids.
3. Prompt tabulation and award. Sealed bids will be tabulated for comparison and the award made as soon as practical after the opening and recording of the bids.
4. Public record of sealed bids. The record of bidders' names prepared at the bid opening and all the bids and tabulation sheets shall be kept by the purchasing division for a period of three years after the award is made, and be made available for inspection during normal office hours by any interested person. Written tabulation of bids will be provided only upon request. Telephone tabulations will not be provided.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-05

CHAPTER 4-03-07
AWARDING OF CONTRACTS

Section
4-03-07-01 Standards for Awarding Contracts

4-03-07-01. STANDARDS FOR AWARDING CONTRACTS.

1. Lowest and best bid. The awards will be made to the bidder whose bid (a) meets the specifications and other requirements of the invitation to bid and (b) is the lowest and best bid, considering price, responsibility of bidder, and all other relevant factors. The rest of this section gives specific standards that will be followed in determining which is the lowest and best bid.

The designation of brand names and catalog numbers on invitations to bid, in lieu of more detailed specifications, are for illustrative purposes only and not to restrict the bidding. IMMATERIAL TECHNICALITIES, ON AN ALTERNATE OFFERED IN A BID, DO NOT MEAN THAT THE BID WILL NECESSARILY BE REJECTED.

Minor deficiencies or technical variances, which by their nature, are restrictive to a given manufacturer, may be waived if, in the judgment of the purchasing division it would be in the best interest of the state of North Dakota and would not prejudice the rights of other bidders.

2. Cash discounts. In determining the lowest bid when the invitation to bid asks to have cash discounts stated separately, only cash discounts having a period of thirty days or more will be taken into account. The invitation to bid shall state if cash discounts will NOT be taken into account in determining the award.
3. Trade discounts. Trade discounts should never be shown separately, but should always be deducted by the vendor in calculating the unit price quoted.
4. Quantity discounts. Quantity discounts should be included in the price of an item. Such discounts will not be considered where set out separately unless the invitation to bid so specifies. When quantity discounts are requested by the invitation, the price per item shown on the purchase order will be net (after application of such discount).
5. Rights reserved by the state.
 - a. The right is reserved to award on the most advantageous bid on a quality versus price basis.
 - b. The state reserves the right before making awards to make investigations as to whether or not the materials, equipment, supplies, qualifications, or facilities offered by the bidder meet

the requirements set forth in the proposal and specifications, and are ample and sufficient to ensure the proper performance of the contract in the event of the award.

If upon such examination, it is found that the conditions of the proposal are not complied with or that articles or equipment proposed to be furnished do not meet the requirements called for, or that the qualifications or facilities are not satisfactory, the state may reject such a bid. It is distinctly understood, however, that nothing in the foregoing shall mean or imply that it is obligatory upon the state to make any examinations before awarding a contract; it is further understood that if such examination is made, it in no way relieves the contractor from fulfilling all requirements and conditions of the contract.

- c. The state reserves the right to make awards by item, groups of items, or on the total low bid for all the items specified as indicated in the detailed specifications, unless the bidder specifically indicates otherwise in the bid.
 - d. The state reserves the right to make awards within thirty days after the date of bid opening, during which period bids shall not be withdrawn unless the bidder distinctly states in the bid that acceptance, thereof, must be made within a shorter specified time.
 - e. The state reserves the right to reject any and all bids in whole or in part; to waive technical defects, irregularities, and omissions if in the judgment of the state purchasing agent the best interests of the state will be served and to give consideration to past performance.
6. Equipment furnished. All awards are on new equipment, latest model, and accepted by the contractor as such, except as otherwise specifically stated in the specification or proposal.
 7. Bidder preference. Utility, fitness, and quality being equal, the bid or offer of a resident North Dakota bidder or seller shall be given preference. This preference shall be equal to the preference given or required by the state of the nonresident bidder.
 8. Bidders in default. Awards may not be made to any person, firm, or corporation in default of a contract or to any company having as its sales agent or representative, or as a member of the firm, any individual previously in default or guilty of misrepresentation.
 9. Unit price governs. In case of a mistake in the calculation of total price, the unit price shall govern.
 10. Tie bids. If two or more bids meeting the specifications and other requirements of the invitation to bid are tied for low price, the bid will be treated as follows:
 - a. Utility, fitness, and quality being equal, the bid or offer of a resident North Dakota bidder or seller shall be given preference.

This preference shall be equal to the preference given or required by the state of the nonresident bidder.

- b. If there is a significant difference in the responsibility of the bidders (including ability to deliver in the quantity and at the time required), the award will be made to the bidder who is deemed to be the most responsible.
 - c. If there is no significant difference in the responsibility of the bidders, but there is a difference in the quality of the commodities or equipment offered, the bid offering the best quality will be accepted.
 - d. If there is no significant difference in the responsibility of the bidders and no difference in the quality of the items offered, the bid offering the earliest delivery time will be accepted in any case in which the invitation to bid specified that the needs of the requisitioning agency require as early delivery as possible. In all other cases, delivery time will not be considered in making awards so long as the bidder states he will deliver not later than the time specified in the invitation to bid as the latest acceptable delivery time.
 - e. If the bids quoting the same price are equal in every respect, the award may be made to one or more low bidders by drawing lots; or may be split equally among all the low bidders if this is feasible, will not lead to any limitation of competition among bidders, and is in the best interest of the state of North Dakota.
11. Reporting identical bids. In those instances where an award is made to one or more of the tie bidders involving more than one thousand dollars, the purchasing division will, as a matter of policy, report all such tie bids to the United States attorney general and to the attorney general of the state of North Dakota.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 44-08-01,
54-44-04,
54-44.4-05

CHAPTER 4-03-08
GROUNDS FOR REJECTION OF BIDS

Section
4-03-08-01 Cause for Rejection

4-03-08-01. CAUSE FOR REJECTION.

1. Nonresponsive bids. Any bid which does not meet the requirements of the invitation to bid or does not comply with the provisions of this article may be rejected.
2. Alterations and erasures. Bids containing any material alteration or erasure may be rejected unless the change is initialed in ink by the bidder. Samples submitted showing evidence of altering or removing manufacturer's label, logotype, model or serial number, or any other standard of the industry for identification, shall be due cause for rejection of the bid, unless alteration or removal is supported with justifiable documentation satisfactory to the purchasing division.
3. Responsibility of the bidder. The purchasing division may at any time make a supplementary investigation as to the responsibility of any bidder, even though the bidder is on the bidders' list for the item being bought. This may include investigation of financial responsibility, insurability, effective equal employment opportunity, capacity to produce or sources of supply, performance record in the business or industry, and other matters relating to the bidder's probable ability to deliver in the quantity and at the time required under the contract if it is awarded to the bidder. The purchasing division may require the submission of written statements from the bidder or other persons concerning any of such matters.

If it is concluded on the basis of all available evidence that a particular bidder appears not to be sufficiently responsible to assure adequate performance if the contract were awarded to the bidder, the bid will be rejected even if it is the lowest bid.

If there is some question about the responsibility of the low bidder, but the interest of the state of North Dakota would be adequately protected by the filing of a performance bond of the kind described in section 4-03-10-01, or the deposit of a certified check, cashier's check, or bank draft as security for performance, the low bidder may be required to file such a bond or deposit such a check whether or not it was provided for in the invitation to bid, and upon the filing of the bond or deposit of the check the award may be made to such low bidder.

4. Availability of maintenance and repair services.
 - a. If the invitation to bid specifies that maintenance or repair services, or both, will have to be provided by the successful bidder

and if it appears the lowest bidder cannot be depended upon to provide such services promptly, or if maintenance or repairs, or both, are not available without excessive travel expense, the bidder's bid may be rejected even though it is the lowest bid.

- b. If the invitation to bid does not specify that maintenance and repair services will have to be provided by the successful bidder, the state reserves the right to require proof from the apparent low bidder that maintenance and repair services are economically available on a timely basis from other authorized sources. If such maintenance and repair services are not available, the bid may be rejected even though it is the low bid.
5. Contracts in which state officers or employees have interest are prohibited. Bids will be rejected if circumstances are such.

Reference: North Dakota Century Code section 48-02-12.
Officers must not be interested in contract.
No governing board, nor any member, employee,
or appointee thereof, shall be pecuniarily
interested or concerned directly or
indirectly in any public contract, either
verbal or written, that may be entered
into by any such board or officer.

6. Attempt to influence award. No person on a bidders' list or who submits or intends to submit a bid shall give or offer to give, directly or indirectly, any money, article, or other thing of value to:
 - a. Any officer or employee of the department of accounts and purchases.
 - b. Any officer or employee of any requisitioning agency that has submitted or may submit a requisition for any item sold by such person.
 - c. Any officer or employee of the state of North Dakota who is a member of a committee whose duty it is to recommend or adopt specifications for any commodity or equipment to be bought by the state that is sold by such person.

If any person makes or offers to make a gift prohibited by this subsection, all bids submitted by the person will be rejected and the bidder will be barred from further bidding for a period of time not to exceed one year. (Also see subsection 3 of section 4-03-13-01). The department of accounts and purchases will notify the attorney general of any violation of this subsection, in order that the attorney general may take such action as the attorney general deems appropriate.

7. Collusion bids. (Reserved).
8. Rejection of all bids. If it appears to be in the best interest of the state of North Dakota, all bids may be rejected and invitations to bid containing the same or rewritten specifications, terms, and conditions

may be reissued. In any such case, the purchasing division will notify the bidder of the reason why all bids were rejected.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-05

CHAPTER 4-03-09
ACCEPTANCE OF CONTRACT BY THE STATE

Section
4-03-09-01 Binding Contract With State
4-03-09-02 Supplementary Purchases

4-03-09-01. BINDING CONTRACT WITH STATE.

1. Purchase order. After the lowest and best bid has been determined, the purchasing division will send the successful bidder a purchase order accepting the bid in the name of the department of accounts and purchases, state of North Dakota.

2. Binding on bidder. The state's acceptance of the bidder's offer by the issuance of a purchase order will create a binding contract.

The successful bidder must perform in accordance with the terms and conditions of the contract and this article and purchasing laws of the state of North Dakota.

3. No changes impairing rights of state permitted. After the contract between the successful bidder and the state has been entered into by the issuance of a purchase order, no changes (such as a substitution or a price adjustment) may be made in its terms and conditions, if such changes would result in an impairment of any of the rights of the state under the contract.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-05

4-03-09-02. SUPPLEMENTARY PURCHASES. When the purchasing division issues a purchase order for a particular item after following the above bidding procedure, it may at any time thereafter issue subsequent purchase orders to the same vendor, or amendments to the original order for an additional quantity of the same item, at the same price and on the same terms and conditions if:

1. The vendor agrees to accept such purchase order or amendment if issued;
2. The market price of the commodity or equipment in question has not gone down since the first purchase; and

3. The amount of the subsequent purchases or amendments are not of such magnitude as to constitute a substantial or material variation of the original contract.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-05

CHAPTER 4-03-10
PERFORMANCE BY SUCCESSFUL BIDDER

Section
4-03-10-01 Performance Bond

4-03-10-01. PERFORMANCE BOND.

1. May be required. The state of North Dakota shall have the right to require that the successful bidder shall file a performance bond in a designated amount with the department of accounts and purchases, whenever it appears to be in the best interest of the state to do so. It may be required that the bond be filed within a specified number of days after the award is made or the contract shall be canceled and the vendor shall be liable for any damages caused the state by failure to file the bond.
2. Amount. Such performance bond may be required in any amount up to one hundred percent of the amount of the contract, depending upon the nature of the transaction.
3. Surety required. In addition to signing the bond as principal, the successful bidder must have the bond signed by a surety company which (a) has a rating of not less than A+AA according to the current Best's Key Rating Guide, and (b) is authorized to do business in the state of North Dakota. If the surety on the bond has its authority to do business in this state revoked, the bidder must promptly obtain another surety on the bond.
4. Condition of bond. The bond shall be conditioned on full performance of all obligations imposed on the successful bidder by the contract with the state. It shall provide that if the bidder fails to perform any of such obligations, the state of North Dakota may recover from the bidder and the surety (or either of them) any and all damages suffered because of such nonperformance.
5. Source of supply may also be required to file bond. If the bidder does not have a stock of the commodity or equipment in question in the amount asked for, nor facilities to produce the item in such amount, nor the facilities to guarantee satisfactory service, the state of North Dakota may in addition require the source of supply to file a performance bond, with surety, conditioned on such source supplying the bidder as stated in the bid.

6. Form of bonds. The bonds required by this section must be in form and substance satisfactory to the state of North Dakota. Bond forms will be furnished by the purchasing division at the time it issues the purchase order to the successful bidder.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-05

CHAPTER 4-03-11
DELIVERY

Section
4-03-11-01 Deliveries Under the Contract

4-03-11-01. DELIVERIES UNDER THE CONTRACT.

1. Upon order. Deliveries shall be made upon the written order of the purchasing division or the using agency, at the time and in the amounts specified in the invitation to bid and in such orders for delivery. Acceptance of any late deliveries shall not constitute a waiver of any of the rights of the state under its contract with the vendor. The state may reject unapproved early deliveries if the delivery imposes a hardship on the user.
2. Delivery point. All deliveries shall be made to the point or points specified in the invitation to bid.
3. Freight prepaid in all cases. Even if the invitation to bid specifies prices F.O.B. some point (such as manufacturer's plant) other than the using agency, the vendor must prepay all transportation charges to the location of the using agency. The vendor may then be reimbursed for the cost of transportation from the F.O.B. point to the delivery point by adding the freight charges to the invoice accompanied by the receipted freight bill. The state reserves the right to route all shipments contract on a F.O.B shipping point basis.
4. Extension of time. Any extension of time of delivery as specified must be in writing by the state purchasing agent, such extensions applying only to the particular item or shipment.
5. Vendor responsible for delivery in all cases. If the using agency reimburses the vendor for part or all of the transportation charges, the vendor is nevertheless responsible for delivery to the point of destination, and shall file any claims with the carrier for breakage or other losses.
6. Trade-in equipment. If an item of equipment is offered in trade, it shall be the responsibility of the successful bidder to remove it from state property at the bidder's expense. No invoice will be approved for payment until such equipment is removed. Reasonable care will assume no obligation to make extensive repairs to maintain it in the same condition as at the time of inspection. Bidders should expect changes in condition due to normal wear and depreciation and shall accept it in the condition found at the time of transfer.
7. Packaging and crating. All commodities or equipment shall be delivered strongly and securely packed, according to accepted commercial practice and the packaging and marking instructions in the invitation to bid. No

charge shall be made for packing cases, baling, crating, barrels, drums, sacks or other containers except that if the vendor so specifies in the bid, the vendor may make a memorandum charge and require the using agency (a) to return such containers for credit with transportation costs paid by the vendor, or (b) to pay for them if not returned in a reasonable length of time.

8. Time of delivery. The state will not schedule any deliveries for Saturdays, Sundays, or legal holidays, except commodities required for daily consumption or where the delivery is an emergency.
9. All goods subject to inspection. Any commodities or equipment that fail in any respect (a) to meet the specifications, (b) to conform to the vendor's samples, or (c) are not in good condition when delivered, will be subject to rejection.
10. Notice to vendor. Notice of any such rejection based on defects that should be disclosed by ordinary methods of inspection will be given to the vendor within a reasonable time after delivery of the item. Notice of latent defects which would make the items unfit for the purpose for which they are required may be given at any time within one year after delivery.
11. Vendor must remove rejected items. The vendor must remove within forty-eight hours of notification, at the vendor's own expense, any items rejected. If the vendor fails to remove the items, the state may sell them at public auction and remit the proceeds of the sale (less any expenses incurred in the sale) to the vendor.
12. Inspection at source. In some cases inspection of the commodities or equipment will be made at the factory, plant, or other establishment where they are produced or grown.
13. Inspection of premises. The contractor shall permit access to and inspection of the contractor's premises by authorized representatives for the state of North Dakota at all reasonable times.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-05

CHAPTER 4-03-12
ASSIGNMENTS OF CONTRACT

Section
4-03-12-01 Assignments by Successful Bidder

4-03-12-01. ASSIGNMENTS BY SUCCESSFUL BIDDER. Except as otherwise provided in this article, a successful bidder shall not assign the bidder's interest in the contract without the consent in writing of the purchasing division.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-05

the contract conflicts with any statutory or constitutional provision of the state of North Dakota or of the United States.

- f. In the event of any other breach of contract or other unlawful act by the vendor.
3. Cancellation for fraud, collusion, illegality, etc. The purchasing division may cancel any contract entered into under this article if there is sufficient evidence to show that:
- a. The contract was obtained by fraud, collusion, conspiracy, or other unlawful means; or
 - b. The contract conflicts with any statutory provision of the state of North Dakota or of the United States, or with the provisions of section 4-03-08-01.

The department of accounts and purchases will notify the attorney general of the facts upon which such termination or rescission is based, in order that the attorney general may take such action as the attorney general deems appropriate.

4. Withholding moneys to compensate state for damages. If a contract is terminated or rescinded under subsection 1 or 2, the state may deduct from whatever is owed the vendor on that or any other contract an amount sufficient to compensate the state of North Dakota for any damages suffered by it because of the vendor's breach of contract or other unlawful act on the vendor's part on which the cancellation is based.
5. Damages. The damages for which the state may be compensated as provided in this subsection or by a suit on the vendor's performance bond or by other legal remedy shall include, but is not limited to the following:
- a. The additional cost of commodities or equipment bought elsewhere;
 - b. The cost of repeating the competitive bidding procedure;
 - c. Any expenses incurred because of delay in receipt of commodities or equipment; and
 - d. Any other damages caused by the vendor's breach of contract or unlawful act.
6. Barred from further bidding. A vendor whose contract is terminated or rescinded under subsection 1 or 2 may be barred from further bidding for a period of time, not to exceed one year as fixed by the purchasing division.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-05

CHAPTER 4-03-14
PAYMENT FOR GOODS

Section
4-03-14-01 Submission of Invoice

4-03-14-01. SUBMISSION OF INVOICE. Do not send invoice covering commodities and equipment to the purchasing division. Invoices sent to the purchasing division will result in delay in payment since invoices will either be returned to the vendor or forwarded to the appropriate agency.

1. Send invoice direct to using agency.
2. The invoice should give a complete and detailed description of the commodities or equipment delivered.
3. If more than one shipment is required under the contract the state will make partial payment of the contract price as it received the vendor's invoice relating to the separate deliveries.
4. If the vendor allows a cash discount, the period of time in which the state must make payment to qualify for the discounts will be computed from the date the using agency (a) received the invoice voucher (correctly filled out) or (b) received and officially accepts the commodities or equipment, whichever is later. In addition, if any commodities or equipment are rejected, all time from the mailing of the notice of rejection to the acceptance of items delivered shall be excluded from the discount period.

The cash discount will be computed on the selling price of the item or items, only, not on the selling price plus the amount of freight if stated separately.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-05

CHAPTER 4-03-15
APPEAL

Section
4-03-15-01 Rights to Appeal

4-03-15-01. RIGHTS TO APPEAL. Any decision rendered by the purchasing division pursuant to this article may be appealed to the director of accounts and purchases by filing with the director a written statement setting forth all the facts and circumstances together with the basis for making such appeal.

History: Effective February 1, 1980.

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

Law Implemented
NDCC 54-44-04,
54-44.4-04

TITLE 13

BANKING AND FINANCIAL INSTITUTIONS, DEPARTMENT OF

STAFF COMMENT: The changes to sections 13-02-01-02, 13-02-01-06, and 13-02-01-07 were declared to be emergency changes and thus became effective January 1, 1980.

ARTICLE 13-02

BANKING AND SAVINGS AND LOAN ASSOCIATIONS

Chapter	
13-02-01	Maximum Rates of Interest Payable by State Banking Associations on Time and Savings Deposits
13-02-02	Bank Reserves
13-02-03	Limitation on Bank Borrowings on a Day-to-Day Basis
13-02-04	Mailing of Monthly Statements of Banks
13-02-05	Procedure for Establishing a Separate Drive-In Walkup Facility
13-02-06	Establishment of Customer Electronic Funds Transfer Centers
13-02-07	Branch Offices - State-Chartered Savings and Loan Associations

CHAPTER 13-02-01

MAXIMUM RATES OF INTEREST PAYABLE BY STATE BANKING ASSOCIATIONS ON TIME AND SAVINGS DEPOSITS

Section	
13-02-01-01	Time Deposits of One Hundred Thousand Dollars or More
13-02-01-02	Fixed Ceiling Time Deposits of Less Than One Hundred Thousand Dollars
13-02-01-03	Savings Deposits
13-02-01-04	Governmental Unit Time Deposits of Less Than One Hundred Thousand Dollars
13-02-01-05	Individual Retirement Account and Keogh (H.R. 10) Plan Deposits of Less Than One Hundred Thousand Dollars
13-02-01-06	Twenty-six Week Money Market Time Deposits of Less Than One Hundred Thousand Dollars
13-02-01-07	Time Deposits of Less Than One Hundred Thousand Dollars With Maturities of <u>Four Two and One-Half</u> Years or More

13-02-01-02. FIXED CEILING TIME DEPOSITS OF LESS THAN ONE HUNDRED THOUSAND DOLLARS. Except as provided in sections 13-02-01-01, 13-02-01-04, 13-02-01-05, 13-02-01-06, and 13-02-01-07, no state banking association shall pay interest per annum on any time deposit at a rate in excess of the applicable rate under the following schedule:

MATURITY	MAXIMUM PERCENT
30 days or more but less than 90 days	5 1/4
90 days or more but less than 1 year	5 1/2 3/4
1 year or more but less than 36-months <u>2 1/2 years</u>	6
36-months <u>2 1/2 years</u> or more but less than 4 years	6 1/2
4 years or more but less than 6 years	7 1/4
6 years or more but less than 8 years	7 1/2
8 years or more	7 3/4

History: Amended effective July 1, 1979; amended effective August 21, 1979; amended effective January 1, 1980.

General Authority
NDCC 6-01-04

Law Implemented
NDCC 6-03-02,
6-03-63

13-02-01-06. TWENTY-SIX WEEK MONEY MARKET TIME DEPOSITS OF LESS THAN ONE HUNDRED THOUSAND DOLLARS. Except as provided in section 13-02-01-01, state banking associations may pay interest on any nonnegotiable time deposits of ten thousand dollars or more, with a maturity of twenty-six weeks, at a rate not to exceed the rate established (auction average on a discount basis) for United States treasury bills with maturities of twenty-six weeks issued on or immediately prior to the date of deposit. Rounding such rate to the next higher rate is not permitted. A state bank may not compound interest during the term of this deposit. A state bank may offer this category of time deposit to all depositors. However, a state bank may pay interest on any nonnegotiable time deposits of ten thousand dollars or more with a maturity of twenty-six weeks which consists of funds deposited to the credit of, or in which the entire beneficial interest is held by:

1. The United States, any state of the United States, or any county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or political subdivision thereof; or

2. An individual pursuant to an Individual Retirement Account agreement or Keogh (H.R. 10) Plan established pursuant to 26 U.S.C. (I.R.C. 1954) sections 401, 408,

at a rate not to exceed the ceiling rate payable on the same category of deposits by any federally insured savings and loan association or mutual savings bank.

History: Amended effective July 1, 1979; amended effective January 1, 1980.

General Authority
NDCC 6-01-04

Law Implemented
NDCC 6-03-02,
6-03-63

13-02-01-07. TIME DEPOSITS OF LESS THAN ONE HUNDRED THOUSAND DOLLARS WITH MATURITIES OF FOUR TWO AND ONE-HALF YEARS OR MORE. Except as provided in sections 13-02-01-01 and 13-02-01-02, a state banking association may pay interest on any nonnegotiable time deposit with a maturity of four two and one-half years or more that is issued on or after the first day of every each month at a rate not to exceed one-and-one-quarter three-quarters of one percent below the average four two and one-half-year yield for United States treasury securities as determined and announced by the United States department of the treasury three business days prior to the first day of such month. The average four two and one-half-year yield will be rounded by the United States department of the treasury to the nearest five basis points. A state bank may offer this category of time deposit to all depositors. However, a state bank may pay interest on any nonnegotiable time deposit with a maturity of two and one-half years or more which consists of funds deposited to the credit of, or in which the entire beneficial interest is held by:

1. The United States, any state of the United States, or any county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or political subdivision thereof; or
2. An individual pursuant to an Individual Retirement Account agreement or Keogh (H.R. 10) Plan established pursuant to 26 U.S.C. (I.R.C. 1954) sections 401, 408,

at a rate not to exceed the ceiling rate payable on the same category of deposits by any federally insured savings and loan association or mutual savings bank.

History: Effective July 1, 1979; amended effective January 1, 1980.

General Authority
NDCC 6-01-04

Law Implemented
NDCC 6-03-02,
6-03-63

TITLE 45

INSURANCE, COMMISSIONER OF

STAFF COMMENT: Article 45-03 contains all new material and thus is not underscored. Article 45-03 was declared to be an emergency and thus became effective January 1, 1980.

TITLE 45

INSURANCE, COMMISSIONER OF

Article

45-01 General Administration

45-02 Regulation of Insurance Companies, Agents, and Contracts

45-03 Regulation of Life Insurance

ARTICLE 45-03
REGULATION OF LIFE INSURANCE

Chapter
45-03-01 Life Insurance Solicitation

CHAPTER 45-03-01
LIFE INSURANCE SOLICITATION

Section	
45-03-01-01	Purpose
45-03-01-02	Scope
45-03-01-03	Definitions
45-03-01-04	Disclosure Requirements
45-03-01-05	General Rules
45-03-01-06	Failure to Comply
45-03-01-07	Effective Date

45-03-01-01. PURPOSE.

1. The purpose of this chapter is to require insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration, and improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.
2. This chapter does not prohibit the use of additional material which is not in violation of this chapter or any other (state) statute or regulation.

History: Effective January 1, 1980.

General Authority
NDCC 26-01-16.1,
28-32-02

Law Implemented
NDCC 26-10-08.1

45-03-01-02. SCOPE.

1. Except as hereafter exempted, this chapter shall apply to any solicitation, negotiation, or procurement of life insurance occurring within this state. This chapter shall apply to any issuer of life insurance contracts including fraternal benefit societies.
2. Unless otherwise specifically included, this chapter shall not apply to:
 - a. Annuities.
 - b. Credit life insurance.
 - c. Group life insurance.
 - d. Life insurance policies issued in connection with pension and welfare plans as defined by and which are subject to the Federal Employee Retirement Income Security Act of 1974.
 - e. Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

History: Effective January 1, 1980.

General Authority
NDCC 26-01-16.1,
28-32-02

Law Implemented
NDCC 26-10-08.1

45-03-01-03. DEFINITIONS. For the purposes of this chapter, the following definitions shall apply:

1. "Buyer's guide" means a document which contains, and is limited to, the language contained in the appendix to this chapter or language approved by commissioner of insurance.
2. "Cash dividend" means the current illustrated dividend which can be applied toward payment of the gross premium.
3. "Equivalent level annual dividend" is calculated by applying the following steps:
 - a. Accumulate the annual cash dividends at five percent interest compounded annually to the end of the tenth and twentieth policy years.
 - b. Divide each accumulation in subdivision a by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the values in subdivision a over the respective periods stipulated in subdivision

- a. If the period is ten years, the factor is 13.207, and if the period is twenty years, the factor is 34.719.
 - c. Divide the results of subdivision b by the number of thousands of the equivalent level death benefit to arrive at the equivalent level annual dividend.
4. "Equivalent level death benefit" of a policy or term life insurance rider is an amount calculated as follows:
- a. Accumulate the guaranteed amount payable upon death, regardless of the cause of death, at the beginning of each policy year for ten and twenty years at five percent interest compounded annually to the end of the tenth and twentieth policy years respectively.
 - b. Divide each accumulation of subdivision a by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in subdivision a over the respective periods stipulated in subdivision a. If the period is ten years, the factor is 13.207, and if the period is twenty years, the factor is 34.719.
5. "Generic name" means a short title which is descriptive of the premium and benefit patterns of a policy or a rider.
6. "Life insurance cost indexes" are calculated as follows:
- a. "Life insurance net payment cost index" is calculated in the same manner as the comparable life insurance cost index except that the cash surrender value and any terminal dividend are set at zero.
 - b. "Life insurance surrender cost index" is calculated by applying the following steps:
 - (1) Determine the guaranteed cash surrender value, if any, available at the end of the tenth and twentieth policy years.
 - (2) For participating policies, add the terminal dividend payable upon surrender, if any, to the accumulation of the annual cash dividends at five percent interest compounded annually to the end of the period selected and add this sum to the amount determined in paragraph 1.
 - (3) Divide the result of paragraph 2. (Paragraph 1 for guaranteed-cost policies) by an interest factor that converts it into an equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in paragraph 2. (Paragraph 1 for guaranteed-cost policies) over the respective periods stipulated in paragraph 1. If the period is ten years, the factor is 13.207, and if the period is twenty years, the factor is 34.719.
 - (4) Determine the equivalent level premium by accumulating each annual premium payable for the basic policy or rider at five

percent interest compounded annually to the end of the period stipulated in paragraph 1 and dividing the result by the respective factors stated in paragraph 3. (This amount is the annual premium payable for a level premium plan.)

(5) Subtract the result of paragraph 3 from paragraph 4.

(6) Divide the result of paragraph 5 by the number of thousands of the equivalent level death benefit to arrive at the life insurance surrender cost index.

7. "Policy summary" means a written statement describing the elements of the policy including but not limited to:

a. A prominently placed title as follows: "STATEMENT OF POLICY COST AND BENEFIT INFORMATION".

b. The name and address of the insurance agent, or if no agent is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the policy summary.

c. The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written.

d. The generic name of the basic policy and each rider.

e. The following amounts, where applicable, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including, but not necessarily limited to, the years for which life insurance cost indexes are displayed and at least one age from sixty through sixty-five or maturity, whichever is earlier:

(1) The annual premium for the basic policy.

(2) The annual premium for each optional rider.

(3) The guaranteed amount payable upon death, at the beginning of the policy year regardless of the cause of death, other than suicide, or other specifically enumerated exclusions, which is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately.

(4) The total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider.

(5) The cash dividends payable at the end of the year with value shown separately for the basic policy and each rider. (Dividends need not be displayed beyond the twentieth policy year.)

- (6) The guaranteed endowment amounts payable under the policy which are not included under guaranteed cash surrender values above.
- f. The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is variable, the policy summary includes the maximum annual percentage rate.
 - g. Life insurance cost indexes for ten and twenty years but in no case beyond the premium paying period. Separate indexes are displayed for the basic policy and for each optional term life insurance rider. Such indexes need not be included for optional riders which are limited to benefits such as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than twelve months and guaranteed insurability benefits nor for the basic policies or optional riders covering more than one life.
 - h. The equivalent level annual dividend, in the case of participating policies and participating optional term life insurance riders, under the same circumstances and for the same durations at which life insurance cost indexes are displayed.
 - i. A policy summary which includes dividends shall also include a statement that dividends are based on the company's current dividend scale and are not guaranteed in addition to a statement in close proximity to the equivalent level annual dividend as follows: "An explanation of the intended use of the Equivalent Level Annual Dividend is included in the Life Insurance Buyer's Guide."
 - j. A statement in close proximity to the life insurance costs indexes as follows: "An explanation of the intended use of these indexes is provided in the Life Insurance Buyer's Guide."
 - k. The date on which the policy summary is prepared.

The policy summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in subdivision e shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space.

History: Effective January 1, 1980.

General Authority
NDCC 26-01-16.1,
28-32-02

Law Implemented
NDCC 26-10-08.1

45-03-01-04. DISCLOSURE REQUIREMENTS.

1. The insurer shall provide, to all prospective purchasers, a buyer's guide and a policy summary prior to accepting the applicant's initial premium or premium deposit, unless the policy for which application is made contains an unconditional refund provision of at least ten days or unless the policy summary contains such an unconditional refund offer, in which event the buyer's guide and policy summary must be delivered with the policy or prior to delivery of the policy.
2. The insurer shall provide a buyer's guide and a policy summary to any prospective purchaser upon request.
3. In the case of policies whose equivalent level death benefit does not exceed five thousand dollars, the requirement for providing a policy summary will be satisfied by delivery of a written statement containing the information described in subdivisions b, c, d, paragraphs 1, 2, and 3 of subdivision e, and subdivisions f, g, h, j, and k, all of subsection 7 of section 45-03-01-03.

History: Effective January 1, 1980.

General Authority
NDCC 26-01-16.1,
28-32-02

Law Implemented
NDCC 26-10-08.1

45-03-01-05. GENERAL RULES.

1. Each insurer shall maintain at its home office or principal office a complete file containing one copy of each document authorized by the insurer for use pursuant to this chapter. The file shall contain one copy of each authorized form for a period of three years following the date of its last authorized use.
2. An agent shall inform the prospective purchaser, prior to commencing a life insurance sales presentation, that the agent is acting as a life insurance agent and inform the prospective purchaser of the full name of the insurance company which the agent is representing to the buyer. In sales situations in which an agent is not involved, the insurer shall identify its full name.
3. Terms such as financial planner, investment advisor, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.

4. Any reference to policy dividends must include a statement that dividends are not guaranteed.
5. A system or presentation which does not recognize the time-value of money through the use of appropriate interest adjustments shall not be used for comparing the cost of two or more life insurance policies. Such a system may be used for the purpose of demonstrating a cash-flow pattern of a policy if such presentation is accompanied by a statement disclosing that the presentation does not recognize that, because of interest, a dollar in the future has less value than a dollar today.
6. A presentation of benefits shall not display guaranteed and nonguaranteed benefits as a single sum unless they are shown separately in close proximity thereto.
7. A statement regarding the use of life insurance cost indexes shall include an explanation to the effect that the indexes are useful only for the comparison of the relative costs of two or more similar policies.
8. A life insurance cost index which reflects dividends or an equivalent level annual dividend shall be accompanied by a statement that it is based on the company's current dividend scale and is not guaranteed.
9. For the purposes of this chapter, the annual premium for a basic policy or rider, for which the company reserves the right to change the premium, shall be the maximum annual premium.

History: Effective January 1, 1980.

General Authority
NDCC 26-01-16.1,
28-32-02

Law Implemented
NDCC 26-10-08.1

45-03-01-06. FAILURE TO COMPLY. Failure of an insurer to provide or deliver a buyer's guide, or a policy summary as provided in section 45-03-01-04 shall constitute an omission which misrepresents the benefits, advantages, conditions, or terms of an insurance policy.

History: Effective January 1, 1980.

General Authority
NDCC 26-01-16.1,
28-32-02

Law Implemented
NDCC 26-10-08.1

45-03-01-07. EFFECTIVE DATE. This chapter shall apply to all solicitations of life insurance which commence on or after January 1, 1980.

History: Effective January 1, 1980.

General Authority
NDCC 26-01-16.1,
28-32-02

Law Implemented
NDCC 26-10-08.1

APPENDIX

Life Insurance Buyer's Guide

The face page of the Buyer's Guide shall read as follows:

Life Insurance Buyer's Guide

This guide can show you how to save money when you shop for life insurance. It helps you to:

- Decide how much life insurance you should buy;
- Decide what kind of life insurance policy you need; and
- Compare the cost of similar life insurance policies.

Prepared by the National Association of Insurance Commissioners:

Reprinted by (Company Name)
(Month and Year of Printing)

The Buyer's Guide shall contain the following language at the bottom of page 2:

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various Insurance Departments to coordinate insurance laws for the benefit of all consumers. You are urged to use this Guide in making a life insurance purchase.

This Guide Does Not Endorse Any Company or Policy.

The remaining text of the Buyer's Guide shall begin on page 3 as follows:

Buying Life Insurance

When you buy life insurance, you want a policy which fits your needs without costing too much. Your first step is to decide how much you need, how much you can afford to pay, and the kind of policy you want. Then, find out what various companies charge for that kind of policy. You can find important differences in the cost of life insurance by using the life insurance cost indexes which are described in this Guide. A good life insurance agent or company will be able and willing to help you with each of these shopping steps.

If you are going to make a good choice when you buy life insurance, you need to understand what kinds are available. If one kind does not seem to fit your needs, ask about the other kinds which are described in this Guide. If you feel that you need more information than is given here, you may want to check with a life insurance agent or company or books on life insurance in your public library.

Choosing The Amount

One way to decide how much life insurance you need is to figure how much cash and income your dependents would need if you were to die. You should think of life insurance as a source of cash needed for expenses of final illnesses, paying taxes, mortgages or other debts. It can also provide income for your family's living expenses, educational costs and other future expenses. Your new policy should come as close as you can afford to making up the difference between (1) what your dependents would have if you were to die now, and (2) what they would actually need.

Choosing The Right Kind

All life insurance policies agree to pay an amount of money if you die. But all policies are not the same. There are three basic kinds of life insurance:

1. Term Insurance.
2. Whole Life Insurance.
3. Endowment Insurance.

Remember, no matter how fancy the policy title or sales presentation might appear, all life insurance policies contain one or more of the three basic kinds. If you are confused about a policy that sounds complicated, ask the agent or company if it combines more than one kind of life insurance. The following is a brief description of the three basic kinds:

Term Insurance

Term insurance is a death protection for a "term" of one or more years. Death benefits will be paid only if you die within that term of years. Term insurance generally provides the largest immediate death protection for your premium dollar.

Some term insurance policies are "renewable" for one or more additional terms even if your health has changed. Each time you renew the policy for a new term, premiums will be higher. You should check the premiums at older ages and the length of time the policy can be continued.

Some term insurance policies are also "convertible". This means that before the end of the conversion period, you may trade the term policy for a whole life or endowment insurance policy even if you are not in good health. Premiums for the new policy will be higher than you have been paying for the term insurance.

Whole Life Insurance

Whole life insurance gives death protection for as long as you live. The most common type is called "straight life" or "ordinary life" insurance, for which you pay the same premiums for as long as you live. These premiums can be several times higher than you would pay initially for the same amount of term insurance. But they are smaller than the premiums you would eventually pay if you were to keep renewing a term insurance policy until your later years.

Some whole life policies let you pay premiums for a shorter period such as 20 years, or until age 65. Premiums for these policies are higher than for

ordinary life insurance since the premium payments are squeezed into a shorter period.

Although you pay higher premiums, to begin with, for whole life insurance than for term insurance, whole life insurance policies develop "cash values" which you may have if you stop paying premiums. You can generally either take the cash, or use it to buy some continuing insurance protection. Technically speaking, these values are called "nonforfeiture benefits". This refers to benefits you do not lose (or "forfeit") when you stop paying premiums. The amount of these benefits depends on the kind of policy you have, its size, and how long you have owned it.

A policy with cash values may also be used as collateral for a loan. If you borrow from the life insurance company, the rate of interest is shown in your policy. Any money which you owe on a policy loan would be deducted from the benefits if you were to die, or from the cash value if you were to stop paying premiums.

Endowment Insurance

An endowment insurance policy pays a sum or income to you - the policyholder - if you live to a certain age. If you were to die before then, the death benefit would be paid to your beneficiary. Premiums and cash values for endowment insurance are higher than for the same amount of whole life insurance. Thus endowment insurance gives you the least amount of death protection for your premium dollar.

Finding a Low-Cost Policy

After you have decided which kind of life insurance fits your needs, look for a good buy. Your chances of finding a good buy are better if you use two types of index numbers that have been developed to aid in shopping for life insurance. One is called the "Surrender Cost Index" and the other is the "Net Payment Cost Index". It will be worth your time to try to understand how these indexes are used, but in any event, use them only for comparing the relative costs of similar policies. LOOK FOR POLICIES WITH LOW COST INDEX NUMBERS.

What Is Cost?

"Cost" is the difference between what you pay and what you get back. If you pay a premium for life insurance and get nothing back, your cost for the death protection is the premium. If you pay a premium and get something back later on, such as a cash value, your cost is smaller than the premium.

The cost of some policies can also be reduced by dividends; these are called "participating" policies. Companies may tell you what their current dividends are, but the size of future dividends is unknown today and cannot be guaranteed. Dividends actually paid are set each year by the company.

Some policies do not pay dividends. These are called "guaranteed cost" or "nonparticipating" policies. Every feature of a guaranteed cost policy is fixed so that you know in advance what your future cost will be.

The premiums and cash values of a participating policy are guaranteed, but the dividends are not. Premiums for participating policies are typically higher than for guaranteed cost policies, but the cost to you may be higher or lower, depending on the dividends actually paid.

What Are Cost Indexes?

In order to compare the cost of policies, you need to look at:

1. Premiums.
2. Cash Values.
3. Dividends.

Cost indexes use one or more of these factors to give you a convenient way to compare relative costs of similar policies. When you compare costs, an adjustment must be made to take into account that money is paid and received at different times. It is not enough to just add up the premiums you will pay and subtract the cash values and dividends you expect to get back. These indexes take care of the arithmetic for you. Instead of having to add, subtract, multiply, and divide many numbers yourself you just compare the index numbers which you can get from life insurance agents and companies:

1. Life Insurance Surrender Cost Index. This index is useful if you consider the level of the cash values to be of primary importance to you. It helps you compare costs if at some future point in time, such as 10 or 20 years, if you were to surrender the policy and take its cash value.
2. Life Insurance Net Payment Cost Index. This index is useful if your main concern is the benefits that are to be paid at your death and if the level of cash values is of secondary importance to you. It helps you compare costs at some future point in time, such as 10 or 20 years, if you continue paying premiums on your policy and do not take its cash value.

There is another number called the Equivalent Level Annual Dividend. It shows the part dividends play in determining the cost index of a participating policy. Adding a policy's Equivalent Level Annual Dividend to its cost index allows you to compare total costs of similar policies before deducting dividends. However, if you make any cost comparisons of a participating policy with a nonparticipating policy, remember that the total cost of the participating policy will be reduced by dividends, but the cost of the nonparticipating policy will not change.

How Do I Use Cost Indexes?

The most important thing to remember when using cost indexes is that a policy with a small index number is generally a better buy than a comparable policy with a larger index number. The following rules are also important:

1. Cost comparisons should only be made between similar plans of life insurance. Similar plans are those which provide essentially the same

basic benefits and require premium payments for approximately the same period of time. The closer policies are to being identical, the more reliable the cost comparison will be.

2. Compare index numbers only for the kind of policy, for your age and for the amount you intend to buy. Since no one company offers the lowest cost for all types of insurance at all ages and for all amounts of insurance, it is important that you get the indexes for the actual policy, age and amount which you intend to buy. Just because a "Shopper's Guide" tells you that one company's policy is a good buy for a particular age and amount, you should not assume that all of the company's policies are equally good buys.
3. Small differences in index numbers could be offset by other policy features, or differences in the quality of service you may expect from the company or its agent. Therefore, when you find small differences in cost indexes, your choice should be based on something other than cost.
4. In any event, you will need other information on which to base your purchase decision. Be sure you can afford the premiums, and that you understand its cash values, dividends, and death benefits. You should also make a judgment on how well the life insurance company or agent will provide service in the future, to you as a policyholder.
5. These life insurance cost indexes apply to new policies and should not be used to determine whether you should drop a policy you have already owned for a while, in favor of a new one. If such a replacement is suggested, you should ask for information from the company which issued the old policy before you take action.

Important Things To Remember - A Summary

The first decision you must make when buying a life insurance policy is choosing a policy whose benefits and premiums most closely meet your needs and ability to pay. Next, find a policy which is also a relatively good buy. If you compare Surrender Cost Indexes and Net Payment Cost Indexes of similar competing policies, your chances of finding a relatively good buy will be better than if you do not shop. REMEMBER, LOOK FOR POLICIES WITH LOWER COST INDEX NUMBERS. A good life insurance agent can help you to choose the amount of life insurance and kind of policy you want and will give you cost indexes so that you can make cost comparisons of similar policies.

Don't buy life insurance unless you intend to stick with it. A policy which is a good buy when held for 20 years can be very costly if you quit during the early years of the policy. If you surrender such a policy during the first few years, you may get little or nothing back and much of your premium may have been used for company expenses.

Read your new policy carefully, and ask the agent or company for an explanation of anything you do not understand. Whatever you decide now, it is important to review your life insurance program every few years to keep up with changes in your income and responsibilities.

TITLE 52

MOTOR VEHICLE DEPARTMENT

STAFF COMMENT: Sections 52-06-04-07, 52-06-06-03, 52-06-06-04, 52-06-10-03, and 52-06-10-09 were republished to correct typographical errors.

TITLE 62
PLUMBING, BOARD OF

STAFF COMMENT: Table 62-03-07 replaces a previous table but is not underscored in order to improve readability.

62-03-12-04. VENT TERMINALS.

1. Extension above roofs. Extension of vent pipes through a roof shall be terminated at a minimum of six inches [15.24 centimeters] and a maximum of nine inches [22.86 centimeters] above it. On sloping roofs this measurement will be taken on the roof peak side of the vent pipe.
2. Waterproof flashings. Each vent terminal shall be made watertight with the roof by a proper flashing the use of approved flashings or flashing material. ~~The flashing shall provide a one-inch [2.54 centimeters] air space between the vent pipe and the flashing; it shall be of telescoping top sleeve type to allow for variation in height of the vent terminal; it shall further provide an inside sleeve to ensure that a one-inch [2.54 centimeter] air space is provided completely through the roof; it shall have a lead cap provided with a band [draw ring] to secure the lead cap to the end of a metal vent pipe; or a plastic cap solvent welded to a plastic vent pipe.~~
3. Flag poling prohibited. Vent terminals shall not be used for the purpose of flag poling, television aerials, or similar purposes.
4. Location of vent terminal. No vent terminal shall be located directly beneath any door, window, or other ventilating opening of the building or of an adjacent building nor shall any such vent terminal be within ten feet [3.05 meters] horizontally of such an opening unless it is at least two feet [60.96 centimeters] above the top of such opening.
5. Extensions through wall. Vent terminals extending through a wall, when approved by the administrative authority, shall be at least ten feet [3.05 meters] horizontally from any lot line and terminate downward. They shall be effectively screened and shall meet the requirements of subsection 4. Vent terminals shall not terminate under the overhang of a building.
6. Extensions outside buildings. No soil, waste, or vent pipe extension shall be run or placed on the outside of a wall of any building.

History: Amended effective February 1, 1980.

General Authority
NDCC 43-18-09

Law Implemented
NDCC 43-18-09

TABLE 62-03-07

MINIMUM PLUMBING FACILITIES

Type of building * or occupancy	Water Closets		Urinals
	Male	Female	Fixtures/Persons
Schools			
Elementary	1-30	1-25	1-25
Secondary	1-40	1-30	1-25
.....			
Theaters, +			
Auditoriums,	2- 1-200	2- 1-100	2- 1-200
Convention Halls	3-201-400	3-101-200	3-201-400
	4-401-600	4-201-400	4-401-600
	Over 400, add 1 fixture for each additional 500 males, 1 for each 300 females		Over 600, add 1 for each additional 300 males
.....			
Dormitories +++			
	1 per 10	1 per 8	1 per 25
	Additional Persons		Over 150, 1 per
	1 per 25	1 per 20	50
.....			
Office or public			
buildings +	Fixtures	Persons	**
	1	1- 15	
	2	16- 35	
	3	36- 55	
	4	56- 80	
	5	81-110	
	6	111-150	
	1 additional for each 40		
.....			
Manufacturing,			
warehouses,	1	1- 9	**
workshops, loft	2	10- 24	
buildings,	3	25- 49	
foundries, and	4	50- 74	
similar	5	75-100	
establishments	1 additional for each 30		
.....			
Restaurants,			
bars, and lounges	2	1- 50	1
++ +++ ++++	3	51-100	1
	4	101-200	2
	5	201-500	3
.....			
Dwelling or			
apartment houses	1 for each dwelling or apartment unit		

TABLE 62-03-07 (continued)
MINIMUM PLUMBING FACILITIES

Type of building * or occupancy	Lavatories	Bathtubs or Showers	Drinking Fountains ***
	Fixtures/Persons	Fixtures/Persons	Persons
Schools			
Elementary	1-35		1-40
Secondary	1-40		1-50
.....			
Theaters, + Auditoriums, Convention Halls	1- 1-200 2-201-400 3-401-750 Over 750, 1 for each addnl 500 persons		1 per 100 1 addnl for each 200 thereafter
.....			
Dormitories ***	1 per 12 Over 12 1 per 15 females 1 per 20 males	1 per 8 For female, add one bathtub per 30, over 150, 1 per 20	1 per 100 1 addnl for each 200 thereafter
.....			
Office or public buildings +	1- 1- 15 2- 16- 35 3- 36- 60 4- 61- 90 5- 91-125 1 addnl for each 45		1 per 100 1 addnl for each 200 thereafter
.....			
Manufacturing, warehouses, workshops, loft buildings, foundries, and similar establishments	Up to 100 1 per 10 Over 100 1 per 15	1 shower for each 15 persons exposed to excessive heat or to skin contamination with poisonous, infectious, or irritating materials	
.....			
Restaurants, bars, and lounges ++ +++ +****	2 3 4 4		

.....			
Dwelling or apartment houses	1 for each dwelling or apartment unit	1 for each dwelling or apartment unit	

.....			
Working men temporary facilities	1/5 working men See Section 62-03-07-24		1 fixture or equivalent for each 100 working men
.....			
Hospitals Individual Room Ward	The minimum number of plumbing fixtures for hospitals and related institutions will be governed by the rules, regulations, and standards for hospitals and related institutions in North Dakota, a copy of which is available from the Division of Health Facilities, North Dakota State Department of Health, State Capitol, Bismarck, North Dakota 58505.		

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- * Building category not shown on this Table shall be considered separately by the Administrative Authority.
 - ** Urinals may be provided in men's toilet rooms in lieu of water closets but for not more than 2/3 of the required number of water closets.
 - *** Drinking fountains shall not be installed in toilet rooms.
 - **** Laundry trays - 1 laundry tray or 1 automatic washer standpipe for each dwelling unit or 2 laundry trays or 2 automatic washer standpipes (or combinations thereof) for each 10 apartments. Kitchen sinks - 1 for each dwelling or apartment unit.
 - + 1 service sink per floor.
 - ++ To find the number of each sex for Restaurants, bars, and lounges divide the number of square feet in the seating area by 15 and divide this number in half for each sex.
 - +++ Laundry trays - 1 for each 50 persons. Service sinks - 1 for each 100 persons.
 - ++++ A restaurant is defined as a business which sells food to be consumed on the premises.
 - (a) The number of occupants for a drive-in restaurant shall be considered as equal to the number of parking stalls.
 - (b) Handwashing facilities must be available in the kitchen for employees.

History: Amended effective February 1, 1980.

TITLE 69

PUBLIC SERVICE COMMISSION

STAFF COMMENT: Sections 69-05.3-01-03 and 69-09-06-06 were republished to correct typographical errors.

TITLE 75

SOCIAL SERVICE BOARD

STAFF COMMENT: The synopsis of the change to paragraph 2 of subdivision c of subsection 2 of section 75-02-02-07 is contained in other committee material. Sections 75-02-01-07 and 75-03-06-04 were republished to correct typographical errors.

75-02-02-07. CONDITIONS OF ELIGIBILITY.

1. No age, residence, citizenship, or other requirements will be imposed that is prohibited by title XIX of the Social Security Act.
2. Financial eligibility.
 - a. Persons receiving aid to families with dependent children or technically eligible to receive aid to families with dependent children on the basis of categorical relatedness shall be subject to the income levels set out below and to the resource eligibility standards set out under North Dakota Century Code chapter 50-09 and the resource rules and policies of the social service board pertaining to aid to families with dependent children eligibility except that those resource rules set out below which are more liberal in any particular case than the aid to families with dependent children rules and policies shall be applicable in the case of aid to families with dependent children recipients and those categorically related to the aid to families with dependent children program.
 - b. Persons receiving supplemental security income or technically eligible therefor on the basis of age, disability, or blindness shall be subject to the income levels set out below as well as the resource standards set out below.
 - c. The following levels of income and resources for maintenance, in total dollar amounts, will be used as a basis for establishing financial eligibility for medical assistance, and are in accordance with 45 C.F.R. 248.21:
 - (1) The income levels applicable to families of various sizes in determining eligibility for medical assistance will be according to income levels established by the social service board of North Dakota.
 - (2) ~~Only--twenty-five--percent~~ None of the net income of the spouse of an aged, blind, or disabled individual who enters a long-term care facility will be deemed as available to the aged, blind, or disabled individual in determining the eligibility of the aged, blind, or disabled individual for medical assistance

while in such long-term care facility. For the purposes of this paragraph, the term "~~net-income~~" means the income (whether earned or unearned) of the ~~spouse~~ remaining after deduction therefrom of the following:

~~(a) Payments made for noncovered necessary medical care;~~

~~(b) Payments made for necessary health insurance coverage;~~

~~(c) Set aside of income for the spouse and other dependents not in long-term care based upon the protected income levels set out above state hospital for the mentally ill at Jamestown shall be treated as a long-term care facility.~~

(3) Only twenty-five percent of the net income of the parent or parents of a blind or disabled individual under twenty-one years of age will be deemed as available when the individual resides away from the home of the individual's parents on more than a temporary basis, e.g., the child is in a long-term care facility. For the purposes of this paragraph, the term "net income" means the income (whether earned or unearned) of the parent or parents remaining after deduction therefrom of the following:

(a) Payment made for noncovered necessary medical care.

(b) Payments made for necessary health insurance coverage.

(c) Reasonable work-related expenses for producing any earned income.

(d) Set aside of income for the parent or parents and their valid dependents based upon the protected income levels set out above.

(4) All spousal resources or parental resources will be deemed as available to those aged, blind, or disabled individuals as set out in subsections b and c.

d. Resources. The following property provisions will be applied in determining eligibility for medical assistance:

(1) The home. The home of the individual or family will be exempt in determining eligibility for medical assistance. The home is defined as including the land on which it is located, providing the acreage does not exceed one hundred sixty contiguous acres [64.75 hectares] if rural or two acres [.81 hectares] if located in town. Acreage in excess of these amounts would be declared "real property other than home". The home will be considered occupied and exempt if the individual or family is temporarily absent but actually intends and is able to return within a reasonable length of time.

- (2) Real property other than the home. Real property other than the home may not exceed an equity of two thousand five hundred dollars except that real property which is essential to earning a livelihood shall be exempt from the limitation, if the liquidation of such assets would cause undue hardship. The criteria of undue hardship is met when transfer of an income-producing asset would result in reduction of the periodic net income of the transferor and the transferor's valid dependents below the appropriate income level set out in paragraph 1 of subdivision c of subsection 2 of section 75-02-02-07. If undue hardship is not a consideration, equity in excess of the two thousand five hundred dollars would be considered available for meeting medical costs, providing the property is saleable. The person would have the option of liquidating the excess property or borrowing funds on it. It is intended that the provision for exemption of income producing real or personal property above the two thousand five hundred dollar amount be applied only when the property owners are actively engaged in utilizing the property to earn income and derive the total benefit of such income for their maintenance needs. Thus, for example:
- (a) An individual who is merely receiving rent income from property would not be eligible for the additional exemption.
 - (b) Similarly, an individual receiving income from stocks, bonds, savings accounts, etc., would not be eligible for the additional exemption.
 - (c) However, an individual would be actively engaged in utilizing such property if the individual contributed significant current personal labor in utilizing such property for income-producing purposes. The payment of social security taxes on the income from such current personal labor is an indicator of the active utilization of such property.
- (3) Personal property resources.
- (a) Personal property is defined as including cash, savings, and redeemable stocks and bonds, vehicles, machinery, livestock, etc., but does not include personal effects, wearing apparel, household goods, furniture, or trailer homes being used for living quarters. Cash surrender value of life insurance policies will be considered personal property but not cash.
 - (b) Term insurance is exempt personal property. Burial insurance, the terms of which specifically provide that the proceeds can be used only to pay the burial expenses of the insured is also exempt. Other "prepaid" burial arrangements are considered as liquid assets.

- (c) One motor vehicle owned by the applicant or recipient is exempt regardless of its value. Any other motor vehicle must be considered as personal property and is subject to the limitations on personal property set out below.
- (d) Personal property may not exceed an equity of two thousand five hundred dollars except that such property which is essential to the earning of a livelihood shall be exempt from the limitation if the liquidation of such excess assets would cause undue hardship. Liquidation of income producing personal property which would result in reducing annual income below the established income levels would be considered undue hardship. If undue hardship is not found to be a consideration, equity in excess of the two thousand five hundred dollars would be considered available for meeting medical costs providing the property is saleable. The person would have the option of liquidating the excess property or borrowing funds on it. It is intended that the provision for exemption of income producing personal property above the two thousand five hundred dollar amount be applied only when the property owners are actively engaged in utilizing the property to earn income and derive the total benefit of such income for their maintenance needs. The descriptive definitions of the phrases "undue hardship" and "actively engaged in utilizing the property" as set out in paragraph 2 of subdivision d of subsection 2 of section 75-02-02-07 are fully applicable also in instances involving personal property.
- (e) In all instances, real and personal property must be realistically evaluated in accord with current market value, and in considering net equity, any possible costs which may be associated with liquidation of the excess property must be taken into account.

With respect to cash, savings, redeemable stocks and bonds, and other liquid assets, the following levels will be applicable to families of various sizes; one person, one thousand five hundred dollars; two persons, two thousand two hundred fifty dollars; and for each additional person, an amount of twenty-five dollars shall be added. These amounts will not be considered as being available for medical expenses.

e. Disqualifying transfers.

- (1) Every person who before or after making application for medical assistance gives an assignment or makes a transfer of the person's property (whether real or personal or both) for the purpose of rendering oneself eligible for medical assistance is thereby rendered ineligible.

- (2) The intent of the person making such a transfer is the basis for determining eligibility for medical assistance.
 - (3) There are legitimate instances when property transfers may be valid when related to a particular set of circumstances. The applicant or recipient should be given full opportunity to state the reasons for having made the transfer of property and this evidence should in turn be considered in relation to the following questions:
 - (a) Was adequate consideration received?
 - (b) How recent was the transfer? Caution on this point is advised since very recent transfers may in some instances be entirely acceptable insofar as eligibility for medical assistance is concerned.
 - (c) Is the applicant's or recipient's stated purpose reasonable in view of the circumstances prevailing at the time of transfer?
 - (d) Would it have been reasonable to anticipate that the transfer of property at the time it occurred would result in an earlier need for assistance?
 - (e) Were benefits available to the applicant or recipient from the transferee that were contingent upon the transfer of the property?
 - (f) Did the transferee have a legal or otherwise equitable interest in the property transferred to the transferee?
 - (4) A transfer of property for less than adequate consideration, made either within two years prior to the application for medical assistance or after a previous application has been made and denied because of excess property resources, shall be presumed to have been made for the purpose of rendering the applicant eligible for medical assistance. This presumption may be rebutted by substantial evidence of an intent which is inconsistent with the presumed intent.
- f. There shall be a flexible measurement of available income which will be applied in the following order or priority:
- (1) First, for maintenance, so that any income in an amount at or below the established level will be protected for maintenance.
 - (2) Next, payments made for noncovered necessary medical care will be deducted.
 - (3) Reasonable work-related expenses for producing any earned income will be deducted.

- (4) Finally, payments made for necessary health insurance coverage will be deducted.
 - (5) All of the remaining excess income will be applied to costs of medical assistance included in the state plan.
- g. All income and resources will be considered in establishing eligibility and in the flexible application of income to medical costs not in the state plan, and payment toward the medical assistance costs.
- (1) The state agency or local agency under supervision of the state agency will take reasonable measures to ascertain any legal liability of third parties arising after March 31, 1968, for the medical care and services included under the plan, the need for which arises out of injury, disease, or disability of applicants for or recipients of medical assistance.
 - (2) The state or local agency, in determining whether medical assistance is payable, will treat any third party liability as a current resource when such liability is found to exist and payment by the third party has been made or will be made within a reasonable time.
 - (3) The state or local agency will not withhold reimbursement from a third party for assistance provided when the party's liability is established after assistance is granted and in any other case in which the liability of a third party existed but was not treated as a current resource. In such cases, the state and local agency shall require the applicant or recipient to execute all necessary documents to protect rights to subsequent reimbursements. Failure of any applicant or recipient to execute any such documents shall be considered adequate grounds for ineligibility for medical assistance.
 - (4) The state or local agency will seek reimbursement from a third party for assistance provided when the party's liability is established after assistance is granted and in any other case in which the liability of a third party existed, but was not treated as a current resource.
- h. Only such income and resources as are actually available will be considered; income and resources will be reasonably evaluated.
- i. The financial responsibility of any individual for any applicant or recipient of medical assistance will be limited to the responsibility of spouse for spouse, and parents for children under age twenty-one, or blind, or permanently and totally disabled. Such responsibility is imposed on applicants and recipients of medical assistance as a condition of eligibility under the state plan.
3. Blindness and disability.

a. The federal definition of the terms "blind" and "disabled" as used by the social security administration in the supplemental security income program shall be used in all applicable eligibility determinations.

b. The following is the state's definition of blindness in terms of ophthalmic measurement:

An individual is considered blind if the individual has central vision acuity of 20/200 or less in the better eye with correcting glasses or a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance of no greater than twenty degrees.

c. In any instance in which a determination is to be made whether an individual is blind according to the state's definition, there will be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select.

d. Each eye examination report form will be reviewed by a state supervising ophthalmologist who is responsible for the agency's decision that the applicant does or does not meet the state's definition of blindness.

e. The following is the state's definition of permanent and total disability, showing that: (1) "permanently" is related to the duration of the impairment or combination of impairments; (2) "totally" is related to the degree of disability; and (3) "permanently and totally disabled" means that the individual has some permanent physical or mental impairment, disease, or loss, or combination thereof, that substantially precludes the individual from engaging in useful occupations within the individual's competence, such as holding a job.

Under this definition: "Permanently" refers to a condition which is not likely to improve or which will continue throughout the lifetime of the individual; it may be a condition which is not likely to respond to any known therapeutic procedures, or a condition which is likely to remain static or to become worse unless certain therapeutic measures are carried out, where treatment is unavailable, inadvisable, or is refused by the individual on a reasonable basis; "permanently" does not rule out the possibility of vocational rehabilitation or even possible recovery in light of future medical advances or changed prognosis; in this sense the term refers to a condition which continues indefinitely, as distinct from one which is temporary or transient. "Totally" involves considerations in addition to those verified through the medical findings, such as age, training, skills, and work experience, and the probable functioning of the individual in the individual's particular situation in light of the individual's impairment; an individual's disability would usually be tested in relation to ability to engage in remunerative employment; the ability to keep house or to care for others would be the appropriate test for (and

only for) individuals, such as housewives, who were engaged in this occupation prior to the disability and do not have a history of gainful employment; eligibility may continue, even after a period of rehabilitation and readjustment, if the individual's work capacity is still very considerably limited (in comparison with that of a normal person) in terms of such factors as the speed with which the individual can work, the amount the individual can produce in a given period of time, and the number of hours the individual is able to work.

- f. Each medical report form and social history will be reviewed by technically competent persons, not less than a physician and a social worker qualified by professional training and pertinent experience, acting cooperatively, who are responsible for the agency's decision that the applicant does or does not meet the appropriate definition of blindness or disability. The agency shall decline to determine blindness or disability when such determination can be made pursuant to the processing of a supplemental security income benefit's application by the social security administration or its contractee for that purpose.

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General Authority
NDCC 50-24.1-04

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