
GUIDELINES TO NORTH DAKOTA PURCHASING PREFERENCE LAWS

State of North Dakota
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GUIDELINES TO NORTH DAKOTA PURCHASING PREFERENCE LAWS

These guidelines are intended to provide information about North Dakota's purchasing preference laws and related rules to employees who purchase for the state, bidders and the general public. Please contact the OMB State Procurement Office at 701-328-2740 or infospo@nd.gov if you have any questions or suggestions for improving these guidelines.

1. Preference Defined

The term "preference" as it relates to government purchasing is an advantage in consideration for award of a contract given to particular types of products or vendors. Preferences are commonly based upon the bidder's residence, business classification (e.g. small, minority-owned, etc.), location within an economically challenged area, or the origin of product offered.

2. Reciprocal Preference Law

North Dakota has a very broad preference law that applies to OMB, any other state entity, and political subdivisions when purchasing any goods, supplies, equipment, contracts to build or repair any building, structure, road or other real property, and professional services (ref. N.D.C.C. § [44-08-01](#)).

This law requires that the preference given to a resident North Dakota bidder be equal to the preference given or required by the state of the out-of-state or nonresident bidder. This type of preference law is commonly called a "reciprocal preference."

The reciprocal preference law must be applied when evaluating the cost of bids or proposals received from nonresident bidders. A "resident" North Dakota bidder, offeror, seller, or contractor is one who has maintained a bona fide place of business within North Dakota for at least one year prior to the date on which a contract was awarded (ref. N.D.C.C. § [44-08-02](#)).

When bids or proposals are received from a nonresident bidder, the procurement officer must determine whether the bidder's state of residence has a preference law for vendors resident in that state.

3. Preference Laws of All 50 States

State preference laws and regulations can be viewed by visiting the *NASPO State Preference Repository*: <https://www.naspo.org/reciprocity1>

4. Applying Reciprocal Preference

No reciprocal preference is applied to a nonresident bidder whose state of residence has no preference law or only a reciprocal preference law. If all bidders are nonresidents, no reciprocal preference is applied.

If the bidder's state of residence has a preference for bidders in that state, then the nonresident bidder's price will be increased by the same percentage of preference. For example:

A bid is received from a nonresident bidder. The laws of that bidder's state of residency require a 5% preference for vendors resident in that state. So, the ND procurement officer must increase that bidder's bid price by 5% before evaluating it.

For additional assistance, contact the OMB State Procurement Office at 701-328-2740.

5. Tie Bid Preference

After applying any reciprocal preference, if a tie occurs between two or more bidders with equal bid prices or offerors with identical evaluation scores:

- Preference must first be given to bids submitted by North Dakota vendors (ref. N.D.C.C. § [44-08-01.1](#)).
- If a tie remains, preference must be given to approved vendors on the State Bidders List [ref. N.D.C.C. § [54-44.4-09\(4\)](#)].
- If a tie still remains, award shall be made in accordance with N.D.A.C. § [4-12-11-05](#).

6. Other Preference Laws

North Dakota also has several other preference laws:

- Coal. When purchasing coal, state agencies and institutions must comply N.D.C.C. § [48-05-02.1](#) which describes how to apply preference for bidders supplying coal mined in North Dakota.
- Food. During the 2003 legislative session, [Senate Concurrent Resolution No. 4018](#) was passed which urges all publicly supported entities that purchase food to support North Dakota producers and processors by purchasing food products grown or produced and processed in North Dakota.
- Environmentally Preferable Products – Bio-based Products. Effective July 1, 2008, N.D.C.C. § [54-44.4-07](#) will encourage the Office of Management Budget, the institutions of higher education, state agencies and institutions to purchase environmentally preferable products. Where practicable, bio-based products should be specified. The Office of Management and Budget, in coordination with the State Board of Higher Education, shall develop guidelines for a bio-based procurement program.
- Paper, Recycled. N.D.C.C. § [54-44.4-08](#) requires that at least twenty percent of the total volume of paper and paper products purchased for state agencies and institutions

contain at least twenty-five percent recycled material. The Office of Management and Budget must track compliance.

- Printing. N.D.C.C. § [46-02-15](#) requires that if practicable, all state, county, and other political subdivision public printing, binding, and blank book manufacturing, blanks and printed stationery must be awarded to a resident North Dakota bidder as defined in N.D.C.C. § [44-08-02](#). Also see N.D.A.C. § [4-12-16-01](#).
- Soybean-based Ink. N.D.C.C. § [54-44.4-07](#) requires that where practicable, specifications for purchasing newsprint printing services should specify the use of soybean-based ink. The North Dakota Soybean Council and the Agriculture Commissioner shall assist the Office of Management and Budget in locating suppliers of soybean-based inks and collecting data on the purchase of soybean-based inks.
- American Flags. N.D.C.C. § [44-08-22](#) requires that any state entity or any political subdivision may not purchase a flag of the United States of America unless the flag is manufactured in the United States of America. Items that are not flags, but which bear a likeness of the flag, such as food, clothing, lapel pins, a paper product or other non-flag items are excluded from this law.
- Direct Manufacturer Motor Vehicle Sales Prohibited. N.D.C.C. § [39-22-25](#) states that 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.
- Work Activity Centers.
 - General. Effective August 1, 2011, N.D.C.C. § [25-16.2](#) states that if acceptable commodities or services are produced or provided by a work activity center at fair market price, any state entity or political subdivision may enter a contract to purchase directly from the work activity center without obtaining competition. (Also see subsection 2(e) of N.D.C.C. § [54-44.4-05](#)).
 - Construction Stakes. N.D.C.C. § [25-16.2-02](#) requires contracts for highway construction stakes to be awarded to North Dakota work activity centers for the developmentally disabled, unless no work activity center bids on the contract.

7. Small and Disadvantaged Businesses

North Dakota state procurement law does not require any preference based upon business classification (e.g. small, minority-owned, etc.).

The North Dakota Department of Transportation has a Disadvantaged Business Enterprise (DBE) Program to encourage the development and use of companies owned and controlled by minorities, women, and socially and economically disadvantaged individuals on federally-aided highway construction projects. Contact the ND DOT Civil Rights Division at 701-328-2576 or civilrights@nd.gov or visit their website at <http://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm>.