

**OPINION
67-161**

March 28, 1967 (OPINION)

Mr. Ralph Dewing

Director

Accounts and Purchases

RE: Political Subdivisions - Competitive Bids - State Purchasing Age

This is in reply to your letter of March 22, 1967, in which you state the following facts and ask the following questions:

In recent months, cities, counties and school districts have been asking if it is permissible for them to purchase against term contracts established by this office. A term contract is a price agreement established through the competitive bidding process in which a contractor will supply a commodity for a specified period of time at a specified price generally with option to renew for an additional period of time and based on an estimated volume. Chapter 54-52 N.D.C.C. is silent on this matter, however, it has been our policy to allow political subdivisions to participate in existing contracts with the consent of the contractor and this office.

The department therefore requests your opinion in answer to the following questions:

1. May political subdivisions at their request and with the approval of this department and the contractor participate in such contracts?
2. Would such participation satisfy the competitive bidding requirements of the political subdivisions?
3. Would it be permissible for this department to include in the bid specifications of future bid requests a requirement that political subdivisions be allowed to participate in such contracts as established as a result of the bid?"

We believe you have reference to chapter 54-44 rather than chapter 54-52 of the North Dakota Century Code. As you have noted, the chapter authorizing the establishment of a centralized purchasing service for state agencies does not refer to purchases made by the various political subdivisions. However, we believe the department may permit political subdivisions to purchase under term contracts provided that any increase in expense of the department incurred as a result of additional administration, etc., is paid by the participating political subdivisions and not by the state through the Department of Accounts and Purchases.

With respect to the statutory competitive bidding requirements, we would note that same are not identical for all political subdivisions. As an example, section 15-47-15 of the North Dakota

Century Code, as amended, provides, with exceptions, that no contract involving the expenditure of an aggregate amount greater than one thousand dollars, by a school district, shall be entered into by any school district except upon sealed proposals and to the lowest responsible bidder after ten days' notice by at least one publication in a legal newspaper published in the county in which the school district, or a portion thereof, is located. See also section 11-11-26 relative to purchase of fuel and election ballots and supplies by counties. On the other hand, we know of no specific statutory requirements for public bidding for the purchase of personal property by cities although this office has consistently advised that the governing body request public bids even though same may not be required by statute.

In direct reply to your questions:

1. Subject o our answer to question No. 2, it is our opinion that the political subdivisions at their request and with the approval of the Department of Accounts and Purchases and the contractors may participate in term contracts provided that any additional cost of administration to the Department of Accounts and Purchases, as a result of such participation by the political subdivisions, is paid by the participating political subdivisions and not by the state.
2. It is our opinion that such participation would not satisfy the competitive bidding requirements of the political subdivisions where such requirements are statutory in nature and require specific procedures in the advertisement for bids. Where the statutes are silent on public bidding requirements, such participation would be valid without further public advertisement for bids.
3. It is our opinion that it would be permissible for the Department of Accounts and Purchases to include in the bid specifications of future bid requests a requirement that political subdivisions be allowed to participate in term contracts as established as a result of the bid, subject, however, to the limitations set forth in our answers to questions No. 1 and No. 2 herein.

HELGI JOHANNESON

Attorney General