

**CHAPTER 4-12-04  
ETHICS IN PUBLIC PROCUREMENT**

Section

4-12-04-01	Requirement for Good-Faith Actions
4-12-04-02	Emphasis on Competition
4-12-04-03	Handling of Information
4-12-04-04	Conflict of Interest
4-12-04-05	Attempt to Influence Award
4-12-04-06	Collusion of Bidders or Offerors
4-12-04-07	Nondiscrimination in Source Selection
4-12-04-08	Artificial Fragmentation Prohibited

**4-12-04-01. Requirement for good-faith actions.**

All parties involved in the solicitation, negotiation, performance, and administration of contracts for the state shall act in good faith.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

**4-12-04-02. Emphasis on competition.**

Solicitations for bids or proposals will be issued in sufficient time and in a form that will permit the highest practicable degree of full and free competition.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 44-08-01, 54-44.4-01, 54-44.4-04

**4-12-04-03. Handling of information.**

1. No state employee or official will furnish information to a prospective bidder or offeror if, alone or together with other information, it might give the prospective bidder or offeror an unfair advantage.
2. Each state employee or official will handle confidential or proprietary information belonging to the state, a vendor, or a contractor with due care and compliance with state procurement laws and open records laws.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

**4-12-04-04. Conflict of interest.**

1. Each state employee or official directly or indirectly involved in procurement activities for the state will exercise caution in professional and personal activities to prevent a conflict of interest, or the appearance of conflict, regarding any vendor or contractor.
2. An employee or official shall not participate directly or indirectly in a procurement when the employee or official knows that:
  - a. The employee or any member of the employee's immediate family, including a parent, spouse, child, sibling, grandparent, step- (parent, child, siblings), or in-laws (parent, child, and sibling), has a financial interest pertaining to the procurement;

- b. A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
  - c. Any other person, business, or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment involved in the procurement.
3. Upon discovery of an actual or potential conflict of interest, an employee or official shall promptly file a written statement of disqualification and withdraw from further participation in the transaction involved. The head of the state agency or institution, in consultation with the attorney general, shall make a written determination as to what further participation, if any, the employee may have in the procurement.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 12.1-13-02, 12.1-13-03, 48-02-12, 54-44.4-01, 54-44.4-04

#### **4-12-04-05. Attempt to influence award.**

1. Any vendor or contractor is prohibited from giving or offering to give, and any employee and official of the office of management and budget or a purchasing agency involved in any aspect of the procurement process is prohibited from soliciting, accepting, or agreeing to accept money, loans, credits, or prejudicial discounts, subscriptions, offer of employment, gifts, entertainment, favors, or services that might influence, or appear to influence, procurement decisions.
2. Items of nominal value may be offered by a vendor or contractor as a gesture of good will or for public relations purposes and may be accepted.
3. A vendor, contractor, agent, consultant, subcontractor, employee, lobbyist, or any state employee or official may not attempt to influence a procurement decision.
4. A state employee or official involved in any aspect of the procurement process shall report to the state procurement manager any person or business entity that attempts to influence an award or makes or offers to make a gift prohibited by this section. All bids or proposals submitted by the person or business entity will be rejected and the person or business entity will be barred from further bidding for a period of time determined by the state procurement manager. The state procurement manager will notify the attorney general of any violation of this section for any action as the attorney general may deem appropriate.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 12.1-12, 54-44.4-04

**Law Implemented:** NDCC 12.1-12-01, 12.1-12-03, 54-44.4-01, 54-44.4-04, 54-44.4-10

#### **4-12-04-06. Collusion of bidders or offerors.**

A state employee or official involved in any aspect of the procurement process must promptly report to the state procurement manager any case of suspected collusion or suspicious bidding pattern indicating anticompetitive trade practices between actual or prospective bidders or offerors. The procurement action must be suspended. The state procurement manager will notify the attorney general of any violation of this section for any action as the attorney general may deem appropriate.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

**4-12-04-07. Nondiscrimination in source selection.**

Source selection may not be based upon discrimination because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

**4-12-04-08. Artificial fragmentation prohibited.**

Requirements may not be artificially divided to avoid requirements for obtaining competition. Fragmentation of current requirements for commodities and services must be based upon actual need by the purchasing agency.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-11