

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1170

Introduced by

Government and Veterans Affairs Committee

(At the request of the Office of Management and Budget)

1 A BILL for an Act to create and enact a new section to chapter 54-44.4 of the North Dakota
2 Century Code, relating to cooperative purchasing by the office of management and budget; and
3 to amend and reenact sections 15.1-09-34, 54-44.4-02, and 54-44.4-05 of the North Dakota
4 Century Code, relating to the office of management and budget's purchasing services and to
5 competitive, limited competitive, noncompetitive, and negotiated purchases.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 15.1-09-34 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **15.1-09-34. Contracts by school boards - Bids - Penalty.**

- 10 1. Except as provided in this section, the board of a school district may not enter a
11 contract involving the expenditure of an aggregate amount greater than twenty-five
12 thousand dollars unless the school board has given ten days' notice by publication
13 in the official newspaper of the district, received sealed bids, and accepted the bid
14 of the lowest responsible bidder. This section does not apply to contracts for:
- 15 a. The personal services of district employees.
 - 16 b. Textbooks and reference books.
 - 17 c. Articles not sold on the open market.
 - 18 d. Patented, copyrighted, or exclusively sold devices or features required to
19 match articles already in use.
 - 20 e. Patented, copyrighted, or exclusively sold articles so distinctive that only one
21 brand can be purchased.
 - 22 f. Building construction projects under chapters 48-01.1 and 48-02.
 - 23 g. School transportation services purchased under section 15.1-30-11.
 - 24 h. Vehicle fuel purchased under section 15.1-09-34.1.

- 1 i. Heating fuel purchased under section 15.1-09-34.1.
- 2 j. The purchase of a used motor vehicle, including a schoolbus, motorbus, or
- 3 van, intended primarily for the transportation of students.
- 4 k. Cooperative purchases with the office of management and budget under
- 5 chapter 54-44.4.
- 6 2. For purposes of this section, a "used motor vehicle" means a motor vehicle that
- 7 has been previously owned or leased and which has an odometer reading in
- 8 excess of eighteen thousand miles [28967 kilometers].
- 9 3. A board member who participates in a violation of this section is guilty of a class B
- 10 misdemeanor.

11 **SECTION 2.** A new section to chapter 54-44.4 of the North Dakota Century Code is

12 created and enacted as follows:

13 **Cooperative purchasing.**

- 14 1. The office of management and budget shall purchase commodities or services as
- 15 requested by agencies and institutions under the jurisdiction of the state board of
- 16 higher education and the legislative and judicial branches of state government.
- 17 2. The office of management and budget and the agencies and institutions under the
- 18 jurisdiction of the state board of higher education shall make joint purchases of like
- 19 commodities or services of high common usage when the office of management
- 20 and budget and the state board of higher education determine it is in the best
- 21 interest of the state.
- 22 3. The director of the office of management and budget or the director's designee
- 23 may agree to purchase commodities or services under contracts entered into by
- 24 the United States general services administration or contracts of other government
- 25 entities if it is determined to be in the best interest of the state after consideration
- 26 of price, contractual terms and conditions, and the availability of competition from
- 27 approved vendors under section 54-44.4-09.
- 28 4. The director of the office of management and budget or the director's designee
- 29 may participate in, sponsor, or administer a cooperative purchasing agreement
- 30 with one or more government entities or a nonprofit organization established on

- 1 behalf of public entities for the procurement of commodities or services in
2 accordance with an agreement entered into between the participants.
- 3 5. Cooperative purchasing may include open-ended contracts that are available to
4 other government entities or nonprofit organizations established on behalf of public
5 entities.
- 6 6. Before entering into a cooperative purchasing agreement under this section, the
7 office of management and budget must determine that the contracts were awarded
8 through full and open competition or source selection methods specified in section
9 54-44.4-05 and shall send notice to approved vendors of the office's intent to make
10 a cooperative purchase in accordance with this chapter.

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

13 **54-44.4-02. Office of management and budget purchasing services.** The office of
14 management and budget shall purchase or lease or otherwise arrange for the procurement, for
15 all state agencies and institutions in the executive branch of state government, all materials,
16 furniture, fixtures, printing, insurance, services, and other commodities. The following
17 commodities and services, however, are not subject to the procurement requirements of this
18 chapter:

- 19 1. Land, buildings, space, or the rental thereof.
- 20 2. Telephone and telegraph service and electrical light and power services.
- 21 3. Public books, maps, periodicals, and technical pamphlets.
- 22 4. Department of transportation materials, equipment, and supplies in accordance
23 with section 24-02-16.
- 24 5. Procurements through a contract or other instrument executed by the industrial
25 commission under chapter 54-17.5.
- 26 6. Services for the maintenance or servicing of equipment by the manufacturer or
27 authorized servicing agent of that equipment when the maintenance or servicing
28 can best be performed by the manufacturer or authorized service agent, or when
29 such a contract would otherwise be advantageous to the state.
- 30 7. Emergency purchases the office of management and budget cannot make within
31 the required time and which involve public health or public safety, or when

1 immediate expenditures are necessary for repairs of state property to protect it
2 against further loss or damage, or to prevent or minimize serious disruption in state
3 services. Emergency purchases must be made with the level of competition
4 practicable under the circumstances, and a written determination of the basis for
5 the emergency and for the selection of the particular contractor must be included in
6 the contract file.

7 8. Commodities and services costing less than a specified amount as determined by
8 written directive by the director of the office of management and budget.

9 9. Specified commodities and services as determined by written directive by the
10 director of the office of management and budget.

11 10. Employee benefit services, trust-related services, and investment management
12 services obtained by an agency with a fiduciary responsibility regarding those
13 services.

14 All purchases made by the office of management and budget or a state agency or institution to
15 which authority to purchase has been delegated by the office of management and budget must
16 be made in accordance with this chapter, rules adopted under this chapter, and written policies
17 of the office of management and budget. ~~The office of management and budget shall purchase~~
18 ~~commodities or services as requested by agencies and institutions under the jurisdiction of the~~
19 ~~state board of higher education and the legislative and judicial branches of state government.~~
20 ~~The agencies and institutions under the jurisdiction of the state board of higher education, with~~
21 ~~the office of management and budget, shall make such joint purchases of like commodities or~~
22 ~~services of high common usage as determined jointly by the agencies and institutions under the~~
23 ~~jurisdiction of the state board of higher education and the office of management and budget as~~
24 ~~will result in less cost to the state. The office of management and budget, pursuant to terms~~
25 ~~and conditions imposed by it, may agree with political subdivisions that have organized a~~
26 ~~purchasing group pursuant to a joint powers agreement under chapter 54-40.3 to cooperatively~~
27 ~~purchase certain specific commodities or services designated by the office of management and~~
28 ~~budget if the cooperative purchase will result in a benefit to the state and to the political~~
29 ~~subdivisions participating in the joint powers agreement.~~

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

1 **54-44.4-05. Competitive, limited competitive, noncompetitive, and negotiated**
2 **purchases - ~~Other government purchasing contracts~~ - Exempt records.**

- 3 1. Except as otherwise provided in sections 44-08-01 and 25-16.2-02, and in this
4 chapter, purchasing contracts must be awarded through a competitive bidding
5 process to the lowest responsible bidder considering conformity with
6 specifications, terms of delivery, and quality and serviceability, unless it is
7 determined to be advantageous to the state to select a contractor through a
8 competitive proposal process using other or additional criteria. The procurement
9 officer may reject any or all bids or negotiate for a lower price with a successful
10 bidder. Each bid received, with the name of the bidder, must be recorded. The
11 office of management and budget may enter into term contracts for the acquisition
12 of commodities or services and may make multiple awards for term commodity or
13 service contracts when it deems a multiple award to be in the best interests of the
14 state. All bids received under this chapter pursuant to a competitive sealed bid are
15 exempt records under subsection 5 of section 44-04-17.1 until the date and time
16 the bids are opened.
- 17 2. The office of management and budget shall adopt rules specifying the
18 circumstances under which competition may be waived or limited, when
19 negotiation may be used, and specifying the required justifications and procedures
20 for using those methods of purchasing. The circumstances that may permit limited
21 competitive, noncompetitive, or negotiated purchases include:
- 22 a. The commodity or service is available from only one source.
- 23 b. ~~The commodity or service is available from another governmental entity's~~
24 ~~contract.~~
- 25 e. The commodity or service is to be purchased for experimentation or trial.
- 26 d. c. No acceptable bid or proposal was received pursuant to a competitive bidding
27 or competitive proposal process.
- 28 e. d. Commodities are being purchased for over-the-counter resale.
- 29 f. e. Acceptable commodities or services are produced or provided by correctional
30 institutions or other government agencies.

- 1 ~~g.~~ f. The anticipated cost of purchasing specified commodities or services is less
2 than an amount determined by the office of management and budget which
3 would justify the expense of a competitive bidding or competitive proposal
4 process.
- 5 ~~h.~~ g. A used commodity is advantageous to the state and the commodity is
6 available only on short notice.
- 7 ~~i.~~ h. The commodity is a component or replacement part for which there is no
8 commercially available substitute and which can be obtained only from the
9 manufacturer.
- 10 ~~j.~~ i. Compatibility with equipment currently owned by the state is essential to the
11 proper functioning of that equipment.
- 12 ~~k.~~ j. The agency provides documentation indicating that the services or the
13 circumstances are of such a nature that deviation from the procurement
14 procedure is appropriate.
- 15 ~~3.~~ ~~If the director of the office of management and budget determines it to be in the~~
16 ~~best interest of the state, the office of management and budget may agree to~~
17 ~~purchase according to contracts entered into by the United States general services~~
18 ~~administration or may enter into cooperative purchasing agreements with a~~
19 ~~cooperative purchasing group of other state governments.~~