

INFORMATION REGARDING CONTRACTS FOR SERVICES

This memorandum provides information regarding the state's practices for contracting for services, including information on the performance audit conducted by the State Auditor's office on contracts for services, related legislation from the 2001 Legislative Assembly, and the information technology contract guideline established by the Information Technology Department.

STATUTORY PROVISIONS RELATING TO CONTRACTS FOR SERVICES

North Dakota Century Code (NDCC) Chapter 54-44.4 provides that the Office of Management and Budget shall purchase, lease, or arrange for procurement of all materials, furniture, fixtures, printing, insurance, and other commodities for all executive branch state agencies and institutions. However, regarding contracts for services, the statutory provision is NDCC Chapter 54-44.7 and applies to the selection of architects, engineers, and land surveyors.

STATE AUDITOR'S OFFICE - PERFORMANCE AUDIT REPORT OF CONTRACTS FOR SERVICES

During the 1999-2000 interim, the State Auditor's office conducted a performance audit of contracts for services at the request of the Legislative Audit and Fiscal Review Committee. The goals of the audit were to determine if the current practices related to contracts for services are providing an efficient and effective use of resources and to determine if the current laws, policies, and procedures surrounding contracts for services are adequate.

The audit procedures performed by the State Auditor's office included the review of:

- Policies and procedures surrounding contracts for services at selected state entities.
- Contracts for services entered into by selected state entities and corresponding payments for services.
- The North Dakota Century Code, North Dakota Administrative Code, State Board of Higher Education policies, and Office of Management and Budget policies regarding contracts for services.
- The Office of Management and Budget's *Risk Management Manual* and the Attorney General's office *Contract Drafting and Review Manual*.

The audit report contains the following recommendations relating to state policies and procedures for contracts for services:

1. The Office of Management and Budget develop policies relating to the procurement of services and ensure proper training is provided to state agencies. The policies should identify at a minimum:
 - a. Bidding requirements for the procurement of services (identifying dollar thresholds for bidding processes and time periods for when longstanding contracts are required to be rebid);
 - b. A requirement that payments for services meeting established criteria be made pursuant to a written contract or agreement;
 - c. Written documentation of sole source procurement of services that require agency head approval;
 - d. Written documentation of sole source procurement of services that require Office of Management and Budget approval; and
 - e. A requirement that agencies adequately document the selection process.
2. The State Board of Higher Education develop policies relating to the procurement of services and ensure proper training is provided to college and university employees. The policies should identify, at a minimum:
 - a. Bidding requirements for the procurement of services (identifying dollar thresholds for bidding processes and time periods for when longstanding contracts are required to be rebid);
 - b. A requirement that payments for services meeting established criteria be made pursuant to a written contract or agreement;
 - c. Written documentation of sole source procurement of services that require approval of an established designee at each college and university; and
 - d. A requirement that colleges and universities adequately document the selection process.
3. The Office of Management and Budget, in conjunction with the appropriate legislative committees, introduce the necessary legislation to the 2001 Legislative Assembly to allow the department to:

- a. Establish policies surrounding the procurement of services that are required to be followed by all state agencies; and
 - b. When it is beneficial for the state, establish term/master contracts for services to be utilized by all state entities, including colleges and universities.
4. The Office of Management and Budget and the Attorney General's office establish one manual for contract drafting and periodically update the manual. In addition, the Attorney General's office should ensure all assistant attorneys general are provided training to ensure consistent interpretation and practices throughout the state.
 5. The Office of Management and Budget, with assistance from the Attorney General's office, establish an on-line contract system accessible by all state entities which would provide template contracts to be utilized as well as template/boilerplate language for contracts.
 6. The Office of Management and Budget develop policies relating to contract monitoring and management and ensure proper training is provided state agencies. The policies should address, at a minimum:
 - a. Documenting and signing changes to contracts;
 - b. Entering into and signing amendments that extend the contracts before the end date of the contract; and
 - c. Making payments in conjunction with contract terms.
 7. The State Board of Higher Education develop policies relating to contract monitoring and management and ensure proper training is provided to college and university employees. The policies should address, at a minimum:
 - a. Documenting and signing changes to contracts;
 - b. Entering into and signing amendments that extend the contracts before the end date of the contract; and
 - c. Making payments in conjunction with contract terms.
 8. If the Legislative Assembly grants the Office of Management and Budget the authority to establish term/master contracts for the procurement of services, the Office of Management and Budget and the State Board of Higher Education should determine if joint and cooperative purchases of services would be beneficial for the state.

2001 RELATED LEGISLATION

House Bill No. 1125 (2001) was introduced by the Office of Management and Budget as a result of the recommendations from the State Auditor's office performance audit of contracts for services. The bill as introduced provided that in addition to the Office of Management and Budget's responsibilities in the area of procurement of goods, the agency would also be responsible for arranging for the procurement of services. Due to concerns raised by several state agencies, the bill was amended to provide that the Office of Management and Budget in consultation with the Attorney General should develop standards and guidelines for the procurement of contracts for services and, if appropriate, submit proposed legislation to the 2003 Legislative Assembly regarding those standards and guidelines. House Bill No. 1125 (2001) also encourages state agencies to follow the standards and guidelines set forth by the Office of Management and Budget and develop agency guidelines for procurement of contracts for service.

In conjunction with 2001 House Bill No. 1125, the 2001 Legislative Assembly provided the Office of Management and Budget funding of \$55,000 from the general fund for the agency to hire a consultant to assist with establishing standards and policies and to work with the agencies to determine the appropriate standards and policies.

IMPLEMENTATION OF 2001 RELATED LEGISLATION

The Office of Management and Budget is in the process of developing standards and guidelines relating to the procurement of contracts for services. The Office of Management and Budget has determined that the standards and guidelines should provide state agencies with information on the best practices in the procurement of services, and the Attorney General's office should continue to provide state agencies with additional information regarding contracts for services, including information on required language and clauses and other legal issues. A work group consisting of individuals from various state agencies with experience in procuring contracts for services has been established to review and discuss draft standards and guidelines. The Office of Management and Budget anticipates the work group to complete work on the standards and guidelines in July 2002 and the finalized standards and guidelines to be reviewed by the Attorney General's office and a third-party consultant in August 2002. Any necessary legislation related to the standards and guidelines will be drafted at that time for introduction to the 2003 Legislative Assembly.

INFORMATION TECHNOLOGY DEPARTMENT - INFORMATION TECHNOLOGY CONTRACT GUIDELINES

The Information Technology Department has developed a guideline for state agencies to use in the development of information technology contracts. The guideline provides information regarding the specific areas that should be considered in the development of an information technology contract. In summary, an information technology contract should:

- Define the roles and responsibilities of the contracting entity and the contract vendor.
- Require all products and services provided by the contract vendor to comply with state information technology standards.
- Identify the intended contract deliverables and the date the deliverables are to be completed.
- Establish the process of accepting the product or service and the process to be used in the testing of the product or service.
- Specify whether products, equipment, or materials created under the contract should be considered the property of the state of North Dakota.
- State a contract term, including a start date and a completion date.
- Describe contract payments and payment conditions.
- Identify project management responsibilities, including the vendor's project manager and the entity's project manager.
- Identify the process for submitting and approving contract changes or amendments.
- Identify any software to be provided by the contract.
- State the level of maintenance and support to be provided, including the individual to be contacted for service and the agreed-upon acceptable response time.
- Describe the responsibilities of the contract vendor in the development of system or application documentation.
- Describe all training needs, including the nature and extent of training, the location of training, the timeframe for training, and the cost of the training provided.
- Include an indemnity clause in which the contract vendor agrees to defend and hold harmless the state, its officials, and employees from claims, suits, losses, damages, and liabilities of, by, or with respect to third parties.
- Include a provision requiring the contract vendor to provide a performance bond equal to the amount of the contract, where appropriate.
- Include a liquidated damages clause to identify the method for computing the reimbursement to the entity for costs incurred due to the failed delivery of the contracted product or service.
- Be signed and dated by authorized representatives of the contracting parties and notarized by a notary public.