

PURCHASING LAWS FOR SCHOOLS

NOTE: This exhibit does not contain laws related to public improvement/ construction, sale/lease of school property, or cooperative purchasing.

BIDDING REQUIREMENTS

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

1. Except as provided in this section, the board of a school district may not enter a contract involving the expenditure of an aggregate amount greater than fifty thousand dollars unless the school board has given ten days' notice by publication in the official newspaper of the district, received sealed bids, and accepted the bid of the lowest responsible bidder. This section does not apply to contracts for:
 - a. The personal services of district employees.
 - b. Textbooks and reference books.
 - c. Articles not sold on the open market.
 - d. Patented, copyrighted, or exclusively sold devices or features required to match articles already in use.
 - e. Patented, copyrighted, or exclusively sold articles so distinctive that only one brand can be purchased.
 - f. Building construction projects under chapter 48-01.2.
 - g. School transportation services purchased under section 15.1-30-11.
 - h. Vehicle fuel purchased under section 15.1-09-34.1.
 - i. Heating fuel purchased under section 15.1-09-34.1.
 - j. The purchase of a used motor vehicle, including a school bus, motorbus, or van, intended primarily for the transportation of students.
 - k. Cooperative purchases with the office of management and budget under chapter 54-44.4.
 - l. The purchase of products from prison industries under chapter 12-48.
 - m. The purchase of products from work activity centers under chapter 25-16.2.
 - n. Cooperative purchases made pursuant to a joint powers agreement under chapter 54-40.3.
2. For purposes of this section, a "used motor vehicle" means a motor vehicle that has been previously owned or leased and which has an odometer reading in excess of eighteen thousand miles [28967 kilometers].
3. A board member who participates in a violation of this section is guilty of a class B misdemeanor.

44-08-01.1. Bids to be sealed - Designation of time and place for opening – Preference for tie bids.

Notwithstanding any other provisions of the North Dakota Century Code, the governing bodies of the political subdivisions of the state of North Dakota shall accept only sealed bids, whenever by law or administrative decision they are required to call for, advertise, or solicit bids for the purchase of personal property and equipment. Whenever a political subdivision of this state calls for, advertises, or solicits sealed bids, it shall designate a time and place for the opening of such bids. If all of the bids are not rejected, the purchase must be made from the bidder submitting the lowest and best bid meeting or exceeding the specifications set out in the invitation for bids. In the event that two or more bids contain identical pricing or receive identical evaluation scores, preference must be given to bids submitted by North Dakota vendors.

CONFLICT OF INTEREST LAWS AND PROPRIETARY INFORMATION

15.1-07-17. School district contracts - Conflict of interest - Penalty.

1. A school board member or other school officer who has a conflict of interest in any contract requiring the expenditure of school funds shall disclose the conflict to the board and may not participate in any discussions or votes regarding that contract without the consent of all other board members.
2. For purposes of this section, a conflict of interest means the personal, professional, or pecuniary interest of an individual, the individual's spouse or relative, or the individual's business or professional associate.
3. Any person who violates this section is guilty of a class A misdemeanor.

44-04-22. Conflict of interest law.

A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

12.1-13-01. Disclosure of confidential information provided to government.

A person is guilty of a class C felony if, in knowing violation of a statutory duty imposed on him as a public servant, he discloses any confidential information which he has acquired as a public servant. "Confidential information" means information made available to the government under a governmental assurance of confidence as provided by statute.

12.1-13-02. Speculating or wagering on official action or information.

1. A person is guilty of a class A misdemeanor if during employment as a public servant, or within one year thereafter, in contemplation of official action by himself as a public servant or by a government agency with which he is or has been associated as a public servant, or in reliance on information to which he has or had access only in his capacity as a public servant, he:

- a. Acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action;
 - b. Speculates or wagers on the basis of such information or official action; or
 - c. Aids another to do any of the foregoing.
2. A person is guilty of a class A misdemeanor if as a public servant he takes official action which is likely to benefit him as a result of an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a speculation or wager, which he made, or caused or aided another to make, in contemplation of such official action.

44-04-18.4. Confidentiality of trade secret, proprietary, commercial, and financial information.

1. Trade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously publicly disclosed.
6. Unless made confidential under subsection 1 or made exempt under subsection 5, bids or proposals received by a public entity in response to a request for proposals by the public entity are exempt until all of the proposals have been received and opened by the public entity or until all oral presentations regarding the proposals, if any, have been heard by the public entity. Records included with any bid or proposal naming and generally describing the entity submitting the proposal are open.

MOTOR VEHICLES

39-22-05.2. When bid bonds not required in bids to state or political subdivisions.

A person who submits a bid to the state, any of its agencies, or any of its political subdivisions to sell any type of motor vehicle is not required to submit a bidder's bond or a certified or cashier's check if that person is already bonded pursuant to section 39-22-05. If the buyer requires a performance bond, then within ten days of the awarding of the contract, the successful bidder shall submit a performance bond to the appropriate state agency or political subdivision in an amount equal to the contract price.

39-22-25. Direct manufacturer sales prohibited - Penalty.

A manufacturer or franchiser may not offer to sell directly or sell indirectly, any new motor vehicle to a consumer in this state, except through a new motor vehicle dealer holding a franchise for the line make covering the new motor vehicle. This section does not apply to manufacturer or franchiser sales of new motor vehicles to the federal government, charitable organizations, or employees of the manufacturer or franchiser. Any person violating this section is guilty of a class A misdemeanor.

Also see NDCC 15.1-09-33, 15.1-09-34, 15.1-09-34.1

NONDISCRIMINATION

14-02.4-01. State policy against discrimination.

It is the policy of this state to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, status with

regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination or coerce others to discriminate.

NORTH DAKOTA VENDOR AND VETERANS PREFERENCE

43-07-20. Employment preference in contract.

In all contracts, except those which involve federal-aid funds and when a preference or discrimination would be contrary to a federal law or regulation, hereafter let for state, county, city, school district, or township construction, repair, or maintenance work under any laws of this state, there shall be inserted a provision by which the contractor must give preference to the employment of bona fide North Dakota residents, as determined by section 54-01-26, with preference given first to honorably discharged disabled veterans and veterans of the armed forces of the United States, as defined in section 37-19.1-01, who are deemed to be qualified in the performance of that work. The preference shall not apply to engineering, superintendence, management, or office or clerical work.

No contract shall be let to any person, firm, association, cooperative, corporation, or limited liability company refusing to execute an agreement containing the aforementioned provisions.

44-08-01. Preference to North Dakota bidders, sellers, and contractors.

1. The office of management and budget, any other state entity, and the governing body of any political subdivision of the state in purchasing any goods, merchandise, supplies, or equipment of any kind, or contracting to build or repair any building, structure, road, or other real property, shall give preference to bidders, sellers, or contractors resident in North Dakota. The preference must be equal to the preference given or required by the state of the nonresident bidder, seller, or contractor.
2. A state entity authorized to accept bids shall give preference to a resident North Dakota bidder when accepting bids for the provision of professional services, including research and consulting services. The preference must be equal to the preference given or required by the state of the nonresident bidder.
3. The office of management and budget, any other state entity, and the governing body of any political subdivision of the state in specifying or purchasing any goods, merchandise, supplies, or equipment, may not specify any trademarked or copyrighted brand or name, nor the product of any one manufacturer, nor any patented product, apparatus, device, or equipment, when the same will prevent proper competition, unless bidders also are asked for bids or offers upon other articles of like nature, utility, and merit. When it is advantageous that the purchase be of a particular brand of product or products of a particular manufacturer to the exclusion of competitive brands or manufacturers, the purchasing board or entity must document those circumstances and provide written justification for the proprietary specification

or purchase. The purchasing board or entity shall procure the proprietary product through a competitive process unless the needed product is available exclusively from one source of supply or other circumstances exist under which competition can be waived.

44-08-02. Resident North Dakota bidder, seller, and contractor defined.

The term "a resident North Dakota bidder, seller, or contractor" when used in section 44-08-01, unless the context thereof clearly provides otherwise, means a bidder, seller, or contractor who has maintained a bona fide place of business within this state for at least one year prior to the date on which a contract was awarded.

PURCHASING AUTHORITY

- Bus storage: **15.1-09-45**
- Coal purchases: **48-05-02.1**
- Health insurances: **15.1-09-53**
- Real property, equipment, and other property and services: **15.1-09-33**
- School board members only have powers conferred on them by statute: *Pronvost v. Brunette*
- School officers may only exercise powers expressly or impliedly granted by statute: *Kretchmer v. School Board, Gillespie v. Common School District*
- Transportation services: **15.1-30-06, 15.1-30-11, and 15.1-30-12**
- Vehicle and heating fuel: **15.1-09-34.1**

DISBURSEMENT OF FUNDS

15.1-07-12. Negotiable instruments - Disbursement of moneys by business manager.

1. a. The board of a school district may adopt policies governing the disbursement of school district moneys by the business manager.
- b. The policies adopted under subdivision a may include:
 - (1) The authorization, creation, and approval of negotiable instruments;
 - (2) The use of credit or debit cards;
 - (3) The payment of invoices;
 - (4) The use of petty cash;
 - (5) The use of electronic payments; and
 - (6) The use of facsimile signatures.
- c. The policies adopted under subdivision a must include internal controls to safeguard school district moneys.

2. If the board of a school district has not adopted policies to govern the disbursement of school district moneys by the business manager, the business manager may disburse moneys only by issuance of a negotiable instrument upon presentation of a bill or invoice, the payment of which has been authorized by the president of the school board, and only if there are sufficient moneys available for the disbursement. Upon issuing a negotiable instrument, the business manager shall make a record of the instrument.

44-08-05.1. Payments - Purchasing card authority - Penalty.

The director of the office of management and budget, the state board of higher education, the governing body of any political subdivision, and the board of any school district may establish and administer a purchasing card system for use by its officers, employees, representatives, or agents.

Any public officer or employee who fraudulently uses a purchasing card or knowingly approves a payment for false or unlawful claims or which does not otherwise meet the requirements of this section for approval may be subject to criminal prosecution under title 12.1. Any public officer or employee who, without the use of ordinary care and diligence, uses a purchasing card or approves a payment for false or unlawful claims or which does not otherwise meet the requirements of this section for approval is personally liable for any funds improperly expended. Any public officer, employee, or any other individual who has knowledge of an actual or possible violation of this section shall make that information known to the attorney general or the appropriate state's attorney. The attorney general or appropriate state's attorney shall investigate any alleged violation. If there is probable cause to believe that a violation has occurred, the attorney general or appropriate state's attorney shall initiate a criminal prosecution under title 12.1 or a civil suit against the public officer or employee for the recovery of the funds as may actually have been improperly paid, or may initiate a prosecution and a civil suit.

REWARDS FROM VENDORS PROHIBITED

15.1-07-18. Offer of reward - Purchase of school supplies - Penalty.

It is a class A misdemeanor for any person to give or offer to a county superintendent of schools, a school board member, or a school district employee a commission, fee, or other reward for the purchase by the district of any textbooks, furniture, or school supplies.

15.1-07-19. Reward for purchase of school supplies - Penalty.

It is a class B misdemeanor for a county superintendent of schools, a school board member, or a school district employee to accept a commission, fee, or other reward for the purchase by the district of any textbooks, furniture, or school supplies.

End of McClusky School District #19 Exhibit HCAA-E

[07/19]