

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

**Budget Section Meeting, December 5, 2012  
Senator Tony Grindberg, Chairman**

**Testimony**

Good afternoon, Chairman Grindberg and members of the committee, I am Sherry Neas of the Office of Management and Budget, State Procurement Office.

State law requires OMB to provide the budget section with a report of commodities and services that have been exempted from state procurement requirements by the written directive of OMB. (Ref. N.D.C.C. § 54-44.4-02.2)

OMB promulgates rules related to state procurement, and the exemptions are contained in those rules. The first attachment to my testimony is the rule that lists the entities, commodities and services that are exempt from state procurement requirements. Most of these exemptions are subject to other statutes. For example, public improvements are subject to the N.D.C.C. Title 48. Other exemptions include grant programs and professional memberships.

OMB also promulgates rules related to specific commodities and services that have been determined to be exempted from a fully competitive process. Those rules are the second attachment to my testimony. OMB is currently in the rule-making process, and you can see the proposed changes.

OMB approved one exemption by written directive in July:

The Commission on Legal Counsel for Indigents provides legal services for its clients (re. N.D.C.C. Chapter 54-61). Current rules exempt contracts for hiring professional witnesses to provide professional services or testimony related to existing or probable lawsuits in which the state may become a party. This rule will be expanded to include contracts related to indigent defense services.

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

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

**Section**

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

1. These rules apply to all procurements of commodities and services, regardless of the funding source, by each state agency and institution in the executive branch of government, except this chapter does not apply to:
  - a. Those agencies or institutions governed by the state board of higher education, which are exempt under subsection 5 of North Dakota Century Code section 15-10-17 and North Dakota Century Code section 54-44.4-02;
  - b. Those commodities and services not subject to state procurement laws under North Dakota Century Code section 54-44.4-02;
  - c. Those procurements costing less than a specified amount and those specific commodities or services as determined by the director's written directive, pursuant to North Dakota Century Code section 54-44.4-02;
  - d. Contracts for services of legal counsel with attorneys who are not employed by the state, pursuant to North Dakota Century Code section 54-12-08;
  - e. Contracts for public buildings and public improvement contract bids, pursuant to North Dakota Century Code title 48;
  - f. Contracts for architect, engineer, and land surveying services, pursuant to North Dakota Century Code chapter 54-44.7;
  - g. Contracts for concessions, pursuant to North Dakota Century Code chapter 48-09;
  - h. Grant programs, not including procurements using grant dollars; or
  - i. Professional memberships.
2. The office of management and budget may procure exempted commodities or services upon request by an agency or institution.
3. The office of management and budget may require state agencies or institutions to provide an annual report of commodities and services exempted by the director's written directive.

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

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

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

**CHAPTER 4-12-09  
LIMITED COMPETITION, NONCOMPETITIVE, AND EMERGENCY  
PROCUREMENTS**

Section

4-12-09-01	Competition May Be Waived or Limited
4-12-09-02	Limited Competitive Procurements
4-12-09-03	Noncompetitive Procurements
4-12-09-04	Emergency Procurements
4-12-09-05	<u>Notice of Intent to Make a Noncompetitive or Limited Competitive Purchase</u>
4-12-09-06	<u>Work Activity Center Contract Awards</u>

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

1. A purchasing agency may request to limit or waive competitive solicitation requirements pursuant to subsection 2 of North Dakota Century Code section 54-44.4-05.
2. Competition may not be limited or waived to satisfy preferences or for the convenience of the purchasing agency.
3. Circumstances under which ~~a deviation from procurement procedures to limit or waive competition and procure through negotiations is appropriate pursuant to subsection 2 of North Dakota Century Code section 54-44.4-05~~, competition may be waived or limited without a written determination, include:
  - a. Contracts for legal services, subject to the requirements of North Dakota Century Code section 54-12-08;
  - b. Contracts for professional witnesses to provide for professional services or testimony related to existing or probable lawsuits in which the state may become a party;
  - c. Contracts for temporary administrative law judges pursuant to North Dakota Century Code section 54-57-02;
  - d. Contracts for ~~medical doctors, dentists, psychologists, and other~~ medical specialists;
  - e. Purchases of copy-righted printed and electronic works including books, newspapers, magazine subscriptions, periodicals, and pre-recorded audio and video materials, when only available from the publisher or producer;
  - f. ~~Prerecorded audiovisual materials, including records, tapes, cassettes,~~

compact disks, slides, transparencies, films, and videotapes;

- gf. Purchases of materials required for manufacturing and production by a purchasing agency engaged in manufacturing and production operations;
- hg. When immediate expenditures are necessary to ensure the integrity of state records;
- ih. Purchases of livestock, fish, insects, and other animals;
- ji. Commodities for resale at state-operated concessions;
- kj. Purchases of items with cultural, historical, or archaeological significance for museums or archival purposes;
- lk. Purchases of works of art;
- ml. Contracts for residential, and treatment, and vocational rehabilitation services to ensure continuity of client care and purchases of vocational rehabilitation commodities for clients of the department of human services;
- mm. Contracts for performers, entertainers, and guest speakers, excluding contracts for education, instruction, or training; and
- en. Medications, pharmaceuticals, metabolic foods, food supplements, food replacements, vitamins, and therapeutics, and medical devices as prescribed by health care professionals for patients of a state facility or clients of a state program;
- o. Purchase of heating fuels, ready mix cement, sand, gravel, road oil, and bituminous mix which can be procured using limited competition to bidders or offerors within a specific geographic area; and
- p. Contracts for insurance placed through an independent broker, agent, or contractor when the independent broker, agent, or contractor was hired through a competitive or limited competitive process.

4. A prior written determination is required for all other requests for limited competitive and noncompetitive purchases subject to the provisions of this chapter and the terms of the purchasing agency's delegated purchasing authority.

**History:** Effective August 1, 2004; amended effective \_\_\_\_\_, 2012.

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

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