



# TRANSIT PROCUREMENT PLAN

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Plan Update History		
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All	9/2024	Updated All Links
All	9/2024	Updated All Attachments
1.7 State Purchasing Thresholds	9/2024	Updated Threshold Chart from ND OMB
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# Chapter 1: State Transit Procurement Program

## 1.1 INTRODUCTION

The North Dakota Department of Transportation (NDDOT) has developed this procurement plan in accordance with the U. S. Department of Transportation, Federal Transit Administration (FTA) and State of North Dakota requirements for all recipients using State and FTA funds.

When an entity applies for and accepts state and federal funds, they also are accepting the responsibility of maintaining oversight of the procurement process and assuring it is compliant. State and federal regulations regarding procurement of goods and services are complete, detailed and often change to reflect changes in legislation. Before procurements are initiated, recipients should review these resources and work with the Transit Section to ensure required steps are followed.

Procurement is the process of purchasing, renting, leasing, or otherwise acquiring any goods or services. This includes the process of acquisition, including description of requirements, solicitation of bids and proposals, evaluation and selection of sources, preparation and award of a contract, and all phases of contract administration (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 goods 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 (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.

The purpose of this plan is to establish guidelines for 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 plan is intended to be a desktop reference and training plan for state employees responsible for purchasing printing, goods, and services. Agencies and institutions 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

OMB is the administrative agency for state procurement for the executive branch of government, excluding institutions under the jurisdiction of the State Board of Higher Education. OMB promulgates rules related to state procurement practices. The State Procurement Office (SPO) is the section within OMB responsible for state procurement. SPO will make purchases on behalf of agencies, and provide procurement assistance (N.D.C.C. §§ [54-44-04\(18\)](#), [54-44.4-02](#), [54-44.4-04](#)).

The State Board of Higher Education has the authority to determine policy for purchasing for the North Dakota University System in coordination with OMB (N.D.C.C. § [15-10-17](#), [S.B.H.E Policy 803.1](#), [NDUS Procedure 803.1](#))

The OMB has assigned a State Procurement Officer to each agency and institution. The Procurement Officer Assignments (State of ND Employees – ONLY) are posted on the OMB website. Don't hesitate to contact the OMB State Procurement Officer assigned to your agency or institution when you need assistance.

## 1.3 LEAD PROCUREMENT OFFICER – PROCUREMENT LIAISON

OMB and NDUS requires each agency and institution to designate a lead procurement officer who is responsible for the procurement functions of the organization. (NDUS Procedure [803.1](#))

OMB asks each agency head to complete a [Procurement Liaison Designation form](#), SFN 53112 to

designate the agency's lead procurement officer and liaison to OMB State Procurement.

#### 1.4 TRANSIT SUBRECIPIENT – ONLY

A procurement officer is “an individual duly authorized to enter and administer purchasing contracts and make written determinations with respect thereto and also includes an authorized representative acting within the limits of authority” (N.D.C.C. § [54-44.4-01](#)).

Each transit subrecipient must designate a procurement officer. They would be responsible for the state and federal purchases for the agency. Subrecipients must complete the Procurement Adoption-Procurement Officer Designation form (*Attachment 35*) located in the BlackCat System under Global Resources. The form must be completed, approved by the board, and uploaded into each agency BlackCat System - Resources under the Procurement folder.

The designated procurement officer must follow all the requirements in the plan unless noted State of ND Employees – ONLY. Please note that your procurement may be deemed invalid by NDDOT if you do not allow the NDDOT Transit Section adequate time to review throughout the procurement process.

#### 1.5 PROCUREMENT ONLINE WORK REQUEST SYSTEM – State of ND Employees - ONLY

OMB State Procurement Office will purchase on behalf of agencies. Agencies are also required to submit certain purchase requests to OMB. Agency employees with a NDGOV user name and password can use the [Procurement Work Request System](#); to submit a purchase request to or ask for assistance from the OMB State Procurement Office. Use the Procurement Work Request System to submit forms, comments, and questions to SPO.

If you do not have a NDGOV login, submit requests and forms to [infospo@nd.gov](mailto:infospo@nd.gov). Contact the OMB State Procurement Office at 701-328-2740 for assistance.

#### 1.6 ROLES AND RESPONSIBILITIES

NDDOT is the recipient authorized to receive funds directly from the State of ND and FTA. A “subrecipient” is an agency authorized to receive grant funds through NDDOT. The responsibility for the procurement process ultimately rests with NDDOT as the recipient of the State of ND and FTA grant funds. However, subrecipients are obligated to follow all applicable procurement requirements and provide information to NDDOT demonstrating what funding is being used and how requirements were met.

For ease of use of this plan, transit subrecipients and NDDOT Transit Section are both referred to as a recipient. Minor deviations in the process steps for subrecipients and State of ND Employees are noted throughout the plan.

When a recipient conducts a procurement of goods or services funded with an FTA grant, it is the responsibility of that recipient to manage the entire procurement process and contract administration to ensure its compliance with relevant FTA requirements.

If a recipient accepts capital or operating assistance, FTA requirements also apply to all transit-related third-party purchase orders and contracts. In addition to ensuring adequate and open competition for federally funded purchases of goods or services, recipients must ensure vendor compliance with applicable federal regulations including, developing all procurement documents, specifications, and contract administration.

If a recipient is using State Aid from the NDDOT, the state purchasing rules still ap



**1.7 STATE PURCHASING THRESHOLDS**

Effective July 1, 2018, OMB and NDUS adopted very similar purchasing thresholds. NDUS employees must follow SBHE policies and NDUS procedures. State agencies, and Transit subrecipients, excluding Higher Education Institutions, must follow state laws, administrative rules, and OMB guidelines.

<b>State Procurement Competition Thresholds – Effective August 1, 2023</b> Competition requirements do not apply if purchasing from a <a href="#">government source of supply</a> or the purchase is exempt from state procurement. Resources: <a href="#">OMB Website</a> <a href="#">ND Team Connect</a> High Education: <a href="#">SBHE Policies</a> , <a href="#">NDUS Procedures</a> , <a href="#">Core Technology Services (CTS)</a> Updated 7-28-2023		
Level	Competition and Review Requirements	Documentation Requirement
<b>Information Technology (IT)</b>	- <a href="#">Initiative Intake</a> required when IT business need is identified and planning for an IT procurement. - <a href="#">Third Party Risk Management (TPRM)</a> may apply. - <a href="#">IT Review</a> requirements may apply. - <a href="#">State Contracts</a> indicate if NDIT approval is required. - <a href="#">NDIT Services, Support, Equipment, Software.</a>	State: See <a href="#">IT Procurement Guidelines</a>  NDUS: See SBHE Policies, NDUS Procedures, <a href="#">IT Policies and Procedures</a> , CTS <a href="#">Administrative Services</a> , <a href="#">Contact CTS</a> for assistance.
<b>Printing</b>	<a href="#">Bidding Preference Law</a> : If practicable, printing must be awarded to a resident ND bidder. ( <a href="#">N.D.C.C. § 46-02-15</a> ) State: OMB <a href="#">Central Duplicating &amp; Mail</a> , State Contracts, Agencies may purchase printing less than \$10,000.	See <a href="#">Print Procurement Guidelines</a>
<b>Fixed Assets</b>	Equipment and software \$5,000 or greater must be reported as Fixed Assets. ( <a href="#">N.D.C.C. § 54-27-21</a> )	See OMB <a href="#">Fiscal Policy 205</a>
<b>Level 1 Micro Purchase</b>  Less than \$10,000	Obtain at least one fair and reasonable quote. Rotate vendors solicited on an equitable basis. ( <a href="#">N.D.A.C. § 4-12-08-02</a> )  State Printing: May use OMB Central Print and Mail, submit <a href="#">SPO Work Request</a> , or make Level 1 Purchase (printing in-state preference law applies).	Alternate Procurement (AP) is not required if no competition.  If competition obtained, document solicitation used, vendors solicited, any amendments, responses received, evaluation, basis for award.  State agencies & Transit subrecipients: Document vendors solicited, quotes received, and award determination.
<b>Level 2 Small Purchase</b>  At least \$10,000 but less than \$50,000	Solicit informal bids or proposals from at least three vendors or post to SPO Online and send to bidders list. May send to other potential vendors.  State Printing: Submit <a href="#">SPO Work Request</a> if not using OMB Central Print & Mail or state source of supply.  <b>Transit subrecipients:</b>  SPO Online is not available for Transit Subrecipients.  If purchasing ADA vehicles off the State Bid, approval required from the Transit Section before ordering.  Assets (vehicle, equipment, software, facility, etc.) must be added to Inventory in the BlackCat System if \$5,000 or greater.	Document solicitation used, vendors solicited, any amendments, responses received, evaluation, basis for award.  Alternate Procurement is required if fewer than three vendors are solicited.

<p><b>Level 3 Informal Purchase</b></p> <p>At least \$50,000 but less than \$100,000</p>	<p>Post informal bid or proposal to SPO Online and send to bidders list. May send to other potential vendors.</p> <p>State Printing: Submit <a href="#">SPO Work Request</a> if not using OMB Central Print &amp; Mail or state source of supply.</p> <p><b>Transit subrecipients:</b></p> <p>SPO Online is not available for Transit Subrecipients.</p> <p>If purchasing ADA vehicles off the State Bid, approval required from the Transit Section before ordering.</p> <p>Assets (vehicle, equipment, software, facility, etc.) must be added to Inventory in the BlackCat System if \$5,000 or greater.</p>	<p>Document solicitation used, vendors solicited, SPO Online email notice, any amendments, responses received, evaluation, basis for award.</p> <p>Alternate Procurement if soliciting less than required level of competition.</p> <p>Transit: Approval required before purchase</p>
<p><b>Level 4 Formal Purchase</b></p> <p>\$100,000 and over</p>	<p>Post formal sealed Invitation for Bid (IFB) or Request for Proposal (RFP) to SPO Online and send to bidders list. May send to other potential vendors.</p> <p>State Printing: Submit SPO Work Request if not using OMB Central Print &amp; Mail or state source of supply.</p> <p>State: Major IT Projects \$500,000. (<a href="#">N.D.C.C. § 54-59-32</a>)</p> <p>Prohibition of Israel Boycott (<a href="#">N.D.C.C. § 54-44.4-15</a>) (does not apply to contracts below \$100,000 and companies with fewer than ten employees).</p> <p><b>Transit subrecipients:</b></p> <p>SPO Online is not available for Transit Subrecipients.</p> <p>If purchasing ADA vehicles off the State Bid, approval required from the Transit Section before ordering.</p>	<p>Document solicitation method used, vendors solicited, SPO Online email notice, any amendments, evaluation method, and basis for award.</p> <p>Alternate Procurement if soliciting less than required level of competition.</p> <p>State: Major IT Projects procured by OMB State Procurement unless delegated.</p> <p>Transit: Approval required before purchase.</p>
<p><b>Alternate Procurements</b></p> <p>\$10,000 and over</p>	<p><a href="#">Alternate Procurements</a> required for limited competitive and noncompetitive purchases over \$10,000.</p> <p>Notice of Intent to Make a Limited or Noncompetitive Purchase posted on SPO Online to determine if AP is appropriate. (<a href="#">N.D.C.C. § 54-44.4-05</a>, <a href="#">N.D.A.C. § 4-12-09</a>)</p>	<p>Alternate Procurement if soliciting less than required level of competition.</p> <p>If required level of competition solicited and only one bid or proposal is received, see <a href="#">N.D.A.C. § 4-12-11-08</a>.</p> <p>State: NDIT approval may be required.</p>

### 1.8 FEDERAL REQUIREMENTS

For Federal Requirements please see NDDOT FTA Procurement Policy (*Attachment 1*)

### 1.9 PROCUREMENT OFFICER CERTIFICATION TRAINING PROGRAM – State of ND Employees - ONLY

A procurement officer is “an individual duly authorized to enter and administer purchasing contracts and make written determinations with respect thereto and also includes an authorized representative acting within the limits of authority” (N.D.C.C. § [54-44.4-01](#)).

The ND Procurement Officer Certification Program was created in 2002 to provide state employees responsible for purchasing with training based on the type of procurement they conduct (N.D.A.C. §[4-12-03](#)). The Procurement Officer Certification program has four levels matching the competition thresholds. It is recommended that the certification courses be completed in order, but this is not required. Visit the OMB internal website for registration information: [Procurement Officer Certification Training](#)

<b>Procurement Officer Certification Training Level</b>
Level 1: Micro Purchases less than \$10,000
Level 2: Small Purchases at least \$10,000 but less than \$50,000
Level 3: Informal Purchases at least \$50,000 but less than \$100,000
Level 4: Formal Purchases \$100,000 and over

State employees who have been assigned a state purchasing card (P-card) must complete a minimum of Level 1 training, excluding state employees who use a purchasing card exclusively for travel expenses. A purchasing card is a method of payment, so a Level 1 certified P-card user may make payments greater than \$10,000 using the P-card.

A Level 1 certified employee may make purchases from government sources of supply greater than \$10,000.

An individual who performs the following tasks must be certified:

- The agency’s lead procurement officer and Procurement Liaison (Minimum of Level 1)
- Purchases from state contracts
- Solicits bids and proposals
- Serves as the point of contact for questions related to a solicitation
- Makes an award determination and issues a notice of intent to award
- Makes determinations required by state procurement laws and rules
- Responds to protests

Individuals do not need certification for the following tasks:

- Purchase from government entities
- Submit a Procurement Work Request
- Develop specifications
- Receive and opens bids or proposals
- Participate in an evaluation process
- Approve purchase orders or purchasing card purchases
- Receive and accept goods and services
- Authorize payments
- Agency heads or their designees who sign purchase orders, contracts, and Alternate Procurement forms

### 1.10 DELEGATED PURCHASE AUTHORITY

OMB has statutory authority to delegate purchase authority to state agencies (N.D.C.C. § [54-44.4-03](#), N.D.A.C. § [4-12-03](#) ). OMB delegates purchase authority to the head of the agency and institution. Agency heads may delegate purchase authority to employees based upon the procurement certification training completed using the [Delegation of Purchase Authority form](#), SFN 2566. Completing training does not guarantee that an employee will receive delegated purchase authority.(N.D.A.C. § [4-12-03](#))

Each NDUS institution shall designate one or more persons to act as the institution's lead procurement officer. Lead procurement officers may delegate purchase authority to employees as needs of the institution dictate (NDUS Procedure [803.1](#)).

The delegation will specify any limits (e.g. dollar limits, specific goods or services). Employees may only make purchases within the scope of their delegated authority. Individuals who have been delegated purchase authority must comply with all applicable laws, rules, guideline policies and procedures related to procurement.

#### 1.11 OMB BLANKET DELEGATED PURCHASE AUTHORITY

Effective July 1, 2018, OMB has delegated the following blanket authority to the heads of agencies and institutions subject to procurement laws, rules, and OMB guidelines:

- Goods and Services. Agencies may purchase goods and services, regardless of the dollar amount.
- Printing. Agencies may purchase printing less than \$5,000 subject to the Guidelines for State Procurement Printing. Submit a Purchase Request for printing \$5,000 and over using the Procurement Work Request System. State of ND Employees - ONLY
- Information Technology (IT). Agencies may purchase Information Technology, subject to the Guidelines for Information Technology Procurement. IT purchase \$25,000 and over must be reviewed by the Information Technology Department. Procurement Officers for major IT projects \$500,000 and over must receive a special purchasing delegation from OMB. (N.D.C.C. § [54-35-15.2](#)) State of ND Employees – ONLY
- Alternate Procurements. Alternate Procurement documentation is not required for limited and noncompetitive purchases less than \$10,000. Alternate Procurement approval is required for purchases \$10,000 and over that deviate from the purchasing threshold competition requirements based on the estimated dollar value. Agencies must submit a [SFN 51403 Alternate Procurement form](#) to the State Procurement Office using the Procurement Work Request System. The Alternate Procurement must be approved by the State Procurement Office prior to the purchase. State of ND Employees – ONLY.

#### 1.12 OMB SPECIAL DELEGATED PURCHASE AUTHORITY – State of ND Employees - ONLY

Some types of delegated purchase authority must be approved by OMB.

- Major IT – OMB must delegate special authority to procurement officers for a major information technology project (N.D.C.C. § [54-59-32](#)). The procurement officer for a major IT project must meet minimum qualifications subject to the Guidelines for Information Technology Procurement. State of ND Employees - ONLY.
- Provisional - Employees who have limited training or experience may be granted provisional procurement certification from the OMB State Procurement Office that will be valid for a limited period during which the employee must attend the required certification courses. Until the employee completes the training, a certified procurement officer must oversee the employee's work to ensure compliance with state procurement laws, rules, policies, and procedures.
- Non-State Employee – Under special circumstances, an agency may desire to have a non-state employee as their procurement officer. Use the delegation of purchase authority form to request OMB state procurement approval.

## **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, policies and procedures that govern purchasing practices for their state agency or higher education institution (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 and must maintain courteous and professional relationships with all vendors. It is imperative to avoid any activities, relationships, and communications that in any way diminish, or appear to diminish, fair and impartial treatment of vendors. Do not hesitate to advise the requestor if some aspect of the purchase request 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. (N.D.A.C. § [4-12-04-01](#)) All parties involved in the solicitation, negotiation, performance, and administration of contracts for the state shall act in good faith. Good faith means that all parties to a contract will deal with each other honestly and fairly.
- Emphasis on competition. (N.D.A.C. § [4-12-04-02](#)) Solicitations for bids or proposals will be issued in sufficient time and in a form that will permit the highest practicable degree of full and free competition.
- Handling of information. (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](#). Consult your legal counsel for assistance.
- Conflict of interest. (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 needed equipment). Have another employee make the purchase to avoid an actual or potential conflict of interest. If contracting with someone within one year after they have left public service, consult legal counsel to consider N.D.C.C. §§ [12.1-13-02](#), [12.1-13-03](#). Consult your legal counsel for assistance with potential conflicts of interest.
- Attempt to influence. (N.D.A.C. § [4-12-04-05](#)) 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 purchases). 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.
- Collusion of bidders or offerors. (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 good or service. Report suspected collusion to the OMB state procurement manager.

Nondiscrimination in source selection. (N.D.A.C. § [4-12-04-07](#)) Source selection may not be based upon discrimination because of race, religion, color, national origin, sex, age pregnancy, parenthood, disability, or political affiliation. Artificial fragmentation prohibited. (N.D.A.C. § [4-12-04-08](#)) Procurement requirements may not be artificially divided as to constitute a small purchase [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.
- Urgency. Urgent purchases may be separated from routine purchases.
- Predictability. When goods 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.)

### 2.3 VIOLATIONS

Report any violations of procurement laws, rules, policies or procedures to the agency or institution's procurement section, regardless of the cause. Procurement violations discovered by the OMB State Procurement Office will be reported to the employing agency or institution for appropriate disciplinary action. Violation of state laws, rules, policies and procedures 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 (N.D.A.C. § [4-12-01-06](#)).

"Maverick Spend" is described as buying from vendors without following procurement policy. For example, purchases from a vendor instead of purchasing from an established mandatory government source of supply or state contract.

## **Chapter 3: State Sources of Supply – Save Time and Money**

### 3.1 STATE SOURCES OF SUPPLY

Save time and money by using state sources of supply. When a need is identified, check first to see if the good or service is available from a state source of supply. Agencies and institutions can purchase from state sources of supply and government entities without obtaining competition, regardless of the dollar amount. Some sources of supply may be mandatory for State of ND Employees only.

Transit subrecipients are not required to use the mandatory sources and in some cases may not be allowed to use them. You are encouraged to use the state sources because they may be the most economical option.

### 3.2 AGENCY AND INSTITUTION INVENTORY

It is important to understand how things work at your agency. Some agencies and institutions maintain supply rooms or inventory. Contact your agency's procurement section to learn about existing inventory or supply rooms.

### 3.3 STATE CONTRACTS

State law requires OMB and Higher Education institutions to establish contracts for goods and services of high common use. (N.D.C.C. §§ [54-44.4-06](#), [54-44.4-13](#))

- [State contracts](#) – Visit the OMB website for state contract information.
  - "EPB" designates Environmentally Preferable/Biobased contracts.
  - "CP" designates Cooperative Purchase contracts that are available to other government entities and public schools.
  - "M" designates contracts that are Mandatory for use by executive branch agencies, excluding Higher Education institutions.
- [State Contract Exemption Request form](#) – State agencies, excluding NDUS institutions, must use the State Contract Exemption Request form, SFN 54202, if there is a mandatory state contract that does not meet the needs of their agency. Submit the form to the state contract administrator using the SPO Procurement Work Request System. If the contract exemption is approved, the agency must follow normal procurement procedures.
- Complaint. Please let the State Procurement Office know about problems with state contracts, vendors, defective products, or anything else purchasing related. Submit a complaint using the SPO Work Request System or email to [infospo@nd.gov](mailto:infospo@nd.gov).

### 3.4 COOPERATIVE PURCHASING

"Cooperative Purchasing" is a procurement conducted on behalf of multiple government entities. Purchasing from another entity's contract is a type of cooperative purchase commonly called "piggy-backing." Cooperative purchasing is another great way to save time and money.

- OMB may establish or participate in cooperative purchasing contracts that are made available to government, tribal agencies, and other eligible entities. (N.D.C.C. §§ [54-44.4-06](#), [54-44.4-13](#), N.D.A.C. § [4-12-02-02](#)). Law requires OMB to make determinations and provide notice to vendors.



Submit an [Alternate Procurement Request form](#), SFN 51403, to request using another government entity's contract in lieu of a competitive procurement process.

- Institutions under the jurisdiction of the State Board of Higher Education may enter into cooperative purchasing agreements pursuant to N.D.C.C. § [15-10-28](#)
- 1122 "Counterdrug" Program. This is a federal cooperative purchasing program. North Dakota government entities with counterdrug responsibilities can use this federal program to make purchases for new supplies and equipment from General Services Administration (GSA) contracts. The State Procurement Office has designated State Point of Contact (SP C) to administer the program in North Dakota. Contact 701-328-1721. More information here: [1122 "Counterdrug" Program+](#)
- Transit subrecipients must contact the NDDOT Transit Section for approval prior to entering into a cooperative purchasing agreement. In some cases, both NDDOT and FTA will need to approve this agreement. FTA Master Agreement (as amended).

### 3.5 STATE AGENCIES AND GOVERNMENT ENTITIES – State of ND Employees ONLY

You can purchase directly from other government entities (N.D.C.C. § [54-44.4-05 \(2\)\(e\)](#) and N.D.A.C. § [4-12-15](#)). See the Attorney General's Contract [Drafting and Review Manual](#) for an interagency agreement template.

- Federal Government. State agencies and institutions can contract with the federal government to purchase or lease any equipment, supplies, materials, or other property without competition. (N.D.C.C. § [21-06-08](#).)
- Central Supply. Central Supply offers 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 the Central Supply Catalog for product information. State of ND Agencies – ONLY.
  - [Central Supply](#)
- Central Duplicating Services. Central Duplicating provides printing, mailing, bindery services, technical advice, layout assistance, graphics design services, and finishing. Central Duplicating is located at the Capitol in Bismarck. Central Duplicating Services and other agencies (excluding some NDUS institutions) cannot print on coated stock, continuous forms, snap-out forms, envelopes over twenty thousand, and 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 (N.D.C.C. § [46-02- 20](#)). Contact Central Duplicating at 701-328-2772 or visit its website.
  - [Central Duplicating](#)
- State and Federal Surplus Property. State law requires all agencies and institutions to report their surplus property to OMB. OMB also obtains Federal Surplus Property. OMB State Surplus Property makes surplus state and federal property available to government entities and eligible persons. They also have an electronic recycling program. Call 701-328-9665 or visit the State Surplus website to see a surplus property inventory listing.
  - [Surplus Supply](#)

LESO (Law Enforcement Support Office) 1033 Program. This federal program makes excess military property available to North Dakota government entities whose primary function is enforcement of federal, state and local laws, and whose compensated law enforcement

officers have the powers of arrest and apprehension. Section 1033 of the National Defense Authorization Act of 1997 authorizes the Department of Defense to transfer excess military property to state and local law enforcement agencies. Preference is given to counter-drug and counter-terrorism activities. State Surplus Property operates this program.

- [LESO](#)
- [Rough Rider Industries](#). Rough Rider Industries (RRI) is the vocational training arm of the ND Department of Corrections and Rehabilitation. RRI's motto of "Building quality products while preparing quality people" keeps in line with their mission of teaching and providing the necessary

job skills to adults in incarceration which will help these individuals successfully transition back into society. All governmental entities can purchase directly from Rough Rider Industries forgoing the normal procurement process (N.D.C.C. §[12-48-03.1](#)). RRI is located in Bismarck and features statewide sales and delivery of quality furniture and office systems furniture, a full line of seating and upholstery services, dumpsters and metal products, painting, powder coating, and sandblasting services, plastic bag and garbage can liners, indoor/outdoor signs, mattresses, and a full line of custom garment production and sewing services. Call 701-328-6161 or 800-732-0557 or visit [www.roughriderindustries.com](http://www.roughriderindustries.com).

- [Core Technology Services](#). Institutions and entities under the State Board of Higher Education (SBHE) can receive a variety of IT applications and services from Core Technology Services (CTS) including hosting services. Some IT services are mandated or require CTS review prior to purchasing. See SBHE Policy [1200.1](#) and [1901.3](#) for the details. Contact CTS at 701-777-7287 or visit <http://cts.ndus.edu/> for more information.
- [Information Technology Department - Telecommunications](#). The Information Technology Department (ITD) provides a variety of information technology services, including programming, software development, and website development to state agencies. 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 Guidelines to IT Procurement (State of ND Employees – ONLY) Agencies are required to obtain 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. § [54-59-05](#)). Submit telecommunication requests on-line on the [ITD website](#) or call ITD Telecommunications at 701-328-1002.
- [Other Government Entities](#). State agencies and institutions can purchase from other government entities within North Dakota and government entities located in other states [N.D.C.C. § [54-44.4-05 \(2\)\(e\)](#)]. Contact your legal counsel for assistance.

### 3.6 WORK ACTIVITY CENTERS – State of ND Employees - ONLY

It is in the public's best interest to advance employment opportunities to individuals with disabilities so that those individuals may acquire job skills and training and gain greater independence and quality of life. Work Activity Centers are nonprofit corporations, licensed by the Department of Human Services, organized for the primary purpose of employing and providing rehabilitative activities for individuals with physical disabilities, developmental disabilities, or chronic mental illnesses. State law allows any state entity or political subdivision to contract directly with work activity centers. See the online [Work Activity Center Listing](#) (*Attachment 54*) of available goods and services. (N.D.C.C. § [25-16-2](#)).

## **Chapter 4: Specifications**

### 4.1 PURPOSE OF SPECIFICATIONS

If the goods or services you need are not available from a state source of supply, you'll need to conduct a procurement process.

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 good or service the purchasing agency requires and consequently what a bidder must offer [N.D.C.C. § [54-44.4-06\(1\)](#)]. Well-written specifications ensure the state obtains goods and services that meet quality, performance, and delivery requirements at an economical price.

- [Value to the Taxpayer](#). Ensure goods 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 (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 good or service must be written into the specifications. Quality is measurable. Consider only the goods 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](#)).

#### 4.2 BRAND-NAME SPECIFICATIONS – 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.

Specification that includes a brand name must invite bidders to offer comparable products. If you use a brand name, say “Or equal” or “Equivalent 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](#)).

Sometimes you do need a particular brand. For a Level 1 purchase, no Alternate Procurement (*Attachment 2*) is required if a certain brand is required. See Guidelines to Alternate Procurements or NDUS Procedure [803.1](#).

#### 4.3 GREEN PURCHASING

State law has requirements related to the specification of environmentally preferable products (EPP). These are products that have reduced negative effect or increased positive effect on human health and the environment, when compared with competing products that serve the same purpose. See the Guidelines to Environmentally Preferable Procurements for more information. (State of ND Employees – ONLY)

- Environmentally Preferable Products. (N.D.C.C. § [54-44.4-07](#)). Procurement of environmentally preferable products, such as soybean-based ink for newsprint, recycled paper products, and bio-based products.
- Recycled Paper and Paper Products. (N.D.C.C. § [54-44.4-08](#)). Requires OMB and any state agency or institution to purchase at least 20% of the total volume of paper and paper products to be at least 25% recycled material. OMB is required to track compliance with this requirement.

#### 4.4 WRITING SPECIFICATIONS

As a Procurement Officer, you are tasked with obtaining goods and services for your agency or institution at the needed quality, quantity, place, time, and price. Communicate with the end-user to make sure you fully understand the requirements, so you can write effective specifications.

- Avoid “mushy” language – If something is required, use “must, shall, or will.” Use “should or may” to express something that is not mandatory.
- What – Provide a detailed description of “what” you need to purchase.
  - If you are purchasing supplies or equipment, describe the purpose, physical attributes, features, and functionality. Be sure to include any required installation, training, or maintenance.
  - A specification for services is commonly called a “Scope of Work” or “Statement of Work.” If you are purchasing services, provide a detailed description of the work. Describe the tasks that need to be accomplished and any end products or “deliverables” that the contractor must provide to you. Describe any goods or services being supplied by the state.
- Who – Who must perform the work? Describe any requirements that apply to the contractor. Does the contractor need to have any special education, qualifications, experience requirements, or licenses? Will the contractor need to obtain any licenses or permits? Will the contractor’s employees need to complete background checks?
- Where – Where do the goods need to be delivered? or services performed? Provide the physical address and zip code for delivery. Provide any special instructions, such as availability of a loading dock or off-loading equipment.

- When – When do the goods or services need to be received by your agency? Provide a required delivery date. What times of the day can delivery be made?

#### 4.5 EQUIPMENT

When buying equipment, you have many options that can be incorporated into your specifications.

- 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. You do not need approval from the OMB State Surplus Property to trade-in your equipment. However, OMB State Surplus Property can help you determine if the trade-in allowance is reasonable. Contact your agency’s asset manager if the equipment is capitalized.
- Used Equipment. If you are purchasing used equipment, you may indicate a desirable age range, condition, and acceptable amount of hours or mileage. Be sure to require that the used equipment must pass your inspection or testing.
- Consumables. Are you purchasing something that will need parts or supplies on a recurring basis? Your specification and solicitation can include consumables if you want to establish a source for on-going consumable supplies.
- Service and Maintenance. Your specifications should include everything that is needed, including any installation, training, and minimum warranty. If you are buying equipment that will need occasional service or a maintenance agreement, those can be included in the specifications. If you will need the contractor to provide service after the sale, your specifications can include a maintenance agreement.

#### 4.6 LEASE VS. PURCHASE ANALYSIS

If your agency is planning to get quotes on a lease or lease-purchase of equipment or software, you will need to do a lease versus purchase analysis. State law requires that any state agency or institution that acquires the use of an asset as a result of a lease arrangement shall prepare a written analysis documenting the decision to acquire the asset. This analysis may be reviewed during audits for the fiscal period during which the decision was made. Visit the OMB website for a [lease vs. purchase cost/benefit analysis](#) form (*Attachment 19*). See [OMB Fiscal Policy 312](#), N.D.C.C. § [54-27-21.1](#) and N.D.A.C. § [4-12-06-05](#).

#### 4.7 SPECIFICATION FOR SERVICES

Sometimes you may need to purchase 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\(5\)](#)].

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.

A specification for services is commonly called the “scope of work” or “statement of work.” Writing the scope of work is one of the most important and difficult steps in preparing a solicitation for services. Prospective service providers will use the scope of work to prepare a technical proposal and cost proposal. The agency or institution will use the scope 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.

- The scope of work can describe what the contractor must do, such as specific tasks and deliverables and describe any directives the contractor must follow.
- The scope of work can also describe what the contractor must be, such as qualifications, experience, and licenses.

#### 4.8 SERVICES - INDEPENDENT CONTRACTOR VS. EMPLOYEE DETERMINATION

If you are purchasing services, remember that state agencies and institutions cannot hire employees through

the procurement process. The procurement process is used to acquire the services of an independent contractor.

As a Procurement Officer for your agency or institution, you should consult legal counsel to help you if questions arise. Specifically, contact legal counsel if your agency is planning to contract with a current state employee or former state employee within one year after they left state employment.

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 and Human Rights](#) website.

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 their 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.

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 the general public.

#### 4.9 TEMPORARY EMPLOYMENT AGENCIES

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 bidding requirements.

#### 4.10 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 Amendments](#). Contact your agency's legal counsel if you make any changes to any standard terms and conditions. (*Attachment 50*)

#### 4.11 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 have a nominal cost but involve substantial potential risk.

Service contracts will normally include indemnification and insurance requirements. "Indemnification" is a term that addresses who is responsible for risks under the contract. Requiring "Insurance" ensures the contractor has the financial resources to cover potential risks. Contact your agency or institution lead

procurement officer or the OMB Risk Management Office at 701-328-7580 for assistance. Visit the OMB website for the ["Guidelines to Managing Contractual Risk"](#) (*Attachment 16*)

**4.12 QUALIFIED PRODUCTS LIST (N.D.A.C. § 4-12-06-04)**

1. If testing or examination of the commodities or services is desirable or necessary to best satisfy state requirements, a qualified products list may be developed with approval of the state procurement office.
2. When developing a qualified products list, a representative group of vendors must be solicited, in writing, to submit products for testing and examination to determine acceptability for inclusion on the qualified products list.
3. Inclusion on a qualified products list must be based on results of tests or examinations conducted in accordance with state requirements and the product specification.
4. The existence of prequalified products on a qualified products list does not constitute prequalification of any prospective vendor.

**4.13 REQUEST FOR INFORMATION (N.D.A.C. § 4-12-06-07)**

A noncompetitive solicitation may be issued to obtain information, data, comments, or reactions from possible vendors preceding a solicitation for bids or proposals or a multistep bidding procedure. Information obtained as a result of a request for information is subject to the state open records law.

**4.14 SPECIFICATION MEETING (N.D.A.C. § 4-12-06-08)**

Prior to issuing a solicitation, the procurement officer may hold a specification meeting to seek information necessary to prepare a suitable specification and competitive solicitation. The procurement officer will provide adequate notice to potential bidders. The meeting is open to the public. Attendance may not be made mandatory as a condition for submitting a bid or proposal.

**4.15 MARKET RESEARCH AND DEMONSTRATIONS**

Market research is simply research to learn before you make a purchase. Market research includes, but is not limited to:

- Discussions with vendors who sell what you need
- Demonstrations of potential solutions, equipment or services
- Research through subject matter experts who have knowledge of the industry

Market research is a best practice as you prepare for a procurement. You should contact a representative number of potential bidders. Market research does not replace the procurement process. Use market research to help you determine your requirements. Use the procurement process to evaluate competing products and service providers to make an award decision. Be careful not to give vendors advance information that would give them an unfair advantage in the procurement process.

## Chapter 5: Level 1 Micro Purchase Procedures

Level 1	Competition Requirements
Micro Purchase  Less than \$10,000	At least one fair and reasonable quote.  Note: Equipment and software must be added to inventory in the BlackCat System if \$5,000 or greater. (N.D.C.C. § <a href="#">54-27-21</a> Fixed Asset Minimum Reporting Value)  State agencies (excluding Higher Education institutions) must submit <a href="#">printing purchase requests</a> \$5,000 and over to OMB State Procurement.  State agencies must rotate vendors solicited on an equitable basis (N.D.A.C. § <a href="#">4-12-08-02</a> ). Rotate vendors solicited on an equitable basis (N.D.A.C. § <a href="#">4-12-08-02</a> )  Alternate Procurement form not required if multiple quotes not solicited.

	State agencies & Transit subrecipients: Document vendor solicited, quotes received, and award determination.
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**5.1 LEVEL 1 MICRO PURCHASES**

If the good or service you need is not available from a state source of supply and you know the estimated price is under \$10,000, then you are ready to make a Level 1 purchase. Under state law, “Small purchases must be made with competition practicable under the circumstances”. Purchases under \$10,000 have been determined to be extremely low-value purchases. Micro purchases are too small to justify the time and expense of soliciting competition. Procurement rules allow for these purchases to be made using adequate procedures to ensure goods and services are obtained at a fair and reasonable price, which may include soliciting only one bid or proposal. The terms “bids” or “quotes” are used interchangeably (N.D.C.C. § [54-44.4-11](#), N.D.A.C. § [4-12-08-02](#)).

Transit subrecipients are required to complete a fair and reasonable determination for all micro purchases over \$5000 and maintain the determination with the procurement file. If the micro purchase includes any labor over the \$2,000 threshold, Davis Bacon Wage Rates apply and the subrecipient must include the labor rates in the solicitation of bids and monitor the project to ensure the correct labor rates were paid. The NDDOT may require the use of a micro purchase checklist in such cases. Subrecipients may adopt the Fair & Reasonable Attachment to document this process and may be reviewed upon request. The fair and reasonable indication stamp is suggested for use as documentation (*Attachments 13 and 31 through 34*)

**5.2 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:

- Goods. 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 equipment lease with monthly payments of \$400 is \$9,600.
- 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 \$5,000 per year with three renewal options is \$20,000.
- Artificial Fragmentation Prohibited (N.D.A.C. § [4-12-04-08](#)). Procurement requirements may not be artificially divided as to constitute a small purchase [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.

**5.3 RECURRING PURCHASES – ROTATING VENDORS**

If you need to purchase goods or services on a recurring basis, you should consider whether or not establishing a contract would be advantageous. Recurring purchases with cumulative significant dollar spend are appropriate for term contracts.

It is appropriate to handle infrequent, small dollar purchases as independent transactions, even if the annual total is \$10,000 or more. For example, you purchase “Widgets” in January for \$5,000 and purchase “Widgets” again in September for \$5,000. It is appropriate to treat both purchases as a Level 1 procurement.

Under Level 1 procedures, procurement officers must rotate vendors solicited on an equitable basis (N.D.A.C. § [4-12-08-02](#)). If there are multiple vendors selling what you need to purchase, simply rotate the vendors you contact to obtain one fair and reasonable quote. For example, if there are three lumber yards in your community, try to spread your one fair and reasonable quote Level 1 purchases between the three vendors.

The requirement to rotate vendors applies when you only obtain one fair and reasonable quote. If you get quotes from multiple vendors for a Level 1 purchase, simply award to the lowest bidder. It is unacceptable if one vendor repeatedly is the low bidder receiving the award in a competitive procurement. If there is only one known supplier, you should consider the frequency and dollar volume of your purchases to determine if you should find other suppliers or establish a contract.

#### 5.4 SELECTING A BIDDER

After you have developed the specifications, you need to select bidders from whom you can solicit a quote from for your Level 1 purchase. You have many options, including:

- State Bidders List. OMB is required to maintain a Bidders List. You can find the bidders list on the [State Procurement Online \(SPO\) system](#). You are not required to use the Bidders List for purchases under \$10,000, but it is a good source for finding potential bidders.
- Printing Preference. If you are purchasing printing, you must comply with the North Dakota state law that requires all public printing, binding, and blank book manufacturing must be awarded to a resident North Dakota bidder (N.D.C.C. § [44-08-02](#)). Get quotes for printing from North Dakota bidders, unless it is determined to be not practicable (N.D.A.C. § [4-12-16-01](#)). See the Guideline for State Procurement of Printing (State of ND Employees – ONLY).
- ND Secretary of State Registration. North Dakota Secretary of State business registration requirements are based 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. See the Guidelines to Vendor Registration (State of ND Employees – ONLY) to determine if registration is required. Check the ND Secretary of State [Business Records Search](#) to see if a vendor is registered.
- 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. If you are purchasing something that requires the contractor to have a North Dakota license, permit, or registration, be sure to obtain proof that they have complied with this requirement before award. Visit the [NDSU Extension Service website](#) for a list of licenses required by the state.
- List of Debarred and Suspended Vendors. OMB State Procurement maintains a list of vendors who have been debarred or suspended from doing business with the State. Do not get quotes from suspended or debarred vendors (N.D.A.C. § [4-12-05](#)). Some agencies and institutions also have requirements to check the Federal Debarred vendor list, so check your internal procurement policies.

#### 5.5 GETTING ONE QUOTE

After you identify a potential bidder, you are ready to get a quote. You can get a quote using a variety of methods:

- Stores. You can physically go to a store and get a quote. “Time is money,” so consider how much time it will take you to go to the store to make the purchase.
- Telephone quote. You can contact the bidder by phone and describe what you need. Be sure to tell them that the price needs to include all shipping and handling. You can use the [Informal Bid-Telephone Quote](#) form SFN 2706 to document the telephone bid. Bidders will normally respond by telephone unless you ask for a written quote.
- Email or Fax Quote. You can contact vendors by email or fax. You can put the requirements into the body of the fax or email. The OMB website also has an [Informal Request a Quote Template \(Attachment 17\)](#) you can use to solicit a vendor.
- Internet Quote. You can obtain a quote from an online website. Most websites have “click through” agreements. Visit with your legal counsel to ensure you are not agreeing to terms and conditions. Be sure to visit with your legal counsel before agreeing to any terms and conditions.
- Micro Purchase Checklist. This is a resource to help you make Level 1 Micro purchases.



## 5.6 QUESTIONS AND SOLICITATION AMENDMENTS

After you ask a vendor for a quote, they may have questions. You should respond to vendor questions in a timely manner. Sometimes vendor questions may make you realize a mistake has been made. If you need to change your requirements, you need to amend your solicitation.

If you contacted vendors by phone or in person, you can call them to make the change. If you requested a written quote in an email, you can make the change in a subsequent email.

If you used a Request for Quote template, you can either send a revised Request for Quote or send a Solicitation Amendment. State of ND Agencies and Employees visit the OMB internal website for templates. Transit subrecipients use the attached templates.

## 5.7 RECEIVING QUOTES

The method you used to contact vendors will determine how you receive quotes. You can review a quote as soon as you receive it. If you contacted multiple vendors, you can evaluate and award when you receive responses from all vendors. If you set a deadline and a vendor doesn't respond in time, the quote is late. Vendors cannot change their responses after the deadline.

Sometimes you contact vendors, and they respond with a "no bid." Document all the vendors you contacted, including the vendors that declined to bid.

## 5.8 EVALUATING QUOTES

You'll need to evaluate the quotes received to make sure the product or service offered meets your requirements.

- "Responsive Bidder" means a firm or person whose response fully meets all the requirements of the solicitation. Responses that are submitted late or don't meet specifications must be rejected. Visit the OMB website for a [Rejection Letter template](#). (Attachment 3) Use this template to tell bidders why their response was rejected.
- "Responsible Bidder" means a firm or person who is capable of performing the work. If you suspect a bidder is not responsible, see N.D.A.C. § [4-12-11-04](#).

## 5.9 FAIR AND REASONABLE PRICE

Use adequate procedures to ensure goods and services are obtained at a fair and reasonable price. The fair and reasonable price can be based on previous purchases, market research, a published price list, or by simply soliciting more than one vendor.

If the quote is fair and reasonable, you can award to the bidder. Keep documentation of the quote in your procurement file.

## 5.10 BIDS \$10,000 OR OVER

If you receive bids or proposals priced at \$10,000, you'll have to determine whether or not this is a Level 1 purchase.

- You can defer the purchase to a Level 2 Procurement Officer to get three quotes. They can use the first quote as one of the three needed quotes, or they can start over.
- You can get multiple quotes. If you received at least one bid meeting specifications under \$10,000, and other bids over \$10,000, this is still a Level 1 purchase. You can make an award to the "low bidder meeting specs" under \$10,000.
- If you were soliciting multiple proposals and the proposal with the highest evaluation score is priced \$10,000 or more, you must obtain the level of competition required for the dollar value. If the proposal with the highest evaluation score is under \$10,000, it is a Level 1 purchase and you can make the award.

If all bids or proposals received are \$10,000 or over, this is not a Level 1 procurement. State of ND Employees must obtain the level of competition required for the dollar value. If it is a Level 2 purchase, the procurement must be done by a Procurement Officer with Level 2 certification training. At least two more vendors should be contacted to submit bids or proposals. Transit subrecipients refer to your designated Procurement Officer.

## 5.11 GETTING MULTIPLE QUOTES/BIDS

You can get competition for a Level 1 purchase. Some agencies may have internal policies that require

competition at lower levels.

A request for quote is a procurement strategy for purchasing goods and services that are suitable for award to the lowest priced bidder whose bid meets the specification or the scope of work. Bidding is appropriate for goods, equipment, and non-professional services. If you get one quote and the price seems too high, you can get another quote. It is also appropriate to solicit more than one quote if you have multiple bidders in the area. "When in doubt, bid it out." The OMB website has templates (*Attachments 18 & 45*) you can customize to request competitive bids or proposals. Provide the same information to all bidders. Give bidders a deadline for responding. Do not share the price information with other bidders until after you have made the award. If you are getting quotes, you must award to the bidder that meets your specifications and has the lowest price ("Low bidder meeting spec"). If a bidder offers you something that doesn't meet your specification, you must reject their bid.

#### 5.12 GETTING MULTIPLE PROPOSALS

Sometimes you are purchasing equipment, software or services for which it is difficult to write detailed specifications, or you would like to have an evaluation process.

Competitive proposals are a procurement strategy in which award is made to the responsible vendor whose proposal is determined to be most advantageous based upon cost and other evaluation criteria. The related weight of cost and the other evaluation criteria must be stated in the solicitation. Provide the same information to all bidders. Give bidders a deadline for responding. Do not share the price information with other bidders until after you have made the award.

The request for proposal process allows you to have discussions with vendors. You can also have vendors make changes to their proposals by requesting best and final offers. The request for proposal process is appropriate for equipment, information technology, and professional services. Visit the OMB State Procurement website for checklists and templates to help you conduct a competitive request for proposal process.

#### 5.13 NORTH DAKOTA PREFERENCE LAWS – RECIPROCAL PREFERENCE

If you are receiving multiple quotes, you need to be aware of "preference" laws that apply if you receive bids or proposals from out of state or nonresident vendors. 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. If you receive bids or proposals from nonresident bidders, contact your lead procurement officer for assistance in determining whether or not preference laws apply.

- The 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 it 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](#)).
- You do not need to apply a preference if you receive quotes from only North Dakota vendors or only nonresident bidders. Apply preference when there is a mix of North Dakota and nonresident bidders. You also do not need to apply a preference if no vendors are from states with 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 \$8,000. Laws in that bidder's state of residence require a 5% preference for vendors who are resident in that state. Increase the nonresident bidder's price by 5% before evaluation (\$400). So, you must evaluate the nonresident's bid as \$8,400.*

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

- Coal. N.D.C.C. § [48-05-02.1](#)
- 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](#)
- Printing. N.D.C.C. § [46-02-15](#) and [Guidelines for State Procurement of Printing](#).



- [Soybean-based Ink](#). N.D.C.C. § [54-44.4-07](#)
- [American Flags](#). N.D.C.C. § [44-08-22](#)
- [Direct Manufacturer Motor Vehicle Sales Prohibited](#). N.D.C.C. § [39-22-25](#)
- [Work Activity Centers](#). N.D.C.C. § [25-16.02](#)
- [Work Activity Centers - Construction Stakes](#). N.D.C.C. § [25-16.2-02](#)

See the OMB Guidelines to North Dakota Purchasing Preference Laws (State of ND Employees – ONLY) for more information

Transit subrecipients should contact the NDDOT Transit Section for questions on purchases using federal and state funds.

**5.14 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 are making a Level 1 purchase by obtaining one fair and reasonable quote, a protest is unlikely. If you obtain multiple quotes and make a competitive award, vendors may disagree with your solicitation or award decision and submit a protest.

If you receive a protest, you must follow the laws and rules related to responding to protests. Contact your agency’s lead procurement officer and legal counsel for assistance. See the OMB State Procurement Office website for a [Protest Response template](#) (*Attachment 37*).

## Chapter 6: Level 2 Small Purchase Procedures

<p><b>Level 2 Small Purchase</b></p> <p>At least \$10,000 but less than \$50,000</p>	<p>Solicit informal quotes/bids or proposals from at least three vendors, or post to SPO Online with appropriate state bidders list. May send to additional vendors.</p> <p>State agencies: ITD must review IT purchases over \$25,000. Contact <a href="mailto:itdprocurement@nd.gov">itdprocurement@nd.gov</a></p> <p><b>Transit subrecipients:</b></p> <p>SPO Online is not available for Transit Subrecipients.</p> <p>Level 2 purchases require prior NDDOT approval.</p> <p>If purchasing ADA vehicles off the State Bid, approval required from the Transit Section before ordering. Contact <a href="mailto:transitnd@nd.gov">transitnd@nd.gov</a></p> <p>Assets (vehicle, equipment, software, facility, etc.) must be added to Inventory in the BlackCat System if \$5,000 or greater.</p> <p><b><u>Documentation is required.</u></b></p> <p><a href="#">Alternate Procurement form</a> required if competition is not solicited from at least three vendors.</p> <p>The form is not required if 3 vendors are solicited and fewer than three bids or proposals are received.</p>
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**6.1 LEVEL 2 SMALL PURCHASES**

If the good or service you need is not available from a state source of supply and you know the estimated

price is at least 10,000 but less than \$50,000, then you are ready to make a Level 2 purchase. Under state law, "Small purchases must be made with competition practicable under the circumstances". Purchases at least \$10,000 but less than \$50,000 have been determined to be extremely low-value purchases. Procurement rules allow for these purchases to be made using adequate procedures to ensure goods and services are obtained at a fair and reasonable price, which includes soliciting quotes/bids or proposals at least three vendors or post to the SPO Online. The terms "bids", "quotes" or proposals are used interchangeably (N.D.C.C. § [54-44.4-11](#), N.D.A.C. § [4-12-08-02](#)).

Transit Subrecipients – SPO Online can only be used by State Agencies. Transit subrecipients must advertise or solicit informal bids or proposals on their own.

Transit subrecipients are required to complete the Procurement File Checklist - Small and a Fair & Reasonable Determination (*Attachments 13 and 31 through-34*) and maintain a file containing all documentation relating to the small purchase. The checklist must be submitted to the NDDOT Transit Section for each small purchase with the request for reimbursement.

## 6.2 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:

- Goods. 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 equipment lease with monthly payments of \$400 is \$9,600.
- 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 \$5,000 per year with three renewal options is \$20,000.
- Artificial Fragmentation Prohibited (N.D.A.C. § [4-12-04-08](#)). Procurement requirements may not be artificially divided as to constitute a small purchase [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.

## 6.3 SELECTING A BIDDER

After you have developed the specifications, you need to select bidders from whom you can solicit a quote from for your Level 2 purchase. You have many options, including:

- State Bidders List. OMB is required to maintain a Bidders List. You can find the bidders list on the [State Procurement Online \(SPO\) system](#). You are not required to use the Bidders List for purchases under \$10,000, but it is a good source for finding potential bidders.
- Printing Preference. If you are purchasing printing, you must comply with the North Dakota state law that requires all public printing, binding, and blank book manufacturing must be awarded to a resident North Dakota bidder (N.D.C.C. § [44-08-02](#)). Get quotes for printing from North Dakota bidders, unless it is determined to be not practicable (N.D.A.C. § [4-12-16-01](#)). See the [Guidelines for State Procurement of Printing](#). State of ND Employees -ONLY.
- ND Secretary of State Registration. North Dakota Secretary of State business registration requirements are based 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. See the Guidelines to Vendor Registration (State of ND Employees – ONLY) to determine if registration is required. Check the ND Secretary of State [Business Records Search](#) to see if a vendor is registered.

- 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. If you are purchasing something that requires the contractor to have a North Dakota license, permit, or registration, be sure to obtain proof that they have complied with this requirement before award. Visit the [NDSU Extension Service website](#) for a list of licenses required by the state.
- List of Debarred and Suspended Vendors. OMB State Procurement maintains a list of vendors who have been debarred or suspended from doing business with the State. Do not get quotes from suspended or debarred vendors (N.D.A.C. § [4-12-05](#)). Some agencies and institutions also have requirements to check the Federal Debarred vendor list, so check your internal procurement policies.
- Federal Vendor List of Debarred and Suspended – [SAM.gov | Home](#)
  - a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least \$25,000
    - (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
    - (2) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
    - (3) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

#### 6.4 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 specifications.”
- 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 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 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 on the internal web only.

- 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 4 of this plan).
- Required Delivery Date: The date commodities must be delivered, or service must be performed. Indicate a specific date or time (days/week/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, by 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 declines to bid, using the [Informal Bid-Telephone Quote form](#), SFN 2706.

#### 6.5 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). State of ND Employees see the OMB State Procurement internal website for a sample Solicitation Amendment. Transit subrecipients see attached sample Solicitation Amendment (*Attachment 50*).

#### 6.6 RECEIVING RESPONSES

The method you used to contact vendors will determine how you receive responses. Informal bids and proposals may be viewed immediately. If responses are received from all bidders solicited, response 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 template](#) (*Attachment 3*) if any responses are received late. Bidders may not change their responses after the deadline.

#### 6.7 EVALUATING RESPONSES

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

- “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 response that did not meet a stated minimum requirement must be rejected (ref N.D.A.C § [4-12-11-03](#)).
- “Responsible Bidder” means a firm or person who is capable of performing the work. If you suspect a bidder is not 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 Chapter 6.10 of this plan). 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-prices 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 an RFP process.
- Compare all-or-none, group, or split award: the solicitation should indicate whether the buyer intends to award all items to the one contractor (all or none award), award by category items (group award), or award each item separately (split award). If the solicitation or bidder's 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.
- Multiple Awards: A multiple award means that two or more bidders will be awarded contracts for similar products or services. The intent to make a multiple award must be stated in the solicitation, and the procurement officer must make a determination that a multiple award is in the best interest of the state. See N.D.C.C. § 54-44.4-051(1) and N.D.A.C. § [4-12-11-07](#).

#### 6.8 FAIR AND REASONABLE PRICE

Use adequate procedures to ensure goods and services are obtained at a fair and reasonable price. The fair and reasonable price can be based on previous purchases, market research, a published price list, or by simply soliciting more than one vendor.

If the quote is fair and reasonable, you can award to the bidder. Keep documentation of the quote in your procurement file.

#### 6.9 GETTING MULTIPLE PROPOSALS

Sometimes you are purchasing equipment, software or services for which it is difficult to write detailed specifications, or you would like to have an evaluation process.

Competitive proposals are a procurement strategy in which award is made to the responsible vendor whose proposal is determined to be most advantageous based upon cost and other evaluation criteria. The related weight of cost and the other evaluation criteria must be stated in the solicitation. Provide the same information to all bidders. Give bidders a deadline for responding. Do not share the price information with other bidders until after you have made the award.

The request for proposal process allows you to have discussions with vendors. You can also have vendors make changes to their proposals by requesting best and final offers. The request for proposal process is appropriate for equipment, information technology, and professional services. State of ND Employees visit the OMB State Procurement internal website for checklists and templates to help you conduct a competitive request for proposal process. Transit subrecipients see the attached checklists (*Attachments 31-34*).

#### 6.10 NORTH DAKOTA PREFERENCE LAWS – RECIPROCAL PREFERENCE

If you are receiving multiple quotes, you need to be aware of "preference" laws that apply if you receive bids or proposals from out of state or nonresident vendors. 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. If you receive bids or proposals from nonresident bidders, contact your lead procurement officer for assistance in determining whether or not preference laws apply.

- The 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 it 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](#)).
- You do not need to apply a preference if you receive quotes from only North Dakota vendors or only nonresident bidders. Apply preference when there is a mix of North Dakota and nonresident bidders. You also do not need to apply a preference if no vendors are from states with 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 \$8,000. Laws in that bidder's state of residence require a 5% preference for vendors who are resident in that state. Increase the nonresident bidder's price by 5% before evaluation (\$400). So, you must evaluate the nonresident's bid as \$8,400.*

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

- Coal. N.D.C.C. § [48-05-02.1](#)
- 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](#)
- Printing. N.D.C.C. § [46-02-15](#) and [Guidelines for State Procurement of Printing](#).
- Soybean-based Ink. N.D.C.C. § [54-44.4-07](#)
- American Flags. N.D.C.C. § [44-08-22](#)
- Direct Manufacturer Motor Vehicle Sales Prohibited. N.D.C.C. § [39-22-25](#)
- Work Activity Centers. N.D.C.C. § [25-16.02](#)
- Work Activity Centers - Construction Stakes. N.D.C.C. § [25-16.2-02](#)

See the OMB Guidelines to North Dakota Purchasing Preference Laws (State of ND Employees – ONLY) for more information.

Transit subrecipients must contact the NDDOT Transit Section for questions on purchases using federal and state funds.

#### 6.11 TIE BIDS OR PROPOSALS – STATE OF ND EMPLOYEES - ONLY

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 (N.D.C.C. § [54-44.4-09\(4\)](#)).

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

If recipient is part of a political subdivision, local rules may also apply.

#### 6.12 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](#).

#### 6.13 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 receive a protest, you must follow the laws and rules related to responding to protests. Contact your agency's lead procurement officer and legal counsel for assistance. See the [Protest Response template \(Attachment 37\)](#).



## Chapter 7: Level 3 Informal Written Purchase Procedures

<p><b>Level 3 Informal Written Purchase</b></p> <p>At least \$50,000 but less than \$100,000</p>	<p>Solicit informal bids or proposals using SPO Online with appropriate state bidders list. May send to additional vendors.</p> <p>State agencies: ITD must review IT purchases over \$25,000. Contact <a href="mailto:itdprocurement@nd.gov">itdprocurement@nd.gov</a></p> <p><b>Transit subrecipients:</b></p> <p>SPO Online is not available for Transit Subrecipients.</p> <p>Level 3 purchases require prior NDDOT approval.</p> <p>If purchasing ADA vehicles off the State Bid, approval required from the Transit Section before ordering. Contact <a href="mailto:transitnd@nd.gov">transitnd@nd.gov</a></p> <p>Assets (vehicle, equipment, software, facility, etc.) must be added to Inventory in the BlackCat System if \$5,000 or greater.</p> <p><b><u>Documentation Required</u></b></p> <p><a href="#">Alternate Procurement form</a> required if:</p> <ul style="list-style-type: none"> <li>• Competition is limited or solicited.</li> <li>• SPO Online is not used. SPO Online is not available for Transit Subrecipients.</li> </ul> <p>Transit: Approval required before purchase. Contact <a href="mailto:transitnd@nd.gov">transitnd@nd.gov</a></p>
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### 7.1 LEVEL 3 INFORMAL WRITTEN PURCHASE PROCEDURES

Solicit informal bids or proposals for purchases at least \$50,000 but less than \$100,000. Procurement rules allow for these purchases to be made using adequate procedures to ensure goods and services are obtained at a fair and reasonable price, which includes soliciting informal quotes/bids or proposals post to the SPO Online. The terms “bids”, “quotes” or proposals are used interchangeably (N.D.C.C. § [54-44.4-11](#), N.D.A.C. § [4-12-08-02](#)).

Transit Subrecipients – Level 3 purchases require NDDOT Transit Section prior approval. SPO Online can only be used by State Agencies. Transit subrecipients must advertise or solicit informal written bids or proposals on their own.

Transit subrecipients are required to complete the Procurement File Checklist – Informal Written Purchase (*Attachments 31 through 34*) and maintain a file containing all documentation relating to the informal written purchase. The checklist must be submitted to the NDDOT Transit Section for each informal written purchase with reimbursement request.

### 7.2 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:

- Goods. 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 equipment lease with monthly payments of \$400 is \$9,600.

- 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 \$5,000 per year with three renewal options is \$20,000.
- Artificial Fragmentation Prohibited (N.D.A.C. § [4-12-04-08](#)). Procurement requirements may not be artificially divided as to constitute a small purchase [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.

### 7.3 SELECTING A BIDDER

After you have developed the specifications, you need to select bidders from whom you can solicit an informal quote from for your Level 3 purchase. You have many options, including:

- State Bidders List. OMB is required to maintain a Bidders List. You can find the bidders list on the [State Procurement Online \(SPO\) system](#). You are not required to use the Bidders List for purchases under \$10,000, but it is a good source for finding potential bidders.
- Printing Preference. If you are purchasing printing, you must comply with the North Dakota state law that requires all public printing, binding, and blank book manufacturing must be awarded to a resident North Dakota bidder (N.D.C.C. § [44-08-02](#)). Get quotes for printing from North Dakota bidders, unless it is determined to be not practicable (N.D.A.C. § [4-12-16-01](#)). See the Guidelines for State Procurement of Printing. State of ND Employees - ONLY.
- ND Secretary of State Registration. North Dakota Secretary of State business registration requirements are based 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. See the Guidelines to Vendor Registration (State of ND Employees – ONLY) to determine if registration is required. Check the ND Secretary of State [Business Records Search](#) to see if a vendor is registered.
- 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. If you are purchasing something that requires the contractor to have a North Dakota license, permit, or registration, be sure to obtain proof that they have complied with this requirement before award. Visit the [NDSU Extension Service website](#) for a list of licenses required by the state.
- List of Debarred and Suspended Vendors. OMB State Procurement maintains a list of vendors who have been debarred or suspended from doing business with the State. Do not get quotes from suspended or debarred vendors (N.D.A.C. § [4-12-05](#)). Some agencies and institutions also have requirements to check the Federal Debarred vendor list, so check your internal procurement policies.
- Federal Vendor List of Debarred and Suspended – [SAM.gov | Home](#)

a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least \$25,000.

(4) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(5) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(6) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and subrecipient, the Federal Government may pursue available remedies,



including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

#### 7.4 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 specifications.”
- 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 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 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 4 of this plan).
- Required Delivery Date: The date commodities must be delivered, or service must be performed. Indicate a specific date or time (days/week/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, by 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 declines to bid, using the [Informal Bid-Telephone Quote form](#), SFN 2706.

#### 7.5 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). State of ND Employees see the OMB State Procurement internal website for a sample Solicitation Amendment. Transit subrecipients see attached sample Solicitation Amendment (*Attachment 50*).

## 7.6 RECEIVING RESPONSES

The method you used to contact vendors will determine how you receive responses. Informal bids and proposals may be viewed immediately. If responses are received from all bidders solicited, response 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 template](#) . (*Attachment 3*) If any responses are received late. Bidders may not change their responses after the deadline.

## 7.7 EVALUATING RESPONSES

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

- “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 response that did not meet a stated minimum requirement must be rejected (ref N.D.A.C § [4-12-11-03](#)).
- “Responsible Bidder” means a firm or person who is capable of performing the work. If you suspect a bidder is not 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 Chapter 7.10 of this plan). 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-prices 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 an RFP process.
- Compare all-or-none, group, or split award: the solicitation should indicate whether the buyer intends to award all items to the one contractor (all or none award), award by category items (group award), or award each item separately (split award). If the solicitation or bidder’s 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.
- Multiple Awards: A multiple award means that two or more bidders will be awarded contracts for similar products or services. The intent to make a multiple award must be stated in the solicitation, and the procurement officer must make a determination that a multiple award is in the best interest of the state. See N.D.C.C. § 54-44.4-051(1) and N.D.A.C. § [4-12-11-07](#).

## 7.8 FAIR AND REASONABLE PRICE

The procurement officer must perform a cost analysis before awarding a contract to determine if the bids provided are fair and reasonable. See NDDOT Transit Cost/Price Analysis and Price Reasonableness form (*Attachment 23*). The type (price or cost) and degree of analysis is dependent of the facts surrounding the particular procurement situation. In general, the rule behind whether to do a PRICE or COST analysis is the following:

- Price analysis (which is comparing quotes to catalog or market prices, via previous contracts or comparison with other competitive proposals) may be performed for most procurements.

Sources of information that are available to conduct a price analysis include:

- Comparisons with other competitive proposals
  - Previous contracts
  - Catalog or market prices
  - Historical prices and trending
- Cost analysis (which includes examining variance from the independent estimate as well as the differences between bids recorded, rather than assuming that open market pricing always equates to appropriate pricing) must be performed for procurements that:
    - Require the contactor to submit estimates for labor hours, overhead, and materials
    - Result in a situation where price competition is lacking
    - Consist of a sole source procurement.

If the quote is fair and reasonable, you can award to the bidder. Keep documentation of the quote in your procurement file.

### 7.9 GETTING MULTIPLE PROPOSALS

Sometimes you are purchasing equipment, software or services for which it is difficult to write detailed specifications, or you would like to have an evaluation process.

Competitive proposals are a procurement strategy in which award is made to the responsible vendor whose proposal is determined to be most advantageous based upon cost and other evaluation criteria. The related weight of cost and the other evaluation criteria must be stated in the solicitation. Provide the same information to all bidders. Give bidders a deadline for responding. Do not share the price information with other bidders until after you have made the award.

The request for proposal process allows you to have discussions with vendors. You can also have vendors make changes to their proposals by requesting best and final offers. The request for proposal process is appropriate for equipment, information technology, and professional services. State of ND agencies visit the OMB State Procurement internal website for checklists and templates to help you conduct a competitive request for proposal process. Transit subrecipients see the attached checklists (*Attachments 31-34*).

### 7.10 NORTH DAKOTA PREFERENCE LAWS – RECIPROCAL PREFERENCE

If you are receiving multiple quotes, you need to be aware of “preference” laws that apply if you receive bids or proposals from out of state or nonresident vendors. 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. If you receive bids or proposals from nonresident bidders, contact your lead procurement officer for assistance in determining whether or not preference laws apply.

- The 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 it 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](#)).
- You do not need to apply a preference if you receive quotes from only North Dakota vendors or only nonresident bidders. Apply preference when there is a mix of North Dakota and nonresident bidders. You also do not need to apply a preference if no vendors are from states with 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 \$8,000. Laws in that bidder’s state of residence require a 5% preference for vendors who are resident in that state. Increase the nonresident bidder’s price by 5% before evaluation (\$400). So, you must evaluate the nonresident’s bid as*

\$8,400.

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

- Coal. N.D.C.C. § [48-05-02.1](#)
- 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](#)
- Printing. N.D.C.C. § [46-02-15](#) and [Guidelines for State Procurement of Printing](#).
- Soybean-based Ink. N.D.C.C. § [54-44.4-07](#)
- American Flags. N.D.C.C. § [44-08-22](#)
- Direct Manufacturer Motor Vehicle Sales Prohibited. N.D.C.C. § [39-22-25](#)
- Work Activity Centers. N.D.C.C. § [25-16.02](#)
- Work Activity Centers - Construction Stakes. N.D.C.C. § [25-16.2-02](#)

See the OMB [Guidelines North Dakota Purchasing Preference Laws](#) for more information. Transit subrecipients must contact the NDDOT Transit Section for questions on purchases using federal and state funds.

If a subrecipient is part of a political subdivision, local rules may also apply.

#### 7.11 TIE BIDS OR PROPOSALS – STATE OF ND EMPLOYEES - ONLY

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 (N.D.C.C. § [54-44.4-09\(4\)](#)).

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

#### 7.12 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](#).

#### 7.13 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 receive a protest, you must follow the laws and rules related to responding to protests. Contact your agency's lead procurement officer and legal counsel for assistance. See the [Protest Response template \(Attachment 37\)](#)

## Chapter 8: Level 4 Formal Purchase Procedures

<b>Level 4 Formal Purchase</b>	Must be purchased using formal sealed bids or Request for Proposal (RFP). Solicitations must be posted using SPO Online with appropriate state bidders list. May send to additional bidders.
\$100,000 and over	State agencies: ITD must review IT purchases over \$25,000. Contact <a href="mailto:itdprocurement@nd.gov">itdprocurement@nd.gov</a>
	<b>Transit subrecipients:</b>

	<p>SPO Online is not available for Transit Subrecipients.</p> <p>Level 4 purchases require prior NDDOT approval.</p> <p>If purchasing ADA vehicles off the State Bid, approval required from the Transit Section before ordering. Contact <a href="mailto:transitnd@nd.gov">transitnd@nd.gov</a></p> <p>Assets (vehicle, equipment, software, facility, etc.) must be added to Inventory in the BlackCat System if \$5,000 or greater.</p> <p><b><u>Documentation is required.</u></b></p> <p><a href="#">Alternate Procurement form</a> required if:</p> <ul style="list-style-type: none"> <li>• Competition is limited or not solicited, or competition is limited.</li> <li>• SPO Online is not used. SPO Online is not available for Transit Subrecipients.</li> </ul> <p><b>Transit subrecipients:</b> Approval required before purchase. Contact <a href="mailto:transitnd@nd.gov">transitnd@nd.gov</a></p>
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#### 8.1 LEVEL 4 FORMAL PURCHASE PROCEDURES

Solicit using formal sealed Invitation for Bid (IFB) or Request for Proposals (RFP) for purchases of \$100,000 and over. Procurement rules allow for these purchases to be made using adequate procedures to ensure goods and services are obtained at a fair and reasonable price, which includes using the Invitation for Bid template or Request for Proposal Template (*Attachments 18 & 45*) and post to the SPO Online. The terms “bids”, “quotes” or proposals are used interchangeably (N.D.C.C. § [54-44.4-11](#), N.D.A.C. § [4-12-08-02](#)).

Transit Subrecipients – Level 4 purchases require NDDOT Transit Section prior approval. SPO Online can only be used by State Agencies. Transit subrecipients must use the IFB or RFP templates, advertise, and solicit informal bids or proposals on their own.

Transit subrecipients are required to complete the Procurement File Checklist (*Attachments 31-34*) – Formal Purchase and maintain a file containing all documentation relating to the formal purchase. The checklist must be submitted to the NDDOT Transit Section for each formal purchase with the request for reimbursement.

#### 8.2 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:

- Goods. 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 equipment lease with monthly payments of \$400 is \$9,600.
- 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 \$5,000 per year with three renewal options is \$20,000.
- Artificial Fragmentation Prohibited (N.D.A.C. § [4-12-04-08](#)). Procurement requirements may not be artificially divided as to constitute a small purchase [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.

Transit subrecipients must perform an independent cost estimate (ICE) if the value of the procurement will exceed the Simplified Acquisition Threshold of \$250,000 to establish the anticipated cost or price to be paid for an item, service, or project that is developed by an entity or entities not associated with the item, service or project to be procured. To be considered “independent,” the estimate cannot be developed by any potential source, supplier, or provider of the item, service, or project. However, it is acceptable to have an “independent” third party develop the estimate for the purchasing activity as long as that party has no interest in bidding or offering on the procurement.

An ICE is required for all procurement that meet the simplified threshold for all procurements that will exceed the Simplified Acquisition Threshold of \$250,000.

For more complex procurements, the ICE represents the documented result of a practical and unbiased analysis, assessment, and quantification of all costs and risks associated with a particular procurement. The ICE serves as an essential tool for conducting the subsequent required cost or price analysis. The NDDOT Transit Independent Cost Estimate (ICE) form (*Attachment 24*) must be completed and maintained as part of the procurement file if the value of the procurement will exceed the Simplified Acquisition Threshold of \$250,000.

### 8.3 SELECTING A BIDDER

After you have developed the specifications, you need to select bidders from whom you can solicit a quote for your Level 4 purchase. You have many options, including:

- State Bidders List. OMB is required to maintain a Bidders List. You can find the bidders list on the [State Procurement Online \(SPO\) system](#). You are not required to use the Bidders List for purchases under \$10,000, but it is a good source for finding potential bidders.
- Printing Preference. If you are purchasing printing, you must comply with the North Dakota state law that requires all public printing, binding, and blank book manufacturing must be awarded to a resident North Dakota bidder (N.D.C.C. § [44-08-02](#)). Get quotes for printing from North Dakota bidders, unless it is determined to be not practicable (N.D.A.C. § [4-12-16-01](#)). See the [Guidelines for State Procurement of Printing](#). State of ND Employees - ONLY.
- ND Secretary of State Registration. North Dakota Secretary of State business registration requirements are based 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. See the Guidelines to Vendor Registration (State of ND Employees – ONLY) to determine if registration is required. Check the ND Secretary of State [Business Records Search](#) to see if a vendor is registered.
- 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. If you are purchasing something that requires the contractor to have a North Dakota license, permit, or registration, be sure to obtain proof that they have complied with this requirement before award. Visit the [NDSU Extension Service website](#) for a list of licenses required by the state.
- List of Debarred and Suspended Vendors. OMB State Procurement maintains a list of vendors who have been debarred or suspended from doing business with the State. Do not get quotes from suspended or debarred vendors (N.D.A.C. § [4-12-05](#)). Some agencies and institutions also have requirements to check the Federal Debarred vendor list, so check your internal procurement policies.
- Federal Vendor List of Debarred and Suspended – [SAM.gov | Home](#)



a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least \$25,000.

(7) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(8) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(9) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

#### 8.4 FORMAL SOLICITATIONS

Formal solicitations require sealed proposals. Proposals can be received by mail, delivery service, or SPO Online secure electronic receipt. Proposals cannot be submitted by email or fax, unless a third party to place in a sealed envelope and deliver to the receiving address.

Transit Subrecipients – Level 4 purchases require NDDOT Transit Section prior approval. SPO Online can only be used by State Agencies. Transit subrecipients must use the IFB or RFP templates (*Attachments 18 & 45*), advertise, and solicit formal bids or proposals on their own.

#### 8.5 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). State of ND Employees see the OMB State Procurement internal website for a sample Solicitation Amendment. Transit subrecipients see attached sample Solicitation Amendment (*Attachment 50*).

#### 8.6 RECEIVING RESPONSES

The method you used to contact vendors will determine how you receive responses. Informal bids and proposals may be viewed immediately. If responses are received from all bidders solicited, response 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 Template](#). (*Attachment 3*) If any responses are received late. Bidders may not change their responses after the deadline.

#### 8.7 EVALUATING RESPONSES

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

- “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 response that did not meet a stated minimum requirement must be rejected (ref N.D.A.C § [4-12-11-03](#)).
- “Responsible Bidder” means a firm or person who is capable of performing the work. If you suspect a bidder is not 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 Chapter 8.10 of this plan). 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:

- Price of Lowest Cost Proposal  
Price of Proposal Being Rated X Number of Points = 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 an RFP process.
- Compare all-or-none, group, or split award: the solicitation should indicate whether the buyer intends to award all items to the one contractor (all or none award), award by category items (group award), or award each item separately (split award). If the solicitation or bidder's 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.
- Multiple Awards: A multiple award means that two or more bidders will be awarded contracts for similar products or services. The intent to make a multiple award must be stated in the solicitation, and the procurement officer must make a determination that a multiple award is in the best interest of the state. See N.D.C.C. § [54-44.4-051](#)(1) and N.D.A.C. § [4-12-11-07](#).

#### 8.8 FAIR AND REASONABLE PRICE

The procurement officer must perform a price or cost analysis before awarding a contract to determine if the bids provided are fair and reasonable. See NDDOT Transit Cost/Price Analysis and Price Reasonableness form (*Attachment 23*). This analysis must be used in conjunction with the independent cost estimate created prior to the solicitation of price quotes for all procurements that exceed the Simplified Acquisition Threshold of \$250,000 or more. The type (price or cost) and degree of analysis is dependent of the facts surrounding the particular procurement situation. In general, the rule behind whether to do a PRICE or COST analysis is the following:

- Price analysis (which is comparing quotes to catalog or market prices, via previous contracts or comparison with other competitive proposals) may be performed for most procurements.

Sources of information that are available to conduct a price analysis include:

- Comparisons with other competitive proposals
  - Previous contracts
  - Catalog or market prices
  - Historical prices and trending
  - Independent cost estimates
- Cost analysis (which includes examining variance from the independent estimate as well as the differences between bids recorded, rather than assuming that open market pricing always equates to appropriate pricing) must be performed for procurements that:
    - Require the contractor to submit estimates for labor hours, overhead, and materials
    - Result in a situation where price competition is lacking
    - Consist of a sole source procurement.

If the quote is fair and reasonable, you can award to the bidder and utilize the Fair and Reasonable indication stamp as documentation (*Attachment 13*). Keep documentation of the quote in your procurement file.



## 8.9 GETTING MULTIPLE PROPOSALS

Sometimes you are purchasing equipment, software or services for which it is difficult to write detailed specifications, or you would like to have an evaluation process.

Competitive proposals are a procurement strategy in which award is made to the responsible vendor whose proposal is determined to be most advantageous based upon cost and other evaluation criteria. The related weight of cost and the other evaluation criteria must be stated in the solicitation. Provide the same information to all bidders. Give bidders a deadline for responding. Do not share the price information with other bidders until after you have made the award.

The request for proposal process allows you to have discussions with vendors. You can also have vendors make changes to their proposals by requesting best and final offers. The request for proposal process is appropriate for equipment, information technology, and professional services. State of ND agencies visit the OMB State Procurement internal website for checklists and templates to help you conduct a competitive request for proposal process. Transit subrecipients see the attached checklists (*Attachments 31 through 34*).

## 8.10 NORTH DAKOTA PREFERENCE LAWS – RECIPROCAL PREFERENCE

If you are receiving multiple quotes, you need to be aware of "preference" laws that apply if you receive bids or proposals from out of state or nonresident vendors. 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. If you receive bids or proposals from nonresident bidders, contact your lead procurement officer for assistance in determining whether or not preference laws apply.

- The 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 it 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](#)).
- You do not need to apply a preference if you receive quotes from only North Dakota vendors or only nonresident bidders. Apply preference when there is a mix of North Dakota and nonresident bidders. You also do not need to apply a preference if no vendors are from states with 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 \$8,000. Laws in that bidder's state of residence require a 5% preference for vendors who are resident in that state. Increase the nonresident bidder's price by 5% before evaluation (\$400). So, you must evaluate the nonresident's bid as \$8,400.*

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

- Coal. N.D.C.C. § [48-05-02.1](#)
- 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](#)
- Printing. N.D.C.C. § [46-02-15](#) and [Guidelines for State Procurement of Printing](#).
- Soybean-based Ink. N.D.C.C. § [54-44.4-07](#)
- American Flags. N.D.C.C. § [44-08-22](#)
- Direct Manufacturer Motor Vehicle Sales Prohibited. N.D.C.C. § [39-22-25](#)
- Work Activity Centers. N.D.C.C. § [25-16.02](#)
- Work Activity Centers - Construction Stakes. N.D.C.C. § [25-16.2-02](#)

See the OMB [Guidelines to North Dakota Purchasing Preference Laws](#) for more information.

Transit subrecipients must contact the NDDOT Transit Section for questions on purchases using federal and state funds.

#### 8.11 TIE BIDS OR PROPOSALS – STATE OF ND EMPLOYEES - ONLY

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 (N.D.C.C. § [54-44.4-09\(4\)](#)).

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

If a subrecipient is part of a political subdivision, local rules may also apply.

#### 8.12 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](#).

#### 8.13 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 receive a protest, you must follow the laws and rules related to responding to protests. Contact your agency's lead procurement officer and legal counsel for assistance. See the [Protest Response template \(Attachment 37\)](#).

## **Chapter 9: Making the Award**

### 9.1 MAKING THE AWARD

You are ready to make the purchase or "award" a contract after you confirm the goods or services the bidder is offering meet your specification and the price is fair and reasonable. You have several options for making the purchase and paying the vendor. Check with your agency or institution Lead Procurement Officer for internal procedures related to methods of making the award.

### 9.2 PURCHASE ORDERS

A purchase order is a written document to a vendor that formalizes all the details of a purchase transaction, such as a description of the requested item, price, and delivery date.

- PeopleSoft/Oracle Purchase Order (PO) system. OMB and NDUS have a PeopleSoft/Oracle Purchase Order system. This system is integrated with the PeopleSoft/Oracle Receiving and Accounts Payable applications, so receiving and payment can be done on-line. Contact your procurement or finance department. Visit the [OMB website](#) for more information.
- Field Purchase Order, SFN 53329. Field purchase orders are padded into books and can be handwritten. Purchase the field purchase order books from OMB Central Supply.
- Terms and Conditions. Terms and conditions are usually contained in the bid document and incorporated into the Purchase Order by reference. Simply type 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."

### 9.3 CONTRACTS USING ATTORNEY GENERAL SAMPLE CONTRACT

The Office of the Attorney General [Contract Drafting and Review Manual](#)

includes contract templates. (*Attachment 10*) that you can customize for your purchase. 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 good or service being procured. 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. Be sure to have the agency's legal counsel review any changes to the standard clauses.

#### 9.4 VENDOR-PROVIDED CONTRACTS

If a vendor gives you a contract or agreement, be sure to have legal counsel review the document before you sign it. Contracts are usually written to protect the party that drafted the contract. The vendor contract or agreement may contain "terms and conditions" that the state cannot legally agree to accept. It is imperative to make modifications to these contracts to ensure the state is properly protected.

## **Chapter 10: Receiving, Contracting, and Closeout**

### 10.1 RECEIVING, INSPECTION, AND ACCEPTANCE

The procurement officer's role in the procurement process should continue until the goods 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 goods 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 good or service 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. When goods are delivered or services rendered, your agency must ensure that there is an inspection process. The goods or services need to be compared to your agency's requirements. Ensure that your agency received what was expected before you make payment. Inspect goods and services as soon as possible after delivery to ensure compliance with the specifications. Promptly notify the vendor if the good or service fails to meet specifications or damaged goods are received.
- Vehicle Contracts: Prior to awarding a contract for the procurement of vehicles. A "Vehicle Contract Pre-Award Checklist" must be completed. (Attachment 53)

### 10.2 INVENTORY – FIXED ASSET REPORTING

Equipment and software valued at \$5,000 and over must be reported as fixed assets (N.D.C.C. § 54-27-21). Contact your agency or institution's asset manager.

### 10.3 AMENDMENTS AND CANCELLATIONS

Sometimes changes or mistakes are discovered after you have made an award. 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.

- You cannot allow a change that would change the award decision (N.D.A.C. § [4-12-10-06](#))
- You cannot amend a contract to avoid competition requirements. (N.D.A.C. § [4-12-13](#))

See the OMB website for a [Sample Contract Amendment](#) template (*Attachment 8*) [Administrative Rules](#) address mistakes after award. Contact your Lead Procurement Officer for assistance.

### 10.4 CONTRACT AMENDMENT EXCEPTION APPROVAL

The alternate procurement form has a provision for contract amendment exceptions. A contract amendment exception may be appropriate:

- If you conducted the level of competition required and there is an unavoidable change that causes the purchase price to exceed the threshold. For example, you conducted a Level 1 procurement and had to amend the contract resulting in the contract exceeding \$10,000.
- If a contract has no remaining extensions or renewals, but unanticipated circumstances make extension of the contract period necessary.

You must obtain an Alternate Procurement approval. State of ND Agencies contact your lead procurement officer or the State Procurement Office. Transit subrecipients must contact the NDDOT Transit Section for approval.

#### 10.5 CONTRACT PROBLEMS

If the goods do not meet specifications or the services were not rendered satisfactorily, notify the contractor immediately. Demand corrective action in writing. Be sure to document all your communication with the vendor. See the OMB website for a [Default Letter template](#) (*Attachment 9*)

Please let the State Procurement Office know about problems with state contracts, vendors, defective products, or anything else purchasing related. Submit a complaint using the SPO Work Request System or email to [infospo@nd.gov](mailto:infospo@nd.gov). OMB can suspend or debar vendors from the State Bidders List (N.D.A.C. § [4-12-05](#)).

**Transit Subrecipients** – After the procurement is complete, the recipient is responsible for ensuring that the product or services procured are actually received.

The recipient should identify a person within their agency to oversee the contract and to be responsible for the following activities:

- Understand the nature of the solicitation, what was agreed to as part of the negotiations, and the structure and substance of the contract.
- Monitor the contract to ensure there is no scope creep, cardinal changes, or add-ons.
  - Scope creep is when small changes in service levels or commodity purchases are made to multi-year agreements over a period of time, resulting in a large change from the original procurement.
  - Cardinal changes are major deviations from the original purpose of the work or the intended method of achievement, or a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract.
  - Add-ons are adding quantities on to the contracted quantities (base and option) as originally advertised, competed, and awarded, whether for the use of the buyer or for others and then treating the add-on portion as though it met the requirement of the original competition.
  - If modifications are required, complete the necessary paperwork listed in the appendices of the respective toolkit. Work with the person who conducted the procurement to complete the required paperwork.
  - For additional information: FTA Circular 4220 Third-Party Contracting Guidance
- Track the progress of the project.
  - Document the progress, deliverables reached, and decisions made.
    - If the contract requirements are not being met, document the areas of non-compliance. Discuss areas of non-compliance with the contractor, document the conversations and timeframe and deliverables of corrective actions. Discuss and document issues such as if the project is on time and on budget? If not, discuss and document what needs to happen to get it back on track?
  - Ensure that contract invoicing is consistent and compliant with contract provisions
  - Key documents in the contract administration file:
    - Statement of Work
    - Required Reports

- Documentation necessary to review, approve and pay invoices
- Manage the project throughout the life of the contract.
  - If there are multiple years to the contract, know when the contract was executed, the original term of the contract (1 year or 2 years), were the options included in the contract, is a new solicitation needed. If it's in an option year, there is documentation needed to be completed a couple of months before the contract expires. If a new solicitation is needed, it should be started 6-12 months before the current contract expires.
  - If the contract has an option year(s), verify and document the following:
    - The price for the current year is fair and reasonable. Check the contract to see if there is an escalator/de-escalator based on Consumer Price Index (CPI) or Producer Price Index (PPI). If CPI or PPI is the only factor, and the contractor is willing to sign an *Exercise of Options* to extend the contract for another year at the existing price, submit written documentation supporting that decision.
    - If recipient does not execute an exercise of option year, then procurement must be resolicited.
    - Whether the contractor has performed as required in the contract. If not, consider resoliciting for a contractor that can perform satisfactorily.
    - The statement/scope of work for the next year. Check with all personnel that may be affected by the contract to verify completeness of the statement of work. Keep in mind, the scope of work must be consistent with the contract and should not include scope creep or cardinal changes.
    - Obtain signed federal clauses for each option year.
  - *For Commodities*

Verify the item received was the item on the purchase order. Complete any necessary paperwork and/or reporting. The recipient must ensure that the commodity met the specifications and document in writing any changes that may have been made in the procurement process. If the item does not meet the contract requirements, notify the contractor immediately. Payment must be held from the contractor until all contract requirements are met.
  - *For Services:*
    - Verify the service procured is thoroughly completed. A detailed statement of work must be included as part of the contract so both the recipient and the contractor understand the contract terms. Complete any necessary paperwork and/or reporting. If the service does not meet the contract requirements, notify the contractor in writing as soon as there is deviation from the contract. Develop a plan to allow the contractor to achieve compliance with the contract. A payment made for a service indicates acceptance that the service met all contractual requirements. Payment must be held from the contractor until all contract requirements are met.

Remember, don't tolerate poor performance – do something about it!

## 10.6 PAYMENT

After you have received and inspected the goods or services, you will need to make payment to the vendor. Be sure vendors receive payment in a timely manner.

- State Purchasing Card. Use the state purchasing card whenever possible. The state purchasing card saves time and money because the vendor is paid by the credit card company. Agencies and institutions avoid the work of processing payments by ACH or check. The State also receives rebates from the purchasing card provider. Visit the OMB Financial website for more information about the [Purchasing Card Program](#). State of ND Employees - ONLY.

- Supplier Registration/IRS Form W-9. If you are paying by check or Automated Clearing House (ACH) vendors may need to be set up as Suppliers in PeopleSoft. OMB [Fiscal Policy 110](#) requires all suppliers to complete an IRS Form W-9. Higher Education institutions should check with their Finance office. For state agencies, vendors can complete an online registration: See the OMB website [Vendor Payments](#). NDUS Institutions check with your Finance Office for Supplier Registration requirements and procedures.
- IRS 1099 Reporting. Most services over \$600 require IRS 1099 reporting. Check with your agency finance department. See the OMB [Fiscal Policy 110](#) and the website [1099 Reporting](#).
- Advanced Payments. Generally, the state does not make advanced payments for goods and services. Advanced payment is appropriate in some circumstances, such as a subscriptions, postage, and equipment rental.
- Vouchers. 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 your Finance Department or OMB Fiscal Division for assistance.

### 10.7 OPEN RECORD REQUESTS

Vendors commonly ask for information about contract awards, evaluations, and request copies of other vendor's bids and proposals.

- Bids become open records after the deadline for receipt. (N.D.C.C. § [44-04-18.4](#), [54-44.4-05](#))
- Proposals become open records upon notice of award. (N.D.C.C. § [44-04-18.4](#), [54-44.4-10](#))

You also must be careful not to release information that is confidential. Contact your legal counsel if you receive an open records request for a bid or proposals that a vendor claims to be confidential.

### 10.8 DOCUMENTATION

Each procurement transaction must be adequately documented for audit and public record purposes. All required procurement documentation must be maintained in accordance with governing records retention requirements. (NDUS – see [SBHE 803.1](#) Purchasing)

Under the state Records Retention requirements, you must maintain documentation of the transaction. The records retention requirements vary depending upon the award and payment method selected.

Examples of current NDDOT Transit Section record retentions are:

- Purchase orders/Requisitions funded by Rural Transit Funds (5311) have a record retention of 3 years after the grant is closed
- Vehicle purchases have a record retention of life of the asset plus 3 years
- Buildings have a record retention of life of the asset plus 3 years

## **Chapter 11: Emergency Purchases**

### 11.1 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 Explanation 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](#).

#### 11.2 URGENT – NON-EMERGENCY PURCHASES

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. A noncompetitive procurement cannot be justified on the basis of a lack of advanced planning, administrative delays, or impending expiration of budget authority. [N.D.A.C. § [4-12-09-03\(2\)](#).]

If the purchasing is \$10,000 and over, an Alternate Procurement form must be approved by the State Procurement Office prior to deviating from the purchasing threshold competition requirements based upon the estimated purchase price. Complete an [Alternate Procurement Request form](#), SFN 51403 to request approval to make a limited or competitive procurement. See N.D.A.C. § [4-12-09-04\(1\)](#). NDUS institutions contact your purchasing department.

## **Chapter 12: Special Procedures**

Certain goods and services require special procedures.

#### 12.1 REFRESHMENTS

Any purchases of refreshments must comply with OMB [Fiscal Policy 515](#) – Coffee and Soft Drink Expense. Coffee and soft drinks may be purchased by state agencies for meetings to inform and train the general public, interested parties, consultants, etc. Coffee and soft drinks for state employees’ during staff meetings are not allowed.

#### 12.2 MICROFILM EQUIPMENT AND SERVICES. – State of ND Employees - ONLY

All state agencies and institutions, except institutions under the State Board of Higher Education, must obtain approval from Information Technology Department, Records Management Division, before purchasing or leasing any microfilm equipment or services (N.D.C.C. § [54-46.1-05](#)). Contact ITD Records Management Division at 701-328-3585 regarding approval requests.

#### 12.3 POSTAGE METERS. – State of ND Employees - ONLY

OMB Facility Management Division must approve the lease or rental of all postage meters by all state agencies. Agencies must submit an annual report of total postage used (N.D.C.C. § [54-06-18](#) and OMB [Fiscal Policy 111](#)). Contact OMB Facility Management at 701-328-2481 to request approval.

#### 12.4 DESKTOP SUPPORT SERVICES – State of ND Employees - ONLY

N.D.C.C. § [54-59-22.1](#) requires specific state agencies to obtain centralized desktop support services from the Information Technology Department. Desktop support means, “technical assistance and device management related to the use of personal computers and peripheral devices. Agencies subject to this requirement must coordinate with ITD Help Desk at 701-328-4470. See NDITD [Desktop Support Service Level Agreement](#).

#### 12.5 FLAGS – State of ND Employees - ONLY

Use the [state contract](#) for Flags to ensure your agency complies with these laws.

- [North Dakota Flags](#). Reproductions of the North Dakota flag are required by law to adhere to the official design and industry color chart codes provided by the state historical society.  
Flags purchased by a state entity or a political subdivision must substantially meet the requirements of N.D.C.C. § [54-02-02](#).
- [American Flags](#). Under N.D.C.C. § [44-08-22](#), American flags purchased by a state entity or any political subdivision must be manufactured in the United States; this requirement does not apply to the purchase of items that portray the likeness of a flag.

#### 12.6 INFORMATION TECHNOLOGY – State of ND Employees - ONLY

If you are planning to purchase information technology hardware, software, software maintenance, or services over \$25,000 that are not on a state term contract, submit the request to ITD for prior approval in accordance with North Dakota Enterprise Architecture Standard [STD-ITD-001](#). Major Information Technology contracts estimated to cost over \$500,000 are subject to NDCC § [54-59-32](#). Contact ITD Planning Division at 701-328-1992 for assistance.

#### 12.7 MOTOR VEHICLES – State of ND Employees - ONLY



North Dakota Department of Transportation, State Fleet Services, must purchase or lease motor vehicles for state agencies (N.D.C.C. § [24-02-03.3](#)). Contact State Fleet Services at 701-328-2543 or visit [www.dot.nd.gov/](http://www.dot.nd.gov/). When purchasing new motor vehicles, the state must comply with N.D.C.C. § [39-22-25](#) related to a prohibition of direct manufacturer sales of new motor vehicles.

## 12.8 INSURANCE

Insurance is subject to special requirements:

- Fire and Tornado Insurance. State property must be insured with the North Dakota Insurance Department, State 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 (N.D.C.C. § [26.1-22](#)). Learn about coverage, rates, and filing claims by calling the North Dakota Insurance Reserve Fund (NDRF) at 701-224-1988 or visit its website at [www.ndirf.com](http://www.ndirf.com).
- 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 [www.swc.state.nd.us/](http://www.swc.state.nd.us/)
- Liability Insurance (Reinsurance): 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](#)). Reinsurance is insurance coverage purchased to address liability exposure that could exceed the statutory caps of the Risk Management Fund. Reinsurance is insurance coverage purchase to address liability exposure that could exceed the statutory caps of the Risk Management Fund. An agency wishing to purchase this coverage should contact Risk Management at 701-328-7584.
- All Risk Insurance: State of ND Employees - ONLY. Special coverage is available for mobile equipment, portable radios, computers, artwork, and similar property. An agency wishing to purchase this coverage should contact the Risk Management Division at 701-328-7584 or visit the OMB Risk Management Services website State of ND Agencies - ONLY. Transit subrecipients should refer to Guidelines to Managing Contractual Risk (*Attachment 16*).

## **Chapter 13: Purchasing Exemptions**

### **13.1 EXEMPTIONS BY STATUTE – State of ND Employees - ONLY**

Certain goods and services are not subject to state procurement laws. N.D.C.C. § [54-44.4-02](#) states, “The following goods and services, however, are not subject to the procurement requirements of this chapter (N.D.C.C. Chapter [54.44.4](#) State Purchasing Practices):

- Land, buildings, 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, N.D.C.C. § [54-21-24.1](#) and OMB Facility Procedures to Complete a State Office Lease and [OMB Leasing State Office Space](#) and [OMB Fiscal Policy 109](#)].
- Telephone and telegraph service and electrical light and power services.
- Public books, maps, periodicals, and technical pamphlets.
- Department of transportation materials, equipment, and supplies in accordance with section [24-02-16](#).

- Procurements by the industrial commission for energy-related programs under chapters [17-05](#), [54-17.5](#), [54-17.6](#), [54-17.7](#), and [54-63](#) and under those statutes in [title 38](#) authorizing the industrial commission to perform well and hole plugging, reclamation work, equipment removal, leak prevention, and similar work.
- Services for the maintenance or servicing of equipment by the manufacturer or authorized servicing agent 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.
- Emergency purchases. See Chapter 11 of this plan.
- Goods and services costing less than a specified amount as determined by written directive by the director of the office of management and budget.
- Specified goods and services as determined by written directive by the director of the office of management and budget.
- Employee benefit services, trust-related services, and investment management services obtained by an agency with a fiduciary responsibility regarding those services.

### 13.2 EXEMPTIONS BY RULE – State of ND Employees - ONLY

These OMB exemptions are stated in North Dakota Administrative Code (N.D.A.C. [4-12-01-04](#)) certain goods and services have been exempted from state procurement laws and rules:

- 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](#);
- Contracts for services of legal counsel with attorneys who are not employed by the state, pursuant to N.D.C.C. § [54-12-08](#).
- Contracts for public buildings and public improvement contract bids, pursuant to North Dakota Century Code [Title 48](#);
- Contracts for architect, engineer, and land surveying services, pursuant to North Dakota Century Code [Chapter 54-44.7](#);
- Contracts for concessions, pursuant to North Dakota Century Code [Chapter 48-09](#);
- Grant programs, not including procurements using grant dollars [N.D.A.C. § [4-12-01-04 \(1\)\(h\)](#)]
- Professional memberships. [N.D.A.C. § [4-12-01-04 \(1\)\(i\)](#)][10.3](#)

### 13.3 EXEMPTIONS BY OMB WRITTEN DIRECTIVE – State of Employees ONLY

N.D.C.C. § [54-44.4-02](#) gives OMB the authority to exempt specified goods and services and purchases under specified dollar amounts by written directive.

## **Chapter 14: Other Purchasing Laws**

### 14.1 OTHER PURCHASING LAWS

As a Procurement Officer, you need to know the laws that apply to the type of purchase you are making. The Procurement Plan applies to the purchase of goods and services that fall under N.D.C.C. Chapter [54-44.4](#) State Purchasing Practices.

Your agency may need to make purchases that are covered by other purchasing laws. It is important that you recognize these other types of purchases. Consult your legal counsel for assistance to determine which laws apply to the purchase.

If a subrecipient is part of a political subdivision, local rules may also apply.

#### 14.2 CONCESSIONS – State of ND Employees - ONLY

Purchase of Concessions is subject to N.D.C.C. Chapter [48-09](#). Agencies must comply when granting concessions for cafes, restaurants, and confectioneries on public buildings and grounds.

#### 14.3 ARCHITECTS, ENGINEER AND LAND SURVEYING SERVICES

Purchase of Architects, Engineering, and Surveying Services is subject to N.D.C.C. Chapter [54-44.7](#). NDDOT is also required to follow the internal Contract Administration Services Procedure Manual when hiring for A & E services.

#### 14.4 PUBLIC IMPROVEMENT

The OMB State Procurement guidelines are not intended for public improvement and construction contracts covered by N.D.C.C. Title [48](#). Agencies should consult their legal counsel for assistance in determining whether the intended purchase falls under N.D.C.C. § [48-01.2](#) Public Improvement Bids and Contracts or N.D.C.C. § [54-44.4](#) State Purchasing Practices.

“Construction” is defined in N.D.C.C. § [48-01.2-01](#) as “the process of building, altering, repairing, improving, or demolishing any public structure 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 the threshold established under N.D.C.C. § [48-01.2-02.1](#).”

N.D.C.C. § [48-01.2-02](#) specifies the public improvement construction threshold for bidding construction of a public improvement and procuring plans, drawings, and specifications by an architect or engineer. Public improvements over the threshold must be advertised prior to the bid opening, except as otherwise provided when an emergency situation is declared (N.D.C.C. § [48-01.2-04](#)).

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

## MISCELLANEOUS INFORMATION AND TEMPLATES

This section includes additional information and templates to be used in procurements to communicate information between the recipient and prospective bidders or proposers.

Note: *Not all templates pertain to all procurements.*

The attachments are presented in the order shown below:

1. NDDOT FTA Procurement Policy
2. Alternate Procurement (AP) Request SFN 51403
3. Bid Proposal Rejection Letter Template
4. Bidders List Application Invitation Template
5. Bond Clauses
6. Confidential Information Determination
7. Conflict of Interest – Confidentiality Evaluator
8. Contract Amendment Template
9. Contract Default Letter Template
10. Contract Template
11. Draft Solicitation Cover Letter
12. Emergency Purchase Explanation SFN 51627
13. Fair and Reasonable Stamp
14. FTA Circular 4420.1F Third Party Contracting Guidance
15. FTA Master Agreement (28) 2021-02-09
16. Guidelines to Managing Contractual Risk
17. Informal Request for Quote Template
18. Invitation for Bid Template
19. Lease vs Purchase Cost Benefit Analysis Instructions
20. Lease vs Purchase Cost Benefit Analysis Template
21. Letter of Instruction for Successful Bidder
22. Minor Informality Template
23. ND Transit – Cost, Price and Reasonableness Template
24. ND Transit – Independent Cost Estimate Template
25. Non-disclosure Agreement Contractor Template
26. Notice of Intent – Limited Competition
27. Notice of Intent to Award Template
28. Notice of Intent to Award – Recission Template
29. Only One Bid or Proposal Template
30. Printing Specifications Template
31. Procurement File Checklist – Micro Purchase
32. Procurement File Checklist – Small Purchase
33. Procurement File Checklist – Informal Written Purchase
34. Procurement File Checklist – Formal Purchase
35. Procurement Plan Adoption/Procurement Officer Designation Form
36. Protest Acknowledgement
37. Protest Response Template
38. Protect Response Extension Awarded
39. Protest Response Extension Protestor
40. Protest Response Mutual Agreement of Resolution
41. Protest Stay of Award
42. Receipt of Bid or Proposal Template
43. Reference Check General Template
44. Request for Information Template

45. Request for Proposal Template
46. RFP Evaluation Committee Introduction Letter Template
47. RFP Evaluators Guide
48. RFP Presentation-Demonstration Instructions
49. Sample Return Notice
50. Solicitation Amendment Template
51. Solicitation Cancellation Template
52. Telephone Quote SFN 02706
53. Vehicle Contract Pre-Award Checklist
54. Work Activity Centers
55. Work Activity Center Determination