

# STATE PROCUREMENT GUIDELINES

## Section 5.7 Vendor Pool Contracts

### 5.7.1 Vendor Pool Contract Law

Effective August 1, 2025, N.D.C.C. § [54-44.4-13.2](#) Multiple Award Vendor Pool Contracts – Indefinite-Delivery (ID), Indefinite-Quantity (IQ) – Multi-step Competition requires:

- Office of Management and Budget (OMB), in coordination with the State Board of Higher Education (SBHE), and North Dakota Information Technology Department (NDIT) must establish guidelines for Vendor Pool Contracts.
- Guidelines must establish thresholds at which a state agency or institution may purchase directly from a vendor pool contractor or must obtain Secondary Competition by soliciting bids or proposals limited to vendor pool contractors.
- A multiple award Vendor Pool Contract term may not exceed a total contract length of five years, including renewals and extensions, unless prior written approval is obtained. The work performed under an awarded Secondary Contract must be completed within the term of the Primary Contract.
- The state agency or institution making a purchase from a Vendor Pool Contract shall prepare a Statement of Work for the entire project describing the services needed to determine the level of competition required.
- The state agency or institution may not artificially fragment requirements or make serial noncompetitive purchases from vendors within the vendor pool to circumvent competition requirements.

Contracts determined to be a “vendor pool” subject to these guidelines must contain the term “vendor pool” in the title. (Example: Grant Writing Services Vendor Pool.)

### 5.7.2 Transition Period – Contracts Established Prior to August 1, 2025

State agencies and institutions must identify any existing Vendor Pool Contracts and review those Vendor Pool Contracts in consideration of the new law and guideline requirements.

A blanket approval is granted through June 30, 2026, for existing contracts that may meet the definition of a Vendor Pool Contract and exceed the five-year statutory Vendor Pool Contract term limit, including any Statements of Work, task orders, work orders, or secondary contracts under those existing vendor pool contracts. This transition period allows time for solicitation, contract amendments, and contract terminations to comply with the new vendor pool law and guidelines.

Current vendor pool Primary Contracts that were established prior to August 1 that have a higher competition threshold than \$250,000 or did not include secondary competition have a blanket approval for an exception from these guidelines through October 31, 2025. This transition period allows time for procedural changes to comply with the new vendor pool law and guidelines.

If the state agency or institution seeks an exception on an existing Vendor Pool Contract related to the five-year statutory limit, competition thresholds established under these guidelines, or other requirements, submit an Alternate Procurement to the State Procurement Office or NDUS approving authority by October 1, 2025.

If a Primary Contract or Secondary Contract executed prior to August 1, 2025, contained a "Survivability Clause" allowing the Secondary Contract to continue beyond the expiration of the Primary Contract, submit an Alternate Procurement to the approving authority.

An [Amendment for Vendor Pool Law Change Template](#) has been created for use in notifying existing vendor pool contracts about the law change and amending existing contracts to comply with the new law.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance with Vendor Pool Contracts.

### **5.7.3 Vendor Pool Definitions**

The following terms are used in these guidelines:

- "Multiple award" means that contracts are awarded to two or more contractors to provide the same or similar services and related goods. (See [N.D.A.C. § 4-12-11-07 Multiple awards](#).)
- "Multi-step competition" in these guidelines means the two phases of competition associated with vendor pool contracts. This vendor pool multi-step differs slightly from the Multistep solicitation contemplated in [N.D.A.C. § 4-12-08-05](#) because the first step establishes contract hourly rate pricing. The vendor pool competition steps are:
  - "Primary Competitive Process" means the solicitation conducted by the State Procurement Office, state agency, or institution to evaluate and award contracts to qualified vendors to create the vendor pool (Primary Contracts).
  - "Secondary Competitive Process" means the level of competition required based upon the vendor pool competition thresholds to select the vendor pool contractors to be awarded a contract for specific services needed by state agencies and institutions (Secondary Contracts).
- "Indefinite-delivery (ID), Indefinite-quantity (IQ)" means that the exact scope of work and delivery time is not known at the time the contract is awarded.

- “Primary Contract” means a contract with a service provider selected to be in the vendor pool, including hourly rates for various services, unit prices for deliverable products, and provisions for price adjustments.
- “Secondary Contract” means a contract awarded by a state agency or institution under a Primary Contract, including a statement of work for the entire project describing the needed services, which must be completed within the term of the Primary Contract.
- “Statement of Work” describes the document describing the specific requirements of the state agency or institution. The estimated value of the statement of work determines the Secondary Competition required. See [Subsection 20 of N.D.A.C § 4-12-01-02](#). A Statement of Work may include multiple projects or services for a time period, not to exceed the Primary Contract term.
- “Threshold” means the dollar amount established under vendor pool guidelines under which direct purchases may be made and over which secondary competition is required from all Primary Contractors within a vendor pool category.
- “Vendor Pool Contract” is a multiple award, indefinite-delivery, indefinite quantity contract structured for multistep competition as described in these guidelines.

Multiple award contracts primarily for the purchase of supplies, goods and equipment with hourly rates for related services such as installation, service, or training are not subject to Vendor Pool Contract laws or guidelines.

Not all multiple award contracts are Vendor Pool Contracts. A state agency or institution may simply need more than one service provider to meet their needs, and the agency or institution determines how those contractors will be used (e.g. primary/secondary/tertiary, geographical location, rotate, etc.). For example:

- A government entity awards multiple contracts for snow removal service providers to ensure availability during winter weather events.
- A government entity awards multiple contracts for services by geographic location (e.g. janitorial services in Bismarck, Valley City, and Jamestown.)

In these examples, the government entity intends to obtain services from all contractors. Conversely, a Vendor Pool Contract is structured to have a multi-step competitive process with pre-qualified Primary Contractors, and thresholds to determine the level of secondary competition required to select a contractor from the vendor pool to be awarded the Secondary Contract for the specific services needed.

Contact the State Procurement Office at [infospo@nd.gov](mailto:infospo@nd.gov) or 701-328-2740 for assistance in determining whether the vendor pool requirements apply to the multiple award scenario being contemplated.

### 5.7.5 Vendor Pool Competition Requirements

The following competition guidelines are established pursuant to N.D.C.C. § [54-44.4-13.2](#).

| Vendor Pool Competition Thresholds                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Direct Purchase</b><br>Less than \$250,000     | <ul style="list-style-type: none"> <li>• Prepare a statement of work for the entire project describing the services needed, which may include multiple projects or services for a time not to exceed the Primary Contract term.</li> <li>• Do not use a vendor pool if there is not sufficient time on the Primary Contract to complete the work under a Secondary Contract.</li> <li>• Obtain at least one bid or proposal from a contractor within the vendor pool.</li> <li>• If the price is fair, reasonable, and less than \$250,000, the state agency or institution may purchase directly from a contractor in the pool.</li> <li>• If the price is close to or over \$250,000 and possible amendments/change orders could make the statement of work exceed the \$250,000 competition threshold, conduct a competitive process to avoid a potential violation of circumventing competition.</li> <li>• Rotate business to vendor pool contractors on an equitable basis, then spend to Primary Contractors may cumulatively exceed \$250,000 during the Vendor Pool Contract period without being considered serial, noncompetitive purchases to circumvent competition. <ul style="list-style-type: none"> <li>○ If repeated, direct purchases to one vendor pool contractor will exceed \$250,000 over time, conduct a competitive process to avoid a violation of the prohibition against serial noncompetitive purchases to circumvent competition requirements.</li> <li>○ It is acceptable to treat infrequent, unanticipated noncompetitive purchases under \$250,000 as separate transactions.</li> </ul> </li> <li>• A Primary Contractor may be awarded competitive Secondary Contracts/Work Orders that cumulatively exceed \$250,000, if a secondary competitive process is performed as described below. There is no cap on spend provided a fully competitive process was used, except for Major IT project requirements. See IT Procurement Guidelines.</li> </ul> |
| <b>Competition Required</b><br>\$250,000 and over | <ul style="list-style-type: none"> <li>• Do not use a Vendor Pool Contract if there is not enough time remaining on the Primary Contract term to complete the work; instead conduct a solicitation for needed services.</li> <li>• Do not use a Vendor Pool Contract if the services needed will create an ongoing requirement for support, maintenance, or future iterations of work beyond the Primary Contract term period. Conduct a fully competitive solicitation not using a Vendor Pool Contract that describes the needed work and on-going service and support.</li> <li>• Solicit secondary competition from all Primary Contractors within the vendor pool using a competitive Work Order Process. A statement of work may include multiple projects or services for a time period, not to exceed the primary contract term.</li> <li>• There is no spending limit on spend on Secondary Contracts awarded under a fully competitive process.</li> <li>• Document solicitation method used, Primary Contractors solicited, amendments, responses received, evaluation, and basis for award.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

|                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Contract-Specific Competition Threshold</b>                 | <ul style="list-style-type: none"> <li>The State Procurement Office, a state agency, or institution may establish a secondary competition threshold lower than \$250,000, without an Alternate Procurement vendor pool competition exception approval. For example, some OMB state contracts require secondary competition less than \$250,000. A request to obtain less competition than the lower contract-specific competition requirements must be submitted through the Alternate Procurement process.</li> </ul> |
| <b>Alternate Procurement</b><br>Request approval of exceptions | <ul style="list-style-type: none"> <li>The Alternate Procurement process is used to request an exemption from Vendor Pool Contract term limits and competition thresholds.</li> <li>State agency Alternate Procurements must be approved by the State Procurement Office. Higher Education Alternate Procurements must be approved by the institution's designated approver.</li> </ul>                                                                                                                                |
| <b>Information Technology</b>                                  | Information Technology laws, guidelines and review/procedures apply to state agencies and institutions establishing a Vendor Pool (Primary Contract) or seeking to award a Secondary Contract under a Vendor Pool Contract. See <u>Guidelines to IT Procurement</u> .                                                                                                                                                                                                                                                  |

Vendor Pool Contracts are intended to create efficiency when procuring commonly used services. The Vendor Pool multi-step competition process is as follows:

- 1<sup>st</sup> Step - "Primary Competition/Primary Contract" describes the initial competitive procurement conducted by the State Procurement Office, state agency, or institution to evaluate and select vendors to award Primary Contracts to create the vendor pool. The Primary Contract includes hourly rates for various services, unit prices for deliverable products, and provisions for price adjustments. Primary Contracts may also be called Master Contracts, State Vendor Pool Contract, etc.
- 2<sup>nd</sup> Step - "Secondary Competition/Secondary Contracts" describes the next stage of the procurement process conducted by a state agency or institution. Prepare a Statement of Work (sometimes called a work order or task order) for the entire project describing the services needed. A Statement of Work may include multiple projects or services for a time period, not to exceed the primary contract term. If multiple contractors are needed to accomplish the statement of work, indicate in the secondary solicitation that multiple contracts will be awarded including how work will be assigned to the multiple contractors. For example:
  - Single Award: A state agency or institution may write a statement of work for marketing services for a period of time not to exceed the remaining Primary Contract term and award a Secondary Contract to one marketing contractor.
  - Multiple Award: A state agency or institution may write a statement of work for staff augmentation services for a period of time not to exceed the remaining Primary Contract term and conduct a secondary competition to make multiple awards of two or more Secondary Contracts with no further competition requirements. The state agency or institution has discretion to decide how work is assigned between the multiple award vendors.

Based on the statement of work, estimate the cost to determine the level of competition required. A direct purchase can be made if a bid or proposal for the Statement of Work is under \$250,000. If the estimate or bid/proposal for the Statement of Work is close to or over \$250,000, the state agency or institution must solicit bids or proposals from all vendor pool contractors. Evaluate bids or proposals received and award a Secondary Contract for that Statement of Work.

Cooperative Vendor Pool Contracts may be established by OMB and NDUS institutions pursuant to [N.D.C.C. § 54-44.4-13](#) and NDUS Procedure 803.2. If participating in a vendor pool established by another government entity or nonprofit organization established on behalf of public entities, OMB and NDUS must comply with the requirements of the vendor pool law or receive an advanced approved Alternate Procurement for any deviation from the five-year limits and competition threshold requirements.

OMB, state agencies, and institutions establishing a vendor pool determine the number of Primary Contracts awarded to create the vendor pool. Consider the number of contractors needed to have capacity for the anticipated volume of work, any geographic requirements (such as statewide coverage), categories of needed services, and the requirement that all Primary Contractors must be solicited when competition is required.

The new laws related to vendor pool contract term limits make planning re-solicitation of vendor pool contracts very important. If on-going or recurring services are needed, a new Vendor Pool Contract should be established in advance of the existing Vendor Pool Contract expiration. The new vendor pool contract term should overlap with the current vendor pool, so new Statements of Work can be awarded under the new vendor pool contract while existing Statements of Work are being completed before the current contract expiration date. For example:

- Primary Contract (5-year statutory limit)
- Issue solicitation and award new Vendor Pool Contracts by approximately the 4<sup>th</sup> year of the current Vendor Pool Contract for new Statements of Work.
- Ensure Secondary Contracts for Statements of Work from first vendor pool contract are completed by expiration of the Primary Contract.

#### **5.7.5 Vendor Pool Contract Term Limits – Exception Approval Process**

The Alternate Procurement process is used to request an exemption from the five-year statutory limit on Vendor Pool Contract terms. The state agency or institution must have a compelling justification. State agency Alternate Procurements must be approved by the State Procurement Office. Higher Education Alternate Procurements must be approved by the institution's designed approver.

If seeking to establish a new Vendor Pool Contract for longer than five years, submit an Alternate Procurement prior to drafting a solicitation.

Secondary Contracts not completed by the expiration of the Primary Contract should be a rare occurrence. If this situation occurs, an Alternate Procurement must be submitted including the date the Secondary Contract was executed and reason the work was not completed prior to the expiration of the applicable Primary and Secondary Contracts.

The Alternate Procurement should be submitted at least 60 days before the Primary Contract expiration to allow time for the Alternate Procurement approval process. If the Alternate Procurement is approved, the Primary Contract and Secondary Contract may be amended to extend the contract term, limited to the time needed to complete the work.

#### **5.7.6 Competition Threshold Exception Approval Process**

Requesting Alternate Procurement to deviate from established \$250,000 competition threshold or lower contract-specific competition threshold should be a rare occurrence, and the state agency or institution must have a compelling justification for seeking an exemption from the competition threshold requirements. State agency Alternate Procurements must be approved by the State Procurement Office. Higher Education Alternate Procurements must be approved by the institution's designed approver.

Not requiring a Secondary Competition process may be appropriate in some circumstances. A Secondary Competition process is not required for:

- A state agency or institution Vendor Pool Contract for use by client entities that are private sector citizens or businesses. For example: Work Force Safety and Insurance establishes a vendor pool for on-site ergonomic initiative providers used and paid by private-sector and public-sector employers.
- A Vendor Pool Contract category with only one vendor awarded in that category.

If a state agency or institution does a noncompetitive secondary contract for under \$250,000, and an unanticipated amendment/change order is requested that will increase the amount to over \$250,000, an Alternate Procurement must be requested prior to execution of the Secondary Contract amendment or change order. The Vendor Pool Competition Threshold Matrix cautions:

If the price is close to or over \$250,000, do a fully competitive process, as amendments/change orders are common and could make the statement of work exceed the \$250,000 competition threshold.

Therefore, the Alternate Procurement reviewer may find that the state agency or institution was not in compliance with these guidelines.

#### **5.7.7 Vendor Pool Contract Administration**

The Office of Management and Budget establishes state vendor pool contracts and administers the Primary Contracts. A state agency or institution establishing a secondary contract for their statement of work is responsible for administering the secondary contract.

State Procurement Office vendor pool contract administration includes requesting annual spend reports from Primary Contractors. If there is no spending with a Primary Contractor within a vendor pool, the State Procurement Office may elect not to renew that contract.

Vendor Pool Contracts are subject to statutory term length, so an initial contract period of four or five years may be appropriate, because Statements of Work and the Secondary Contracts are required to be co-terminus with the Primary Contract expiration date.

If there are performance issues, the state agency or institution should consult its legal counsel. Remedies may include issuing a "Cure Letter" (See State Template) if the Primary Contract allows for a cure period. If performance issues are not resolved, the state agency or institution may work with legal counsel to initiate action to terminate and request the State Procurement Office to suspend or debar.