

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

Budget Section Meeting, December 3, 2014

Testimony

Good afternoon, Mr. Chairman 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)

The following exemptions have been approved by OMB written directive:

- Contracts for legal services or technical services, including the provision of testimony, related to existing or probable lawsuits in which a party is the recipient of indigent defense services pursuant to N.D.C.C. Chapter 54-61. (July 2012)
- Purchases of educational courses and related educational materials selected by the ND Center for Distance Education. (November 2013)

OMB is currently considering the following exemption requests:

- Hedge consulting services, merchant or credit card services, regulatory consulting services, and financial data services obtained by the Bank of North Dakota.
- Direct placement of advertising purchased directly from print, radio, television, billboard, and online vendors (Requested by Department of Agriculture and Bank of North Dakota.)
- Funding requests that promote or benefit North Dakota soybean through the North Dakota Soybean Council under N.D.C.C. section 4.1-11-11.

OMB promulgates rules related to goods and services that are exempt from procurement and those that can be purchased with limited competition or no competition. Those rules are attached to my testimony.

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

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North Dakota Administrative Code Article 4-12 State Procurement Practices

EXEMPTIONS

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

NONCOMPETITIVE

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 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 specialists;
 - e. Purchases of copyrighted printed and electronic works, including books, subscriptions, and prerecorded audio and video materials, when only available from the publisher or producer;
 - f. Purchases of materials required for manufacturing and production by a purchasing agency engaged in manufacturing and production operations;
 - g. When immediate expenditures are necessary to ensure the integrity of state records;
 - h. Purchases of livestock, fish, insects, and other animals;
 - i. Commodities for resale at state-operated concessions;
 - j. Purchases of items with cultural, historical, or archaeological significance for museums or archival purposes;
 - k. Purchases of works of art;
 - l. Contracts for residential, treatment, and vocational rehabilitation services to ensure continuity of client care and purchases of vocational rehabilitation commodities for clients;
 - m. Contracts for performers, entertainers, and guest speakers, excluding contracts for education, instruction, or training; and
 - n. Medications, pharmaceuticals, metabolic foods, food supplements, food replacements, vitamins, therapeutics, and medical devices as prescribed by health care professionals for patients of a state facility or clients of a state program.
 - o. Conducting a limited competitive process for the purchase of heating fuels, ready-mix concrete, sand, gravel, road oil, and bituminous using the level of competition practicable from vendors within a reasonable, specific geographic area.
 - p. Contracts for insurance placed through a broker hired through a competitive or limited competitive process where the broker is hired to evaluate insurance pricing and coverage information from insurance carriers and make recommendations for placement of insurance.
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.