

Introduced by

Senators Heckaman, Robinson

Representative Mock

1 A BILL for an Act to amend and reenact section 54-44.4-05 of the North Dakota Century Code,
2 relating to state agency procurement of research services.

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

4 **SECTION 1. AMENDMENT.** Section 54-44.4-05 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **54-44.4-05. Competitive, limited competitive, noncompetitive, and negotiated**
7 **purchases - Exempt records.**

- 8 1. Except as otherwise provided in section 44-08-01, chapter 25-16.2, and this chapter,
9 purchasing contracts must be awarded through a competitive bidding process to the
10 lowest responsible bidder considering conformity with specifications, terms of delivery,
11 and quality and serviceability, unless it is determined to be advantageous to the state
12 to select a contractor through a competitive proposal process using other or additional
13 criteria. The procurement officer may reject any or all bids or negotiate for a lower
14 price with a successful bidder. Each bid received, with the name of the bidder, must be
15 recorded. The office of management and budget may enter into term contracts for the
16 acquisition of commodities or services and may make multiple awards for term
17 commodity or service contracts when it deems a multiple award to be in the best
18 interests of the state. All bids received under this chapter pursuant to a competitive
19 sealed bid are exempt records under subsection 5 of section 44-04-17.1 until the date
20 and time the bids are opened.
- 21 2. The office of management and budget shall adopt rules specifying the circumstances
22 under which competition may be waived or limited, when negotiation may be used,
23 and specifying the required justifications and procedures for using those methods of
24 purchasing. The office of management and budget shall adopt rules related to sending

1 notice of intent to make limited competitive, noncompetitive, and negotiated purchases
2 in accordance with this chapter. The notice must describe the needed commodity or
3 service and the intended procurement method and must state that vendors are
4 permitted to submit bids or proposals for contracts to be awarded under this section.
5 The circumstances that may permit limited competitive, noncompetitive, or negotiated
6 purchases include:

- 7 a. The commodity or service is available from only one source.
- 8 b. The commodity or service is to be purchased for experimentation or trial.
- 9 c. No acceptable bid or proposal was received pursuant to a competitive bidding or
10 competitive proposal process.
- 11 d. Commodities are being purchased for over-the-counter resale.
- 12 e. ~~Acceptable~~Except as provided in subsection 3, acceptable commodities or
13 services are produced or provided by correctional institutions or other
14 government agencies or a work activity center as defined in section 25-16.2-01.
- 15 f. The anticipated cost of purchasing specified commodities or services is less than
16 an amount determined by the office of management and budget which would
17 justify the expense of a competitive bidding or competitive proposal process.
- 18 g. A used commodity is advantageous to the state and the commodity is available
19 only on short notice.
- 20 h. The commodity is a component or replacement part for which there is no
21 commercially available substitute and which can be obtained only from the
22 manufacturer.
- 23 i. Compatibility with equipment currently owned by the state is essential to the
24 proper functioning of that equipment.
- 25 j. The agency provides documentation indicating that the services or the
26 circumstances are of such a nature that deviation from the procurement
27 procedure is appropriate.

28 3. Competition may be waived or limited or negotiation may be used when a purchasing
29 agency acquires research services anticipated to cost at least fifty thousand dollars
30 from an institution under the control of the state board of higher education if the
31 purchasing agency informs the commissioner of higher education of the need for and

1 detailed nature of the research contract. The commissioner shall forward the contract
2 information to each institution under the control of the state board of higher education,
3 and any institution capable of fulfilling the contract may notify the purchasing agency
4 the institution is interested in obtaining the contract. If more than one institution notifies
5 the purchasing agency, the purchasing agency shall request the institutions to submit
6 competing bids for the contract. The purchasing agency shall award the contract to the
7 lowest responsible bidder considering conformity with specifications, terms of delivery,
8 and quality and serviceability, unless it is determined to be advantageous to the state
9 to use other or additional criteria to evaluate the bids.