

CHAPTER 4-12-11 EVALUATION OF BIDS OR PROPOSALS

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4-12-11-01. Standards for awarding contracts.

Unless circumstances exist under which competition can be limited or waived, contracts must be awarded through a competitive solicitation process to the responsible vendor with the lowest responsive bid or the most advantageous proposal. An award will be made according to the evaluation criteria specified in the solicitation. A contract award will be made as soon as practicable after the opening and evaluation of bids or proposals.

History: Effective August 1, 2004.

General Authority: NDCC 54-44.4-04

Law Implemented: NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

4-12-11-02. Application of preference for North Dakota vendors.

When considering bids or proposals from nonresident vendors, the procurement officer must determine whether the vendor's state of residence has a preference law. The state procurement office shall make publicly available a listing of state preference laws. The preference given to North Dakota bidders must be equal to the preference given or required by the state of the nonresident bidder, in accordance with North Dakota Century Code section 44-08-01.

History: Effective August 1, 2004.

General Authority: NDCC 54-44.4-04

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

4-12-11-03. Responsiveness of the bid or proposal.

Any bid or proposal that does not meet the requirements of the solicitation, other than mistakes determined to be minor informalities, will be rejected.

History: Effective August 1, 2004.

General Authority: NDCC 54-44.4-04

Law Implemented: NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

4-12-11-04. Responsibility of the bidder or offeror.

1. The procurement officer, at any time, may make a supplementary investigation as to the responsibility of any bidder or offeror, even though the bidder or offeror may be on the bidders list for the commodity or service being purchased.
2. This may include investigation of financial responsibility, insurability, effective equal employment opportunity, capacity to produce, sources of supply, performance record in the business or industry, and other matters relating to the bidder's or offeror's probable ability to

deliver in the quantity and at the time required under the contract if it is awarded to the bidder or offeror.

3. The procurement officer may require the submission of written statements from the bidder or offeror or other persons concerning any related matter. If it is concluded on the basis of all available information that a particular bidder or offeror appears not to be sufficiently responsible to assure adequate performance if the contract were awarded to the bidder or offeror, the bid or proposal will be rejected even if it is the lowest bid or the best offer.
4. If a vendor is determined to be not responsible, that vendor may be debarred or suspended from the bidders list.

History: Effective August 1, 2004.

General Authority: NDCC 54-44.4-04

Law Implemented: NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

4-12-11-05. Tie bids or proposals.

In the event of a tie bid or proposal, the procurement officer will ensure that any applicable preference has been applied to price in accordance with North Dakota Century Code section 44-08-01. If a tie remains, award shall be determined as follows:

1. If the tie is between an approved vendor and vendor that is not approved, preference will be given to the approved vendor in accordance with North Dakota Century Code section 54-44.4-09.
2. If the solicitation specified delivery as soon as possible, the bid or proposal with the earliest delivery time will be accepted. In all other cases, delivery time will not be considered in making award, provided the bid or proposal states that delivery can be made within the required time.
3. If a tie remains, a split award may be made or award will be made through a random drawing.

History: Effective August 1, 2004.

General Authority: NDCC 54-44.4-04

Law Implemented: NDCC 44-08-01, 54-44.4-04, 54-44.4-05, 54-44.4-09, 54-44.4-10

4-12-11-06. Conditioned bids or proposals.

1. No alterations or variations of the terms and conditions of the solicitation by the bidder or offeror will be valid and binding upon the state, unless made in writing and accepted by the purchasing agency.
2. Bids or proposals subject to conditions imposed by the bidder or offeror may be rejected as being nonresponsive, as determined by the purchasing agency.

History: Effective August 1, 2004.

General Authority: NDCC 54-44.4-04

Law Implemented: NDCC 54-44.4-02.1, 54-44.4-04, 54-44.4-05, 54-44.4-10

4-12-11-07. Multiple awards.

1. A multiple award can be made when it is determined to be in the best interest of the state to award multiple contracts to two or more bidders or offerors of similar products or services.
2. The intent to make a multiple award must be stated in the solicitation.
3. A multiple award may be appropriate under circumstances in which more than one contractor is required to ensure adequate delivery, service, or product compatibility.

History: Effective August 1, 2004.

General Authority: NDCC 54-44.4-04

Law Implemented: NDCC 54-44.4-02.1, 54-44.4-04, 54-44.4-05, 54-44.4-10

4-12-11-08. Only one responsive bid or proposal received.

1. If only one responsive bid or proposal is received in response to a solicitation, the procurement officer may:
 - a. Make an award to the vendor upon determination that the specifications were not restrictive in accordance with section 4-12-06-02, other prospective bidders and offerors had a reasonable opportunity to respond, the bidder is responsible, and the price submitted is fair and reasonable;
 - b. Reject the bid or proposal and solicit new bids or proposals; or
 - c. Cancel the procurement.
2. If the price submitted is not fair and reasonable and there is no time for resolicitation, or it is unlikely that resolicitation will increase the number of bids or proposals, the procurement may be conducted as a limited competitive or noncompetitive purchase, as appropriate, pursuant to subsection 2 of North Dakota Century Code section 54-44.4-05.

History: Effective August 1, 2004.

General Authority: NDCC 54-44.4-04

Law Implemented: NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

4-12-11-09. Rejection of all bids or proposals.

1. If it appears to be in the best interest of the state, all bids or proposals may be rejected and invitations for bid or requests for proposal containing the same or rewritten specifications, terms, and conditions may be reissued.
2. The procurement officer will send written notice to the bidders or offerors, including the reason all bids or proposals were rejected.
3. The rejected bids or proposals will be retained in the procurement file.

History: Effective August 1, 2004.

General Authority: NDCC 54-44.4-04

Law Implemented: NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10