

---

# NORTH DAKOTA STATE PROCUREMENT MANUAL

## Level 1 Certification

---

**OFFICE OF MANAGEMENT AND BUDGET**

Prepared by  
State Procurement Office  
Central Services Division

August 2009

## TABLE OF CONTENTS

Chapter 1: State Procurement Program .....	4
1.1 PURPOSE OF THIS MANUAL .....	4
1.2 STATE PROCUREMENT PROGRAM .....	4
1.3 PROCUREMENT OFFICER CERTIFICATION PROGRAM .....	4
1.4 DELEGATED PURCHASE AUTHORITY .....	4
1.5 PURCHASE REQUESTS .....	5
Chapter 2: Compliance, Ethics and Violations .....	5
2.1 COMPLIANCE .....	5
2.2 ETHICS .....	5
2.3 VIOLATIONS .....	6
Chapter 3: Exemptions and Emergency Purchases .....	6
3.1 EXEMPTIONS BY STATUTE .....	6
3.2 EMERGENCY PURCHASES .....	7
3.3 STATE BOARD OF HIGHER EDUCATION .....	7
3.4 CONCESSIONS .....	7
3.5 ARCHITECTS, ENGINEER AND LAND SURVEYING SERVICES .....	7
3.6 PUBLIC IMPROVEMENTS (CONSTRUCTION) .....	7
Chapter 4: Existing Sources of Supply .....	8
4.1 STATE SOURCES OF SUPPLY .....	8
4.2 GENERAL SERVICES ADMINISTRATION (GSA) CONTRACTS AND CONTRACTS OF OTHER GOVERNMENT ENTITIES .....	9
Chapter 5: Specifications .....	9
5.1 PURPOSE OF SPECIFICATIONS .....	9
5.2 SPECIFICATIONS FOR COMMODITIES .....	9
5.3 SAMPLE SPECIFICATION FOR COMMODITIES .....	10
5.4 SPECIFICATIONS FOR SERVICES .....	10
5.5 SAMPLE SPECIFICATIONS FOR SERVICES .....	11
5.6 INDEPENDENT CONTRACTOR VS. EMPLOYEE DETERMINATION .....	12
5.7 CONTRACT TERMS AND CONDITIONS .....	12
5.8 INDEMNIFICATION AND INSURANCE REQUIREMENTS .....	13
5.9 SECRETARY OF STATE REGISTRATION REQUIREMENTS .....	13
5.10 NORTH DAKOTA CONTRACTORS, PROFESSIONAL AND OCCUPATIONAL LICENSES .....	13

Chapter 6: State Procurement Basics .....	13
6.1 LEVEL OF COMPETITION REQUIRED .....	13
6.2 LIMITED COMPETITIVE AND NONCOMPETITIVE PROCUREMENTS .....	14
6.3 ESTIMATED PURCHASE PRICE .....	14
6.4 ARTIFICIAL FRAGMENTATION PROHIBITED .....	14
6.5 TERM CONTRACTS .....	14
6.6 METHODS OF COMPETITION .....	15
6.7 TYPES OF SOLICITATIONS .....	15
6.8 NORTH DAKOTA PREFERENCE LAWS .....	16
6.9 PROTESTS.....	16
Chapter 7: Small Purchase Procedures (Up to \$25,000) .....	17
7.1 IDENTIFYING POTENTIAL BIDDERS .....	17
7.2 DEBARRED AND SUSPENDED VENDORS .....	17
7.3 INFORMAL SOLICITATIONS.....	17
7.4 CLARIFICATIONS OR AMENDMENTS TO THE SOLICITATION .....	18
7.5 RECEIVING RESPONSES.....	18
7.6 EVALUATING RESPONSES .....	18
7.7 TIE BIDS OR PROPOSALS.....	19
7.8 ONLY ONE BID OR PROPOSAL RECEIVED.....	19
Chapter 8: Approvals, Restrictions, and Special Procedures.....	19
Chapter 9: Purchase Orders and Contracts .....	22
9.1 PURCHASING CARDS.....	22
9.2 PURCHASE ORDER.....	22
9.3 CONTRACTS USING ATTORNEY GENERAL SAMPLE CONTRACT .....	22
9.4 CONTRACTS FURNISHED BY BIDDERS AND CONTRACTORS.....	22
9.5 OTHER PAYMENT METHODS .....	22
9.6 RECEIVING, INSPECTION, AND ACCEPTANCE .....	23
9.7 REPORTING COMPLAINTS.....	23
9.8 AMENDMENTS AND CANCELLATIONS.....	23
9.9 DOCUMENTATION REQUIREMENTS .....	23
Chapter 10: Procurement Certification (Up to \$2,500) .....	24

# Chapter 1: State Procurement Program

## 1.1 PURPOSE OF THIS MANUAL

The purpose of this manual is to establish guidelines for state procurement that are in accordance with North Dakota Century Code (N.D.C.C.), North Dakota Administrative Code (N.D.A.C.) and written directives of the Office of Management and Budget (OMB). This manual is intended to be a desktop reference and training manual for state employees responsible for purchasing printing, commodities, and services. Agencies may establish internal procedures that do not conflict with state procurement laws, rules, and these guidelines. If questions arise, contact the OMB State Procurement Office at 701-328-2740.

## 1.2 STATE PROCUREMENT PROGRAM

Office of Management and Budget has the authority to operate a centralized purchasing service for printing, commodities, and services [ref. N.D.C.C. §§ [46-01-01](#), [46-02-01](#), [54-44-04\(18\)](#), [54-44.4-02](#)]. The OMB State Procurement Office is responsible for this duty.

Procurement is the process of purchasing, renting, leasing, or otherwise acquiring commodities and services; this includes preparing specifications and solicitations, evaluating bids and proposals, awarding a contract, and contract administration (ref. N.D.A.C. § [4-12-01-02](#)). The terms “procurement” and “purchasing” are used interchangeably.

It is a state policy that each state agency and institution obtain necessary commodities and services at a competitive cost, consistent with quality, time, and performance requirements with fair and equal opportunity to all persons qualified to sell to the state, except as otherwise provided by law (ref. N.D.C.C. § [54-44.4-01](#)). These procedures are not intended to restrict the effectiveness of individuals involved in the procurement, but to provide for legal, complete, and consistent consideration of all aspects of the procurement process.

## 1.3 PROCUREMENT OFFICER CERTIFICATION PROGRAM

The OMB Procurement Officer Certification Program was created in 2002 to provide state employees responsible for purchasing with training related to the type of procurement they conduct. The goal of the program is to increase the professionalism, skills, and accountability of employees who purchase for the state. Employees who will be purchasing \$2,500 or less may read this manual and sign the Level 1 Procurement Certification Application form, SFN 53111 on the last page. See the OMB [State Procurement Officer Certification Program](#) for requirements for employees who will be purchasing over \$2,500.

## 1.4 DELEGATED PURCHASE AUTHORITY

The Director of OMB has delegated to agency heads the authority to purchase printing up to \$2,500 and commodities and services regardless of the dollar amount. See the [OMB Delegated Authority](#) memorandum.

Each agency head is asked to complete a [Procurement Liaison Designation form](#), SFN 53112 to designate one or more persons to act as the agency’s lead procurement officer and liaison to the OMB State Procurement Office.

Agency heads may delegate purchase authority to employees who have achieved procurement officer certification using the [Delegation of Purchase Authority form](#), SFN 2566. The delegation will specify any limits (e.g. dollar limits specific commodities or services). Employees may only make purchases within the scope of their delegated authority.

## 1.5 PURCHASE REQUESTS

The OMB State Procurement Office will make purchases on behalf of state agencies that submit a Purchasing Request. Submit purchase requests using the State Procurement Online system (<http://www.nd.gov/spo/agency/eservice/>). Agencies are required to submit a purchase request for all printing over \$2,500. Agencies that need to make a purchase, but do not have employees with the required level of procurement certification also must submit purchase requests to the OMB State Procurement Office. Contact the OMB State Procurement Office at 701-328-2740 for assistance in submitting a purchase request.

The PeopleSoft/Oracle Requisition system can be used for purchase requests within an agency, but it cannot be used to send requests to the OMB State Procurement Office.

## **Chapter 2: Compliance, Ethics and Violations**

### 2.1 COMPLIANCE

The state procurement program is the vehicle through which a significant amount of the state's taxpayer dollars are spent; therefore, the integrity of the state procurement program is paramount. Any improper actions or the appearance of improper actions by state personnel or vendors can compromise that integrity.

Each person with authority to obligate funds through the state procurement process must know and abide by the laws, rules, written directives of OMB that govern state procurement practices, and their agency's internal policies and procedures (ref. N.D.A.C. § [4-12-03-04](#)). The integrity of the state procurement program is dependent upon sound procurement practices and procedures that are consistently applied by all employees purchasing on behalf of the state.

### 2.2 ETHICS

Procurement officers represent the State of North Dakota. Maintain courteous, professional relationships with all vendors, and avoid any activities, relationships, and communications that in any way diminish, or appear to diminish, fair and impartial treatment of vendors. Strive to ensure commodities and services will be provided to the requestor by the needed time, place, quantity, and price. Do not hesitate to advise the requestor if some aspect of the purchase request is not possible or is inconsistent with state procurement practices.

All public employees and vendors involved in the state procurement process must comply with N.D.A.C. Chapter 4-12-04 related to ethics in public procurement related to:

- Good faith actions (ref. N.D.A.C. § [4-12-04-01](#))
- Emphasis on competition (ref. N.D.A.C. § [4-12-04-02](#)).
- Handling of information (ref. N.D.A.C. § [4-12-04-03](#)). Avoid giving information to a prospective bidder that might give them an unfair advantage. Handle public and confidential information according to the state's open records laws. For additional information, visit the [Office of the Attorney General](#) website.
- Conflict of interest (ref. N.D.A.C. § [4-12-04-04](#)). Avoid even the appearance of a conflict of interest. A conflict of interest occurs when an individual has a personal interest and a job responsibility, and a clear possibility exists that there may be a conflict between the two (e.g. a family member sells the type of equipment needed). Have another employee make the purchase to avoid an actual or potential conflict of interest. Report potential conflict of interests to the agency's procurement section.

- Attempt to influence (ref. N.D.A.C. § [4-12-04-05](#)). Report to the OMB state procurement manager anyone who tries to influence a procurement decision or offers anything of value that might influence or appear to influence the procurement process. Items of nominal value offered by a vendor as a gesture of goodwill or for public relations purposes (e.g. cups, pens, samples) may be accepted. Refuse anything that exceeds a nominal value or will lead to subsequent noncompetitive purchases (e.g. offer of free equipment contingent upon future supply purchases).
- Collusion of bidders or offerors (ref. N.D.A.C. § [4-12-04-06](#)). Collusion is a secret agreement between two or more vendors to circumvent laws and rules regarding competitive bidding, commonly called “price fixing.” For example, two vendors may agree to take turns submitting the lowest priced bid for a commodity or service. Report suspected collusion to the OMB state procurement manager.
- Nondiscrimination in source selection (ref. N.D.A.C. § [4-12-04-07](#))
- Artificial fragmentation prohibited (ref. N.D.A.C. § [4-12-04-08](#)). See Section 6.4.

### 2.3 VIOLATIONS

Report any violations of procurement laws, rules, or OMB directives to the agency’s procurement section, regardless of the cause. Procurement violations discovered by the OMB State Procurement Office will be reported to the employing agency for appropriate disciplinary action. Violation of state laws, rules, and OMB directives may constitute action outside the employee’s scope of employment and the employee could incur personal liability and may not be indemnified by the state if they are sued (ref. N.D.A.C. § [4-12-01-06](#)).

## **Chapter 3: Exemptions and Emergency Purchases**

### 3.1 EXEMPTIONS BY STATUTE

Certain commodities and services are not subject to state procurement laws. The following commodities and services are exemptions listed in N. D.C.C. § [54-44.4-02](#):

1. Land, building, space, or the rental thereof. [Note: Leases for office space off the Capitol grounds must be reviewed by the Office of the Attorney General and approved by OMB Facility Management, ref. N.D.C.C. § [54-21-24.1](#) and [OMB Facility Procedures to Complete a State Office Lease](#) and [OMB Fiscal Policy 109](#)]
2. Telephone and telegraph service, electrical light, and power services.
3. Public books, maps, periodicals, and technical pamphlets.
4. Department of transportation materials, equipment, and supplies in accordance with N.D.C.C. § [24-02-16](#).
5. Procurements by the Industrial Commission for energy-related programs under N.D.C.C. Chapters [17-05](#), [54-17.5](#), [54-17.6](#), [54-17.7](#), [54-63](#), and title [38](#) authorizing the Industrial Commission to perform well and hole plugging, reclamation work, equipment removal, leak prevention and similar work.
6. Services for the maintenance or servicing of equipment by the manufacturer or authorized servicing agency of that equipment when the maintenance or servicing can best be performed by the manufacturer or authorized service agent, or when such a contract would otherwise be advantageous to the state.
7. Emergency purchases. (See Section 3.2 of this Chapter)
8. Commodities and services costing less than a specified amount as determined by written directive by the OMB Director.

9. Employee benefit services, trust-related services, and investment management services obtained by an agency with a fiduciary responsibility regarding those services.
10. Specific commodities and services as determined by written directive by OMB Director. [Note: These exemptions are listed in N.D.A.C. § [4-12-01-04](#).]

### 3.2 EMERGENCY PURCHASES

Emergency purchases are defined in N.D.C.C. § [54-44.4-02 \(7\)](#) as purchases that OMB cannot make within the required time that involve public health or public safety, or where immediate expenditures are necessary for repairs of state property to protect it against further loss or damage, or to prevent or minimize serious disruption in state services.

Emergency purchases must be made with the level of competition practicable under the circumstances. A written determination of the basis for the emergency and selection of the particular contractor must be included in the contract file. An [Emergency Purchase Determination form](#), SFN 51627 must be completed and promptly forward to the OMB State Procurement Office after the purchase has been made. See N.D.A.C. § [4-12-09-04](#).

Sometimes an unexpected requirement or poor planning creates an immediate need for goods or services, but the circumstance is not an “emergency” as defined in law. If the purchase is over \$2,500, complete an [Alternate Procurement Request form](#), SFN 51403.

### 3.3 STATE BOARD OF HIGHER EDUCATION

The State Board of Higher Education has the power to determine policy for purchasing by the University System in coordination with OMB (ref. [N.D.C.C. § 15-10-17](#)).

### 3.4 CONCESSIONS

Agencies must comply with N.D.C.C. § [48-09](#) when granting concessions for cafes, restaurants, and confectioneries on public buildings and grounds.

### 3.5 ARCHITECTS, ENGINEER AND LAND SURVEYING SERVICES

These guidelines are not intended for architect, engineer, construction management, and land surveying services. These services must be procured according to N.D.C.C. § [54-44.7](#).

### 3.6 PUBLIC IMPROVEMENTS (CONSTRUCTION)

These guidelines are not intended for public improvement and construction contracts covered by N.D.C.C. Title [48](#). “Construction” is defined in N.D.C.C. § [48-01.2-01](#) as “the process of building, altering, repairing, improving, or demolishing any public structured or building or other improvement to any public property. The term does not include the routine operation or maintenance of existing facilities, structures, buildings, or real property or demolition projects costing less than one hundred thousand dollars.”

North Dakota law requires any person engaged in the business of acting in the capacity of a contractor in this state to have a contractors license when the cost, value, or price per job exceeds two thousand dollars (ref. N.D.C.C. § [43-07-02](#)).

Public improvement and construction contracts estimated to exceed one hundred thousand dollars must be advertised and procured through a formal competitive sealed procurement process using plans, drawings, and specifications done by an architect or engineer, except as otherwise provided by law. See N.D.C.C. Chapter [48-01.2](#).

## Chapter 4: Existing Sources of Supply

### 4.1 STATE SOURCES OF SUPPLY

Agencies can purchase from existing sources of supply and government entities without obtaining competition, regardless of the dollar amount. Some sources are mandatory

1. State agencies and government entities. See N.D.A.C. Chapter [4-12-15](#).
2. Inventory. Some agencies and institutions maintain supply rooms or inventories. Contact your agency's procurement section to learn about existing inventory.
3. State Contracts. The OMB State Procurement Office establishes term contracts for commodities and services commonly used by state agencies. Agencies are required to purchase from state contracts, unless otherwise stated (ref. N.D.A.C. § [4-12-02-02](#)).
  - [State Contract Exception Request](#) form, SFN 54202. Use this form to request approval from the OMB State Procurement Office if you desire to purchase a commodity or service on a mandatory state contract from another source.
  - [Formal Complaint](#) form, SFN 2565. Use this form to report problems with contracts.
4. Central Supply. Central Supply is located in the Capitol Building in Bismarck, and it offers a large inventory of general office supplies and paper products. Central Supply provides free delivery to customers within the Capitol complex, and will ship (freight collect) to agencies and institutions anywhere in the state. Contact Central Supply at 701-328-3346. See its website at [www.nd.gov/supply/](http://www.nd.gov/supply/) for a catalog or on-line ordering.
5. State Surplus Property. State Surplus Property, located in Bismarck, is a distribution and disposal operation for items that are excess, surplus, or obsolete to the state and federal government. Call 701-328-9666 or visit its website at [www.nd.gov/surplus/](http://www.nd.gov/surplus/).
  - [1122 "Counterdrug" Program](#). The U.S. General Services Administration sponsors this program for purchasing equipment for counterdrug activities through federal procurement channels. State Surplus Property is designated as the State Point of Contact to administer the program in North Dakota.
6. Central Duplicating Services. Central Duplicating Services is a centralized printing facility, located in the Capitol Building in Bismarck, that provides state agencies and institutions with economical and efficient printing and duplicating services, bindery services, technical advice, layout assistance, graphics design services, forms design, and mainframe printing. Central Duplicating Services cannot print or duplicate the following: coated stock, continuous forms, snap-out forms, envelopes over twenty thousand, process color, except for jobs generated on computer printers which do not exceed eleven inches/27.94 centimeters by seventeen inches/43.19 centimeters and five hundred total image pages (ref. N.D.C.C. § [46-02-20](#)). Contact Central Duplicating at 701-328-2772 or visit its website at [www.nd.gov/duplicating/](http://www.nd.gov/duplicating/).
7. Rough Rider Industries. Rough Rider Industries is located in Bismarck, and it is a state-owned industry that manufactures quality wood and metal furniture, a full line of seating, and signs. They also refurbish office partitions and operate a sewing industry. Call 701-328-6165 or 800-732-0557 or visit its website at [www.roughriderindustries.com](http://www.roughriderindustries.com).
8. Office Partition Inventory. Rough Rider Industries manages the state's central inventory of surplus office partitions, including panels, work surfaces, and related components. These components can be purchased "as is" or refurbished. Call 701-328-6165 or 800-732-0557 or visit its website at [www.roughriderindustries.com](http://www.roughriderindustries.com).

9. Information Technology Department. Information Technology Department (ITD) provides a variety of information technology services, including programming, software development, and website development. Contact ITD at 701-328-3190 or visit its website at [www.nd.gov/itd/](http://www.nd.gov/itd/). In certain instances, your agency may be required to use IT services. See N.D.C.C. § [54-59-05](#) and [54-59-08](#).

#### 4.2 GENERAL SERVICES ADMINISTRATION (GSA) CONTRACTS AND CONTRACTS OF OTHER GOVERNMENT ENTITIES

On occasion, needed commodities and services may be available through a GSA contract or from another government entity's contract. Purchasing from another entity's contract is a type of cooperative purchase commonly called "piggy-backing." The state may need to sign a cooperative purchase agreement or pay fees to use the contract. Submit an [Alternate Procurement Request form](#), SFN 51403, to request using another government entity's contract in lieu of a competitive procurement process. The OMB State Procurement Office must make a determination in accordance with N.D.C.C. § [54-44.4-13](#).

## **Chapter 5: Specifications**

### 5.1 PURPOSE OF SPECIFICATIONS

The first step in the procurement process is defining what is needed. A specification is a description of all required physical, design, performance, functional and other characteristics of a needed commodity or service the purchasing agency requires and consequently, what a bidder must provide to be considered for award [N.D.C.C. § [54-44.4-06\(1\)](#)]. Well-written specifications ensure the state obtains commodities and services that meet quality, performance, and delivery requirements at an economical price.

- Value to the Taxpayer. Ensure commodities and services are specified at the proper level of utility and quality for the purpose intended in order to promote overall economy for the purpose intended (ref. N.D.A.C. § [4-12-06-01](#)).
- Quality. Specifications establish the minimum requirements upon which the award will be based; therefore, the desired quality of the commodity or service must be written into the specifications. Quality is measurable. Consider only the commodities or service providers that meet the minimum specifications.
- Specifications Prepared by Non-State Personnel. When someone other than a state employee or official prepares specifications for the state, that person or business entity must be excluded from submitting bids or proposals (N.D.A.C. § [4-12-06-06](#)).
- Restrictive Specifications. Specifications should encourage competition, and may not be restrictive (N.D.A.C. § [4-12-06-02](#)). A specification is restrictive when the specifications, requirements, or conditions have the effect of limiting responses to only one brand, make, source or service provider and have no reasonable relation to the actual needs of the purchasing agency.

### 5.2 SPECIFICATIONS FOR COMMODITIES

There are many ways to write specifications for commodities based upon the complexity of the needed commodity and the type of evaluation planned (i.e. bid vs. proposal).

- Brand-Name-or-Equal Specification. A specification that includes a brand name must invite bidders to offer comparable products (e.g. "or equal" or "similar to"). If a brand offered as an equivalent is rejected, notify the bidder of the reason (ref.

N.D.C.C. § [44-08-01](#), N.D.A.C. § [4-12-06-03](#)). If a certain brand is required, see Section 6.2 of this manual.

- Design Specification. A design specification includes a description of physical requirements, dimensions, and construction or fabrication of an item. Avoid writing a specification around a particular manufacturer's design that may prevent consideration of another (potentially lower-priced) product using a different design.
- Performance Specification. A performance specification describes the required functionality and performance of the needed product or equipment. Offered products are evaluated on their ability to perform, endurance, and ownership costs. Performance specifications are normally used with competitive proposals, so award can be based upon cost, function, and performance.
- Qualified Products List. If testing or examination of the commodities or services is desirable or necessary before or during the solicitation process, the agency may develop a qualified products list with prior approval from the OMB State Procurement Office (ref. N.D.A.C. § [4-12-06-04](#)).
- Samples and Technical Data. It can be very difficult to write specifications for some commodities (e.g. cleaning products). A specification can provide a general description of needed items and ask vendors to furnish product samples, technical data, and prices. Competitive proposals are used, and the solicitation must describe how samples will be evaluated (e.g. lab or field testing). See N.D.A.C. § [4-12-08-11](#).

### 5.3 SAMPLE SPECIFICATION FOR COMMODITIES

Here is a sample specification for commodities:

- Name of the commodity. Use a generic description of the item needed, such as "mower, walk-behind."
- Purpose or intended use. Describe how the item will be used, such as "suitable for daily use on a public complex with large grounds."
- Detailed Description. List all the needed features, physical requirements, and performance capabilities. Invite bidders to offer an "equal" if a brand name is used.
- List special requirements. Describe any special requirements, such as installation, training, service requirements, or warranty provisions. Describe any equipment being offered in trade and ask for a trade-in allowance. If specifying used equipment, require an inspection. State any requirements for bidders to supply samples, furnish technical data, or provide demonstrations.

### 5.4 SPECIFICATIONS FOR SERVICES

"Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance [ref. N.D.C.C. § [54-44.4-01\(5\)](#)]. The National Association of Procurement Officials State and Local Government Purchasing Principles and Practices (NASPO, 2001) identifies six basic classes of contractual services:

- Professional Services. Professional services require the individual rendering the service to exercise professional judgment. That individual's special knowledge, education, skills, qualifications and experience are of primary importance, such as accountants, physicians, and consultants [ref. N.D.C.C. § [54-44.4-01\(3\)](#)]. Competitive proposals or multi-step solicitations are normally used.

- Support Services. Support services are nonprofessional services functions where the process is more important than any product (e.g. janitorial, security, and trash removal). Specifications can usually be written to allow competitive bidding.
- Personal Services. Personal services are unique, technical, or infrequent functions usually performed by an independent contractor (e.g. translation, editing). Competitive bidding can normally be used.
- Client Services. Client services are services contracted for by a jurisdiction on behalf of clients (e.g. vocational rehabilitation, counseling). Client services are more likely to involve not-for-profit contractors than other services. Competitive proposals or multi-step solicitations are normally used.
- Management Services. Management services are managerial/ministerial functions performed by an independent contractor assuming governance of the service delivery, property, and sometimes personnel of a government function (not privatization). An example is management of a state facility. Competitive proposals or multi-step solicitations are normally used.
- Information-Technology (IT) Services. IT services are those services to furnish and operate high technology installations to perform complex programs. An example would be the implementation and management of an information management system. Competitive proposals or multi-step solicitations are normally used.

#### 5.5 SAMPLE SPECIFICATIONS FOR SERVICES

A specification for services is commonly called the “scope of work” or “statement of work.” Writing the statement of work is one of the most important steps in preparing a solicitation for services—and the most difficult. Prospective service providers will use the statement of work to prepare a technical proposal and cost proposal. The agency will use the statement of work to evaluate those bids or proposals, select a service provider, and ensure the service provider completes all the required work in a satisfactory manner. Here is a sample Statement of Work format [The Contract Cookbook for Purchase of Services, 2<sup>nd</sup> Edition; John Short, NASPO (1990)]:

- Background Information. Help the service providers understand the mission of your agency or institution, explain the specific project for which services are being sought, and any additional explanations or historical information.
- Definitions. Clearly establish what is meant by all special terms and phrases
- State-Furnished Property/Services. List any resources the State will provide.
- Contractor-Furnished Property. State what is needed (function, type, quality, etc.), and allow the vendor to describe what it will furnish to meet that need. Avoid dictating requirements that may add unnecessary costs to the contract.
- Description of Specific, Results-Oriented Tasks. List all the essential tasks necessary to achieve the desired results or accomplish the stated mission. Be specific and as comprehensive as possible.
- Quality Assurance. Describe the standards that will be used to measure the quality and quantity of work performed (e.g. progress points for partial payments, how work will be evaluated, corrective measures for unsatisfactory work or progress).
- Experience and Qualification Requirements. Describe any licenses, credentials, expertise, or experience required of the firm and individuals doing the work.

- Directives. List directives that influence the contract (e.g. federal or state laws and regulations, OSHA directives, rules concerning grants, required licenses or registration). Reference directives that are too lengthy to include in the solicitation.
- Deliverables. List every deliverable to be accomplished, even items that seem insignificant. Do not assume that the contractor will give more than is requested.
- Technical Exhibits. Include additional information too lengthy to describe in the text.

#### 5.6 INDEPENDENT CONTRACTOR VS. EMPLOYEE DETERMINATION

The state cannot hire employees through the procurement process. However, the procurement process may be used to acquire the services of an independent contractor. If the services required result in an employer/employee relationship, hire the person through the personnel system, not the procurement system. For more information visit the North Dakota Department of Labor website at <http://www.nd.gov/labor/services/ic-verification/>.

- 1) Here are some of the indicators that an employer/employee relationship may exist:
  - The person is subject to the control of the state, not only as to what will be done but when, where, and how it will be done as opposed to allowing the individual to set his or her own work schedule.
  - The state has the right to discharge the person or the person has the right to terminate services without incurring liability.
  - The state furnishes the individual with tools, equipment, and a place to work.
  - The individual currently works for the state as an employee in the same field as the contract services.
  - The state currently pays employees to perform essentially the same duties to be performed by the contractor.
- 2) The following conditions are indicators that people are independent contractors:
  - They are subject to control or direction of the state only as to the result to be accomplished and the work to be done, not as to the means and methods for accomplishing the result.
  - They are in business providing a service to the public from which they may derive a profit or suffer a loss.
  - They are in business to provide the same or similar services to other entities or the general public.
- 3) Temporary Employment Contracts. Temporary employment agencies are independent contractors that provide staffing services to public and private employers. The occasional use of temporary employment contracts does not create an employer/employee relationship, since the workers are employed by the temporary employment agency, not by the state. Examples include: coverage for an employee on medical leave; working on a short-term project. Contracts with temporary staffing agencies are subject to competitive bidding requirements.

#### 5.7 CONTRACT TERMS AND CONDITIONS

Planning the contract before issuing a solicitation is very important. The solicitation will result in the selection of a vendor with whom the state will enter into a formal, written contract. Procurement rules require that the solicitation contain all the terms and conditions that will be incorporated into the contract. Consider the scope, value and risk of the planned purchase to select the appropriate contract terms and conditions, such as:

- Contract term (duration) and any provisions for renewals and extensions
- Non-appropriation clause if the contract extends beyond current biennium

- Provisions for price adjustments
- Termination provisions

Visit the OMB State Procurement Office website for [solicitation templates](#). Contact your agency's legal counsel if you make any changes to any standard terms and conditions.

#### 5.8 INDEMNIFICATION AND INSURANCE REQUIREMENTS

Contractual risk is based upon circumstances, not the dollar value of the purchase. For example, a contract to clean the windows in the Capitol might be nominal in cost, but involve substantial potential risk. Use the [OMB Guidelines to Managing Contractual Risk](#) to determine what type of indemnification and insurance provisions to require.

#### 5.9 SECRETARY OF STATE REGISTRATION REQUIREMENTS

Requirements for the bidder to register with the North Dakota Secretary of State are also dependent upon the circumstances of the procurement, not the dollar value. It is always preferable to have a bidder register with the Secretary of State, as it provides much greater legal protection for the state. Review the [OMB Guidelines to Vendor Registration](#) to determine if registration is required.

#### 5.10 NORTH DAKOTA CONTRACTORS, PROFESSIONAL AND OCCUPATIONAL LICENSES

Certain types of businesses and individuals in certain professions or occupations are subject to licensing or registration with a state regulatory board or agency. These requirements should be included in the solicitation and contract, and the successful bidder should be required to furnish a copy of the North Dakota license, permit, or registration before award. Visit the [NDSU Extension Service website](#) for a list licenses required by the state.

## **Chapter 6: State Procurement Basics**

### 6.1 LEVEL OF COMPETITION REQUIRED

When needed commodities or services cannot be obtained from an existing source or a government entity, state procurement procedures must be used. The dollar of the purchase determines the level of competition required:

- Purchases \$2,500 and below. Use adequate procedures to ensure commodities and services are obtained at a fair and reasonable price, which may include the soliciting only one informal bid or proposal. Rotate vendors solicited on an equitable basis (ref. N.D.A.C. § 4-12-08-02). "Fair and reasonable" price can be based on previous purchases, market research, a published price list, or by simply soliciting more than one vendor. Remember, "When in doubt, bid it out." Use the state purchasing card whenever possible. See the OMB [Purchasing Card Manual](#).
- Purchases \$2,500.01 to \$25,000. Solicit no fewer than three vendors, insofar as practical, to submit oral or written informal bids or proposals. If you do not receive three bids or proposals, provide a written justification (e.g., "only two known vendors" or "contacted three vendors, only two responded").
- Purchases over \$25,000. Solicit formal sealed bids or proposals with notice to approved bidders on the State Bidders List and post on the [State Procurement Online](#) website (ref. N.D.C.C. § [54-44.4-14](#), N.D.A.C. Chapter [4-12-08](#)).

## 6.2 LIMITED COMPETITIVE AND NONCOMPETITIVE PROCUREMENTS

Occasionally, circumstances arise under which a fully competitive procurement process may be difficult or impossible. Procurement is noncompetitive when there is no bidding process. Limited competition occurs when competition is possible, but the requirements of the solicitation restrict competition to particular bidders. (Ref. N.D.C.C. § [54-44.4-05](#), N.D.A.C. § [4-12-09](#)). Obtain prior approval of all limited competitive or noncompetitive purchases over \$2,500 using the [Alternate Procurement Request form](#), SFN 51403.

## 6.3 ESTIMATED PURCHASE PRICE

The estimated price is needed to verify that adequate funds are available, determine what level of competition is required, and ensure the procurement officer has delegated purchase authority to make the purchase. Estimated price may be based upon previous purchases, market research, a published price list, or asking a vendor for a budgetary estimate. Consider the following:

- Commodities: The entire amount of the purchase price including all shipping and handling, and all other related charges, such as installation or maintenance agreements. Generally, shipping costs can be estimated at 15%.
- Leases: The entire amount of an equipment lease is based upon all payments over the lease term, including any options for extension or renewals. For example, the value of a 24-month copier lease with monthly payments of \$270 is \$6,480.
- Services: The entire amount of a service contract includes the initial term and all possible extension or renewal options. For example, the value of a one-year contract estimated at \$2,500 per year with three renewal options is \$10,000. The [Job Service of North Dakota Workforce Intelligence Network](#) provides current wage and salary information for various occupations. Call 701-328-2868 for assistance.

## 6.4 ARTIFICIAL FRAGMENTATION PROHIBITED

Procurement requirements may not be artificially divided as to constitute a small purchase [ref. N.D.C.C. § [54-44.4-11\(3\)](#)]. Artificial fragmentation means splitting purchase requirements or splitting an invoice to stay below a certain dollar level to avoid competition or stay within delegated authority limits. Consider the following:

- Similar Products: Consolidate similar products that can be purchased from one type of vendor whenever possible. (e.g. Commodity Code Class 445 – Hand Tools, includes subclasses 03 – axes, 27 – powered drills, and 64 screwdrivers).
- Urgency: Urgently needed purchases may be separated from routine purchases.
- Predictability: When commodities and services are needed on a frequent or reoccurring basis, consider consolidating requirements for a periodic purchase or term contract. (i.e. items purchased weekly or monthly, or stored for later use.)

## 6.5 TERM CONTRACTS

Term contracts establish a contractor for a commodity or service for a specific time at a specified price. Term contracts help save time and money through leveraged volumes, quality standards, improved delivery time, and avoiding repetitive bids.

The term contract needs to specify the initial term and any options for extensions or renewals. Fair treatment of bidders necessitates that contracts be routinely rebid. Most term contracts are one year with an option for a one year renewal. Generally, term contracts are no more than four years (including all renewals and extensions). The appropriate contract term varies on a case-by-case basis considering factors such as the type of

commodity or service, availability of competition, complexity, market volatility/price fluctuations, costs associated with switching contractors, etc. If the contract crosses a biennium, include a termination clause for non-appropriation.

The contract term impacts the contractor's ability to hold prices firm. The solicitation and contract may include provisions that allow the contractor to request price adjustments based upon evidence of increased costs or an index, such as the Consumer Price Index.

#### 6.6 METHODS OF COMPETITION

There are two methods of competition, formal (sealed) and informal (unsealed). Both methods foster open competition, offer fairness and impartiality to vendors, and are intended to obtain the most economical commodities and services meeting the needs of the state.

- Formal (sealed) competition requires the purchasing agency to notify vendors on the state bidders list and post the solicitation to the State Procurement Online website. Vendors are required to provide their responses in a prescribed format in a sealed envelope at a specified time and place.
- Informal competition (small purchase procedures) are used for low dollar purchases that do not justify the time and expense of a formal process. The purchasing agency is not required to notify all vendors on the state bidders list or strictly adhere to an opening date. Vendors may be solicited by letter, telephone, fax, or electronically.

#### 6.7 TYPES OF SOLICITATIONS

Select the procurement strategy most suitable for the purchasing being contemplated. After the requirements have been defined, the procurement officer must select the solicitation type. Visit the OMB State Procurement Office website for [sample solicitation templates](#):

- Competitive Bidding. Award is made to the responsible bidder whose bid is the lowest price and responsive to the specifications and other solicitation requirements. Bids become public records upon opening (ref. N.D.C.C. § [54-44.4-04](#), N.D.A.C. § [4-12-08-03](#)). The formal solicitation is an Invitation for Bids (IFB), and the informal solicitation is a Request for Quotes (RFQ). Bidding is appropriate for most commodities and non-professional services (e.g., janitorial or lawn maintenance).
- Competitive Proposals. Award is made to the responsible offeror whose proposal is determined to be most advantageous, based upon cost and the other evaluation criteria. The relative weight of cost and any other evaluation criteria must be stated in the solicitation. Generally, cost is weighted at 40%. For example:
  - Experience & Qualifications - 30%
  - Quality of the Proposal – 40%
  - Cost – 40%

Discussion, negotiations, and best and final offers may be requested. Proposals do not become public records until after an award is made (ref. N.D.C.C. § [54-44.4-10](#), N.D.A.C. § [4-12-08-04](#)). The formal solicitation is called a Request for Proposal (RFP), and the informal solicitation is an “Informal Request for Proposal.” RFPs are appropriate for equipment, information technology, and professional services.

- Multi-step Solicitations. Use a multi-step solicitation when it is not practical to prepare a purchase description that is suitable for award. An initial solicitation is used to develop a short-list of qualified vendors and a subsequent solicitation may be limited only to those vendors that qualify. (See N.D.A.C. § [4-12-08-05](#).)

- Request for Information (RFI). An RFI is a noncompetitive solicitation issued before a solicitation for bids, proposals, or a multi-step solicitation to obtain information, data, comments, or reactions from possible vendors. (See N.D.A.C. § [4-12-06-7](#)).

#### 6.8 NORTH DAKOTA PREFERENCE LAWS

North Dakota has preference laws that must be applied when evaluating bids and proposals. The term "preference" as it relates to government purchasing is an advantage in consideration for award of a contract given to particular types of vendors.

- Reciprocal Preference Law. N.D.C.C. § [44-08-01](#) requires the preference given to a resident North Dakota bidder be equal to the preference given or required by the state of the nonresident bidder. This is commonly called "reciprocal preference." A bidder is "resident" if its maintains a bona fide place of business within North Dakota for at least one year prior to the date the contract was awarded (N.D.C.C. § [44-08-02](#)).

When a bid or proposal is received from a nonresident bidder, determine whether the bidder's state of residence has a preference law. See the [OMB Guidelines to North Dakota Preference Laws](#) for a list of the [state preference laws](#).

If the nonresident bidder's state has a preference law, increase the nonresident bidder price by the same percentage. For example:

*A nonresident bidder submits a bid price of \$1,000. Laws in that bidder's state of residence require a 5% preference for vendors resident in that state. Increase the nonresident bidder's price by 5% before evaluation.*

North Dakota also has preference laws for certain commodities and services.

- Coal. N.D.C.C. § [48-05-02.1](#)
- Construction Stakes. N.D.C.C. § [25-16.2-02](#)
- Food. 2003 Senate Concurrent Resolution No. 4018
- Environmentally Preferable Products – Bio-based Products. N.D.C.C. § [54-44.4-07](#)
- Paper, Recycled. N.D.C.C. § [54-44.4-08](#) requires that at least twenty percent of the total volume of paper and paper products purchased for state agencies and institutions contain at least twenty-five percent recycled material.
- Printing. N.D.C.C. § [46-02-15](#) requires that if practicable, all state, county, and other political subdivision public printing, binding, and blank book manufacturing, blanks and printed stationery must be awarded to a resident North Dakota bidder as defined in N.D.C.C. § [44-08-02](#). See the [OMB Guideline for State Procurement of Printing](#).
- Soybean-based Ink. N.D.C.C. § [54-44.4-07](#)

See the OMB Guidelines to North Dakota Preference Laws for more information (<http://www.nd.gov/spo/legal/docs/preference-laws.pdf>).

#### 6.9 PROTESTS

A vendor may protest a solicitation or award decision in accordance with N.D.C.C. § [54-44.4-12](#) and N.D.A.C. Chapter [4-12-14](#). If you become aware of a situation that could result in a protest, contact your agency's procurement section. See the OMB State Procurement Office website for a [sample protest response](#).

## Chapter 7: Small Purchase Procedures (Up to \$25,000)

### 7.1 IDENTIFYING POTENTIAL BIDDERS

After the specifications are written and type of solicitation selected, the procurement officer is ready to conduct an informal procurement. When making informal purchases over \$2,500 up to \$25,000, a minimum of three bidders must be solicited. More bidders, including government entities, may be solicited (ref. N.D.A.C. § [4-12-15-01](#)). Consider the following when determining the number of bidders to solicit:

- Price: The higher the price, the more competition should be sought;
- Competition: The more bidders that can meet the need, the more competition should be sought;
- Mission requirements: Consider whether soliciting more bidders would cause a delay that could hamper the agency's mission.

While there is no requirement to use the state bidders list for purchases under \$25,000, the state bidders list is a good source for finding potential bidders. These bidders are already registered with the North Dakota Secretary of State and OMB. See the [OMB Guidelines to Vendor Registration](#). Visit the OMB State Procurement Online website to access the State Bidders List (<http://www.nd.gov/spo/agency/eservice/>).

### 7.2 DEBARRED AND SUSPENDED VENDORS

Only those individuals and businesses on the [List of Debarred and Suspended Vendors](#) may not be solicited (ref. N.D.A.C. Chapter [4-12-05](#)).

### 7.3 INFORMAL SOLICITATIONS

Informal solicitations may be in writing or verbal. Whether verbal or written, be sure to provide the same information to all potential bidders at the same time to ensure fairness.

- Verbal solicitations should only be used for simple purchases that can be awarded based upon "lowest responsible bidder meeting specification."
- Written solicitations must be used for informal proposals because state law requires the evaluation criteria to be stated in the solicitation (ref. N.D.C.C. § [54-44.4-10](#)). A written solicitation should also be used for complex or lengthy requirements.

#### Written Solicitations:

The solicitation document must describe the needed commodity or service, describe the type of response expected, and explain how the responses will be evaluated. Customize the solicitation document for the commodity or services being procured. The written solicitation should include:

- Contact Person. Provide the name and contact information for the person who bidders must contact if they have any questions.
- Response Instructions. Describe how, when, and where vendors must respond. Give bidders adequate time to respond (ref. N.D.A.C. § [4-12-04-02](#)).
- Delivery Instructions and Terms of Sale. Indicate the delivery location and state that the price offered by the bidder is to include all shipping, delivery, and handling charges in the pricing quoted. Terms of sale address when title passes from the seller to the buyer, which party is responsible for freight, and which party files claims if commodities are damaged in transit. The OMB State Procurement Office recommends specifying F.O.B. Destination, Freight Prepaid, which requires the

seller to own the commodities in transit, pay freight charges, and file any claims. Title passes to the state at the delivery destination. See the OMB [Freight Matrix](#).

- Specifications of the needed commodity or service. Provide all the information a bidder will require to prepare an accurate quotation or proposal. If a brand name is specified, vendors must be invited to offer competitive brands unless you have received approval to limit competition (see Section 6.2 of this manual).
- Required Delivery Date. The date commodities must be delivered or service must be performed. Indicate a specific date or time (days/weeks/months) after receipt of order (ARO). Expect higher prices if expedited delivery is required.
- Evaluation Criteria. Informal bids must be awarded to the low bidder meeting specifications. Informal proposals must state the relative weight of cost and any other evaluation criteria that will be considered in making the award.

#### Verbal Solicitations:

When soliciting oral bids, follow the same process described in a written quotation, but contact the bidder and recite the requirements instead of issuing a written document. Bidders will normally respond by telephone, unless you ask for a written response. When making an oral solicitation, document quotes received, including any bidders that declined to bid, using the [Request for Telephone Quote](#) form, SFN 2706.

#### 7.4 CLARIFICATIONS OR AMENDMENTS TO THE SOLICITATION

After the solicitation is issued, carefully consider any questions or criticisms raised by potential bidders about the solicitation. If you need to make a correction or modification, notify each bidder you solicited in the same manner as the original solicitation (verbal or written). See the OMB State Procurement website for a sample [Solicitation Amendment](#).

#### 7.5 RECEIVING RESPONSES

Informal bids and proposals may be viewed immediately. If responses are received from all bidders solicited, responses may be evaluated and an award made. Document all bidders solicited and their responses, including those that responded with a “no bid.” Send a [Rejection Letter](#) if any responses are received late. Bidders may not change their responses after the deadline.

#### 7.6 EVALUATING RESPONSES

When evaluating bids or proposals, you can only consider those requirements or evaluation criteria specifically stated in the solicitation.

- Responsive bidder. A “responsive” bidder means a firm or person who submits an offer that conforms to the requirements of the solicitation. Failure to meet specifications and submission of a late bid are common reasons for declaring a bid “not responsive.” Compare the offered products or service to the specifications and requirements stated in the solicitation. A bid or proposal that did not meet a stated minimum requirements must be rejected (ref. N.D.A.C. § [4-12-11-03](#))
- Responsible bidder. A “responsible” bidder means a firm or person who is capable of performing the work. If a bidder appears not to be sufficiently responsible, see N.D.A.C. § [4-12-11-04](#).
- Price Evaluation: If bids or proposals are received from nonresident bidders, apply any reciprocal preference (see Section 6.8 of this manual). Determine the lowest priced, responsive bid or proposal. Be sure each bidder’s total price includes all shipping, handling, and installation costs, if any. Discounts for prompt payment or cash discounts can only be considered if so stated in the solicitation.

When evaluating proposals, the lowest priced proposal receives the maximum points for cost. Points for higher-priced proposals can be calculated:

$$\frac{\text{Price of Lowest Cost Proposal}}{\text{Price of Proposal Being Rated}} \times \text{Number of Points} = \text{Awarded Points}$$

- Discussions, negotiations, and best and final offers: No discussions or negotiations are permitted with competitive bidding. See N.D.A.C. § [4-12-08-04](#) and chapter [4-12-12](#) for guidance about discussions, negotiations and best and final offers within a RFP process.
- Compare all-or-none or split award: If the solicitation or bidders response did not specify whether the award would be an all-or-none or split award, the procurement officer has discretion to make that determination. The administrative costs of issuing multiple purchase orders may be considered to determine whether a split award will be advantageous. As a general rule of thumb, the administrative cost to issue a purchase order is \$50.

#### 7.7 TIE BIDS OR PROPOSALS

If two or more bidders offer equal prices or receive equal evaluation scores after any reciprocal preference is applied.

Preference must first be given to bids submitted by North Dakota vendors (N.D.C.C. § [44-08-01.1](#)).

If a tie remains, preference must be given to approved vendors on the State Bidders List [ref. N.D.C.C. § [54-44.4-09\(4\)](#)].

If a tie still remains, award shall be made in accordance with N.D.A.C. § [4-12-11-05](#).

#### 7.8 ONLY ONE BID OR PROPOSAL RECEIVED

When only one bid or proposal is received, attempt to find out why the competitive process failed. The specifications and other requirements of the solicitation must be reviewed to ensure competition was not restricted. The situation must be handled in accordance with N.D.A.C. § [4-12-11-08](#).

## **Chapter 8: Approvals, Restrictions, and Special Procedures**

Certain commodities and services require special procedures, such as a regulating agency, an approval process, purchase restrictions, or reporting requirements.

### 1. Equipment

- Capitalized Equipment: Equipment and software valued at \$5,000 must be reported as fixed assets under N.D.C.C. § [54-27-21](#). Contact your agency's asset manager.
- Leased or Leased-Purchase Equipment: Solicitations for the leasing or lease-purchase of equipment must include the term of the lease including provisions for extension or renewal. State law requires a lease vs. purchase analysis. Visit the [OMB Fiscal website](#) for forms and instructions. If leasing heavy equipment, such as a motor grader, consider requesting property insurance from the vendor in the solicitation. Notify State Fire and Tornado if leased equipment will be covered under that fund. The lease agreement should be reviewed by the agency's assistant attorney general or special assistant attorney general. Contact your agency's asset manager to determine if the leased equipment needs to be capitalized. See N.D.C.C. § [54-27-21.1](#) and N.D.A.C. § [4-12-06-05](#).

- Trade In Equipment: When replacing equipment, you may trade in your existing equipment. The specifications need to include detailed information about the equipment being offered. If possible, allow vendors an opportunity to inspect the equipment. Request prices with and without a trade in and provide that award may be made either way. Compare the trade in offers with the estimated outright sale price to determine which is most advantageous. Contact OMB State Surplus Property at 701-328-9666 for assistance in estimating the sale price. If the equipment is capitalized, coordinate the trade-in with your agency's asset manager.
  - Used Equipment: On occasion, it is advantageous to purchase used equipment. When specifying used equipment, evaluation criteria should allow consideration of factors such as age, condition, mileage, and require inspection or testing before award. The used equipment is over \$2,500 and only one source for the used equipment can be found or the used equipment available only on short notice, complete an [Alternate Procurement Request](#) form, SFN 51403.
2. Information Technology Procurements: If you are planning to purchase information technology hardware, software, or services over \$25,000 that are not on a state term contracts, submit the request to ITD for prior approval in accordance with North Dakota Enterprise Architecture Standard [STD-ITD-001](#). Contact ITD Planning Division at 701-328-1992 for assistance.
3. Insurance:
- Fire and Tornado Insurance. State property must be insured with the North Dakota Department of Insurance, Fire and Tornado Fund. The State Fire and Tornado Fund provides affordable building and business personal property insurance coverage to state entities and political subdivisions (ref. N.D.C.C. § [26.1-22-05](#)). Learn about coverage, rates, and filing claims by calling the State Fire and Tornado Fund at 701-328-9600 or visit its website at <http://www.nd.gov/ndins/programs/>.
  - Flood Insurance: All flood insurance policies, regardless of the company, are underwritten through the National Flood Insurance Program (NFIP). The Office of the State Engineer is the State NFIP Coordinator. Flood insurance may be purchased directly from any licensed property insurance agent. Flood insurance purchased over and above the NFIP coverage limits must use state procurement procedures. Contact the Office of the State Engineer at 701-328-4898 or [swc@nd.gov](mailto:swc@nd.gov) for assistance in evaluating whether your agency should obtain flood insurance and NFIP flood hazard mapping. Additional information is available on the State Water Commission Special Projects website at <http://www.swc.state.nd.us/>
  - Liability Insurance: The Risk Management Fund provides tort liability coverage for the state and state employees acting within the scope of their employment up to \$250,000 per person and \$1 million per occurrence. OMB, through the Risk Management Fund, is given the authority to decide which state agencies may purchase liability insurance. All liability insurance purchased on behalf of the state must be authorized in writing by the OMB Director (ref. N.D.C.C. Chapter [32-12.2](#)). Contact Risk Management at 701-328-7584 or visit its website at <http://www.nd.gov/risk>.
4. Microfilm Equipment and Services: Information Technology Department must approve purchase requests over \$1,000 (ref. N.D.C.C. § [54-46.1-05](#)). Contact ITD Records Management Division at 701-328-3585 regarding approval requests.

5. Motor Vehicles:
  - State Fleet Services, a division of the North Dakota Department of Transportation, must purchase or lease motor vehicles for state agencies (ref. N.D.C.C. § [24-02-03.3](#)). State Fleet Services also operates the State Motor Pool locations throughout the state. Contact State Fleet Services at 701-328-2543 or visit its website at <http://www.dot.nd.gov/>.
  - Direct manufacturer sales prohibited. When purchasing new motor vehicles you must comply with N.D.C.C. § [39-22-25](#) related to a prohibition of direct manufacturer sales of new motor vehicles.
6. Paper – Recycled content requirement: State law requires that at least twenty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material. When purchasing paper products, OMB must request information on the percentage of recycled paper content when soliciting paper products. (Ref. N.D.C.C. § [54-44.4-07](#), [54-44.4-08](#))
7. Printing: All printing over \$2,500, not done by Central Duplicating Services, must be requisitioned through the OMB State Procurement Office. State law requires that all public printing, binding, and blank book manufacturing must be awarded to a resident North Dakota bidder as defined in N.D.C.C. § [44-08-02](#). N.D.C.C. § [46-02-20](#) also prohibits state agencies from doing certain types of printing in state operated print shops. See the [OMB Guidelines for State Procurement of Printing](#).
8. Postage Meters: Office of Management and Budget, Facility Management Division, must approve the lease or rental of all postage meters by all state agencies and institutions. Agencies must also submit an annual report identifying the total postage used during the calendar year (ref. N.D.C.C. § [54-06-18](#) and OMB [Fiscal Policy 111](#)). Contact OMB Facility Management at 701-328-2481 to request approval.
9. Refreshments: Any purchases of refreshments must comply with OMB [Fiscal Policy 515](#).
10. Report of Services: State law requires each agency and institution to file an annual report with OMB before March first each year regarding the services purchased during the preceding year (N.D.C.C. § [54-44.4-02.1](#)). Report all nonexempt services over \$2,500 using the [Report of Services](#) form, SFN 52968 or an approved agency form.
11. Telecommunication Equipment and Services: Purchase all telecommunication equipment and services through ITD Telecommunications Division, including telephones and telephone systems (other than cellular phones), automated attendant systems, call sequencers, lines, circuits, all data communication equipment and services, routers, switches, data circuits (ref. N.D.C.C. § [54-49-05](#)). Submit telecommunication requests on-line on the [ITD website](#) or call ITD Telecommunications at 701-328-1002.

## Chapter 9: Purchase Orders and Contracts

After selecting the successful bid or proposal, the procurement officer must award a contract using one of the following methods:

### 9.1 PURCHASING CARDS

OMB administers a purchasing card program state agencies are encouraged to use. A \$2,500 single purchase limit and a \$10,000 monthly maximum limit are the default settings. If higher limits are required, contact OMB. See the [OMB Purchasing Card Users Manual](#).

### 9.2 PURCHASE ORDER

A purchase order may be issued as a contract for commodities or simple, low dollar services provided it adequately describes the service to be performed. Since a purchase order does not contain adequate space to describe all the elements of a service contract, the terms and conditions of the solicitation must be incorporated into the purchase order by reference. To do this, simply type the following language on the purchase order, "The attached terms and conditions of (Solicitation Type, Number, and Date) are incorporated and made part of this purchase order by reference."

- Purchase Order - PeopleSoft/Oracle System. The online [PeopleSoft/Oracle Purchase Order \(PO\) system](#) is used to create and issue a purchase order. This system is integrated with the PeopleSoft/Oracle Receiving and Accounts Payable applications, so receiving and payment can be done on-line. Contact your agency's procurement section for authorization and training to use the on-line purchase order system.
- Field Purchase Order, SFN 53329. This short purchase order is padded into books and must be hand-written. It is intended for local, over-the-counter purchases and must be hand-written. Order Field Purchase Order books from Central Supply.

### 9.3 CONTRACTS USING ATTORNEY GENERAL SAMPLE CONTRACT

A contract will be issued for most service contracts and term contracts. Use the Office of the Attorney General Contract and Review Manual and Sample Service Contract to create a contract appropriate for the commodity or service being procured. Be sure to have the agency's legal counsel review any changes to the standard clauses. Ensure the final contract contains the statement of work agreed upon between the state and the successful vendor and incorporate all the terms and conditions from the solicitation. Consult your agency's legal counsel for assistance.

### 9.4 CONTRACTS FURNISHED BY BIDDERS AND CONTRACTORS

All contracts furnished by the bidders and potential contractors need to be reviewed by the agency's legal counsel (e.g. lease agreements). These contracts are often one-sided and heavily favor the vendor. It is imperative to make modifications to these contracts to ensure the state is properly protected.

### 9.5 OTHER PAYMENT METHODS

On occasion, purchases are made without using a purchasing card, purchase order, or contract. For example, maintenance is required on office equipment, and the service provider leaves an invoice. Agencies should develop internal procedures for these situations. These expenses can be paid on a voucher. Contact OMB Fiscal Division for assistance.

## 9.6 RECEIVING, INSPECTION, AND ACCEPTANCE

The procurement officer's responsibility doesn't end when the purchase order or contract is issued. The procurement officer's role in the procurement process should continue until the commodities are delivered or the services have been performed. Purchase order or contract administration, which includes receiving, inspecting, acceptance, problem resolution, and payment, is very important. The best specifications and broadest competition are wasted efforts if the state pays for commodities received or services rendered that do not meet the requirements of the purchase order or contract.

- Follow-up. Ensure outstanding purchase orders and contracts are monitored to prevent missed deadlines, especially if the commodity or services is urgently needed. Document all communications with a vendor about outstanding orders. If your request needs an earlier delivery than originally agreed, you may need to authorize special shipping (usually at an additional cost).
- Deliveries. Delivery is expected at the time agreed upon when the order was placed. Although early deliveries are usually welcomed, an early delivery may be rejected if the delivery imposes a hardship for the agency. If a delivery is late, send a written notice to the contractor and require a written response explaining why delivery is late and when delivery can be expected. If the vendor's explanation and alternate delivery time are acceptable, document the file and communicate the new delivery date to the end-user. Contact your agency's procurement section for assistance.
- Receiving, Inspection, and Acceptance. Receive, inspect, and accept commodities and services as soon as practical after delivery to ensure compliance with the stated specifications and ensure the vendor receives timely payment. Promptly notify the vendor if the commodity or service fails to meet specifications or damaged commodities are received.

## 9.7 REPORTING COMPLAINTS

Substandard performance by a vendor, such as late deliveries or commodities/services that do not meet requirements should not be tolerated, and vendors that do not perform satisfactorily need to be reported to your agency's procurement section using a [Formal Complaint](#) form, SFN2565.

## 9.8 AMENDMENTS AND CANCELLATIONS

On occasion, administrative errors, omissions, or changing circumstances may create a need to cancel or amend a purchase order or contract after it has been issued. Purchase orders and contracts must not be amended to avoid competition requirements. See the OMB State Procurement Office website for a [Sample Contract Amendment](#) template.

## 9.9 DOCUMENTATION REQUIREMENTS

Each procurement transaction must be adequately documented for audit and public record purposes. If the purchase is over \$2,500, the procurement file must have evidence that three vendors were solicited or document the reason three bids were not obtained. Include any required approvals, solicitation document used, list of bidders solicited, responses received, bid summary or evaluation worksheets, reasons for rejecting a particular bid, and method of award (e.g. purchasing card or purchase order). Written determinations are required for all emergency, limited competitive and noncompetitive procurements.

## **Chapter 10: Procurement Certification (Up to \$2,500)**

Now that you have read this manual, complete the “Request for Level 1 Procurement Certification” form found on the last page of this manual. Send this form to your agency’s procurement section. Before making any procurements, be sure you receive a delegation of purchase authority from the head of your agency.

Remember, this manual does not address each agency’s policies and procedures. Contact your agency’s procurement section if you need additional guidance or have questions regarding the contents of this manual.

**Congratulations!**



**REQUEST FOR LEVEL 1 CERTIFICATION**  
ND STATE PROCUREMENT OFFICE  
SFN 53111 (08-2007)

**Level 1 Certification for individuals who perform small purchases up to \$2,500.**

The individual below has demonstrated Level 1 competency by reading the North Dakota  
Level 1 State Procurement Manual.

Name of the Person to be Certified:		
Title of Person to be Certified:		
Agency/Institution:	Department Number:	
Division/District:		
Address:		
City:	State:	Zip Code:

I certify that I have read and understand the North Dakota Level 1 State Procurement Manual. I agree to be held accountable for the competent, effective, legal and ethical interpretation and application of this information.

Signature:	Date:
<b>INSTRUCTIONS:</b> The individual requesting this certification must complete and sign this certificate. Upon completion of this request the individual must be sent to their agency's procurement section to be maintained on file at their agency or institution.	