



Purchasing Policies and Procedures

REASON FOR POLICY

The Business Office is responsible for the preparation and enforcement of Minot State University purchasing policies for goods, except electronic purchases which are handled by Information Technology Central. The Vice President for Administration and Finance may delegate authority to a MSU employee to purchase specific types and classes of goods with prior written request and authorization by the department supervisor. This authorization shall specify what may be purchased by the employee and the duration of the purchasing authorization.

In an effort to use state funds in the most efficient and productive manner, MSU requires university departments to use the Purchasing Department when purchasing office equipment, furniture, copiers and any other purchase over \$10,000.00. For purchases using Federal Funds, the micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CF2 subpart 2.1 at \$10,000.00. Minot State follows the same policies and procedures it uses for procurement from its nonfederal funds when procuring property, goods and service under a federal award (2 CFR 200.318-200.326), except as stated for the micro-purchases threshold.

The Purchasing Department is located in the Business Office in the Administration building and is under the direction of Vice President for Administration and Finance. In the event there is an unauthorized purchase, the Vice President for Administration and Finance will meet with the individual(s), and their supervisor to reduce the potential for future non-compliance. Any unauthorized purchase may result in holding the individual personally responsible for payment of the purchase. Please refer to the Business Office's year end accounting letter, for current fiscal year-end purchase deadlines and cut-off dates.

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DEFINITIONS

Business Entity	Means a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on a business.
Business Interest	Means any degree of ownership (except ownership of widely-held stock in major, publicly-held corporation), employment, or other mutual agreement for economic gain, by the employee, or any member of the employee's close family (spouse, child, sibling, parent, or in-law).
Commodities	All property, including equipment, supplies, materials, printing, insurance, and leases of equipment. The definition applies to commodities obtained through all payment methods, including purchase, sponsorship or exchange.
Conflict of Interest	Refers to a clash between public (University) interest and the private pecuniary interest of the individuals concerned.
Formal Bid	A process which sealed bids are received and opened at a specified time in response to a solicitation for a well-defined commodity or service. Award is made to the responsible bidder whose bid is the lowest price and responsive to the specifications and other solicitation requirements.
Informal Bid or Quotes	An oral or written competitive solicitation for commodities or services that does not require a formal sealed bid, public opening or other formalities. Award is made to the lowest cost, responsive, responsible bidder meeting specifications.
Informal Proposal	A written competitive solicitation for commodities or services that does not require formal sealed proposals, public opening, or other formalities. Award is made to the highest scoring bidder based on stated evaluation criteria.
Leases	An option for acquiring equipment for short term use, but usually not a permanent solution to an asset acquisition
NDCC	North Dakota Century Code
NDUS	North Dakota University System
OMB	Office of Management and Budget
Procurement Officer	An individual duly authorized to enter and administer purchasing contracts and make written determinations with respect thereto and also includes an authorized representative acting within the limits of authority.
Purchases	The acquisition of goods or services
RFP (Formal Request for Proposal)	A process by which sealed proposals are received and opened at a specified time in response to a solicitation for a certain commodity or service. Award is made to the highest scoring bidder based on stated evaluation criteria. RFP's are subject to the requirements outlined in N.D.C.C. §54-44.4-10
SBHE	State Board of Higher Education
Services	The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance. The term includes professional services. The definition applies to services obtained through all payment methods, including purchase, sponsorship or exchange.
Sole Source	The commodity or service is unique and that the vendor, to the best of the requestor's knowledge and belief, based on the thorough research of the requestor, is the only vendor able to furnish the commodity or service.

References: N.D.C.C §54-44-.4-01; NDUS Procedures 803.1

WEBSITE REFERENCES

MSU Allowable/Unallowable List	http://www.minotstateu.edu/busoffic../documents/faculty-staff/allowable_unallowable_expenditures.pdf
NDCC	http://www.legis.nd.gov/general-information/north-dakota-century-code
NDCC State Purchasing Practices	http://www.legis.nd.gov/cencode/t54c44-4.pdf?20151209143016
NDUS Financial Affairs Procedures	https://inside.ndus.edu/ppop/NDUS%20Procedures/Forms/AllItems.aspx
North Dakota OMB	http://nd.gov/omb
North Dakota State Procurement Office	http://nd.gov/spo
SBHE Conflict of Interest Policies	https://ndus.edu/state-board-of-higher-education/sbhe-policies/600-heading-policies/
SBHE Financial Affairs Policies	https://ndus.edu/state-board-of-higher-education/sbhe-policies/800-heading-policies/

FORMS

Lease versus Purchase Justification	http://www.minotstateu.edu/busoffic/documents/peoplesoft/lease_purchase_justification.xls
Purchase Requisition	http://www.minotstateu.edu/busoffic/documents/peoplesoft/cnd_purchase_requisition.xls
Purchasing Card Record	https://www.minotstateu.edu/busoffic/documents/faculty-staff/cnd_purchasing_card_record.xls
Notification of Change in Inventory	http://www.minotstateu.edu/plant/documents/change_in_inventory.xls
Alternate Procurement Request	http://www.minotstateu.edu/busoffic/documents/peoplesoft/sole_source_purchase_justification.doc

SBHE 611.4 - CONFLICT OF INTEREST

1. An officer of the North Dakota State Board of Higher Education authorized to sell or lease any property or make any contract in the officer's official capacity is subject to the provisions of N.D.C.C. Section 12.1-13-03 and may not be interested in any such sale, lease or contract.
2. Pursuant to N.D.C.C. Section 48-02-12, employees of the Board may not have any interest in a public construction or repair contract.
3. An employee of the Board may not have an interest in any contract involving the expenditure of public or institutional funds entered into by the institution that the employee serves or by the Board unless:
 - a. N.D.C.C. Sections 12.1-13-03 and 48-02-12 do not apply; and
 - b. The contract is approved by the institution's chief financial officer or, if the employee in question is the chief financial officer or president of an institution or an officer of the Board, by the Board, following full disclosure of the employee's interest.
4. All employees involved in projects receiving federal funds shall consult applicable federal laws and regulations and comply with conflict of interest rules which may govern federal grants or other sponsored agreements.
5. An officer or other employee who violates this policy is subject to dismissal or other disciplinary action.

MSU - CONFLICT OF INTEREST POLICY

State Board of Higher Education Policy 611.4 states "an employee of the Board may not have an interest in any contract involving the expenditure of public or institutional funds entered into by the institution that the employee serves...unless the contract is approved by the institution's chief financial officer..." The Board policy places upon us the responsibility for identifying and monitoring potential conflict of interest situations involving the expenditure of University funds. In order to monitor these situations, it is necessary that employees identify for MSU any business entity in which they have a business interest and notify the Vice President, Administration & Finance (VPAF), anytime they are involved in a contract decision involving that entity, including preparation of product specifications.

The following are points to consider:

1. **Disclosure and Management:** While certain activities are not permitted, a conflict of interest is not necessarily inappropriate or prohibited; what is inappropriate is the failure to disclose a conflict, and once disclosed, the failure to provide appropriate supervision and management of the identified conflict.
2. **Conflict of Interest:** A conflict of interest exists when a University employee is involved in an activity, commitment, or interest that adversely affects, comprises, or is incompatible with the obligations that the employee has to MSU. It includes influencing the University in such a way as to lead to improper financial gain for the University employee or the University employee's spouse or dependent children. It also includes involvement and commitment to outside-the-University activities which interfere with the employee's obligation to students, colleagues, and the primary mission of the University.
3. **Procedures:** University personnel are expected and required to take the initiative to report promptly, with sufficient detail, all activities or situations which may involve, or appear to involve, a conflict of interest. All employees who have a business interest in a business entity, or whose spouse, child, sibling, parent, or relative-in-law has a business interest in a business entity that does or could potentially do business with the University must complete a "Notification of Business Interest" form and return it to the VPAF. (Note definitions of "business interest" and "business entity" within this policy)

Any employee who fails to report any conflict of interest possibilities or violates this policy is subject to disciplinary action up to and including termination.

MSU - CONFLICT OF INTEREST PROCEDURES

1. **Disclosure:** In addition to any disclosures required by the Conflict of Interest Policy, all employees who have an actual or potential Conflict of Interest (IE: a business interest in a business entity as defined above) associated with a transaction administered by the VPAF shall file a "Notification of Business Interest" form with the VPAF. This form must be filed one time for each business interest. The filing of this form does not relieve the employee from additional responsibilities addressed herein.
2. **Specifications (Identifying the service or goods to be acquired):** Notification must be given to the VPAF whenever an employee of the University is involved in preparing contract specification for goods or services that a Business Entity, in which the employee has a Business Interest, may obtain the contract or benefit from the same. Such notification may be indicated on the requisition itself or on a special attachment thereto, and may simply refer to a previously filed Notification of Business Interest. Preparing procurement specification includes not only the actual task of preparation but the ability to cause preparation or influence the nature of the specifications.
3. **Authorization (Signing the purchase requisition):** An employee of the University shall not authorize a transaction with a Business Entity in which that employee has a Business Interest.

4. Acceptance and Approval for Payment: If goods or services have been acquired from a business in which an employee has a business interest, then that employee shall not perform either of the functions of: (a) verifying the correctness and completeness of goods and services ordered for the University; or (b) approving such items for payment.

SBHE 803.1 - PURCHASING POLICIES

1. Each institution shall develop and implement necessary and appropriate policies and procedures to ensure compliance with laws and State Board of Higher Education policies governing purchasing. Officers and employees involved in purchasing decisions shall comply with all applicable federal and state laws and regulations relating to conflict of interest and acceptance of gifts and gratuities. Institution purchasing policies and procedures shall conform to SBHE Policy 611.4 relating to conflict of interest, and include procedures for disclosing a conflict of interest. Further, institution purchasing policies and procedures shall address whether vendors' offers of scholarships, endowments and other premiums contained in bids or proposals will be considered and, if so, the criteria for evaluating such offers.
2. Pursuant to N.D.C.C. §15-10-28, institutions may enter into agreements with institutions of higher learning in other states and regional education contracts. Pursuant to N.D.C.C. §54-44.4-13, institutions shall make joint purchase of like commodities or services of high common usage when determined to be in the best interest of the state, and institutions may use cooperative purchasing contracts entered into by the Office of Management and Budget (OMB). Additional bids or proposals shall be solicited from other vendors when required by law or this policy.
3. Preference shall be given to North Dakota bidders when required pursuant to N.D.C.C. §44-08-01.
4. Institutions are encouraged to purchase environmentally preferable products as outlined in N.D.C.C. §54-44.4-07.
5. The purchase of recycled paper products is subject to the requirements in N.D.C.C. §54-44.4-08.
6. Information Technology purchases are subject to SBHE Policy 1901.3
7. Each procurement transaction must be adequately documented for audit and public record purposes. All required procurement documentation must be maintained in accordance with governing records retention requirements per SBHE Policy 1912(7).
8. The policies governing purchasing shall be waived for non-competitive purchases, as outlined in the purchasing procedures, when approved by the purchasing agent or other person delegated that authority.

References: N.D.C.C. §44-08-01, 54-44.4-07, 54-44.4-08; SBHE Policy 611.4, 1901.3, 1912(7); NDUS Procedure 803.1.

NDUS 803.1 – PURCHASING PROCEDURES

1. Procurement Department Responsibilities
 - a. Each institution shall designate one or more persons to act as the institution's lead procurement officer. Lead procurement officers may delegate purchase authority to employees as needs of the institution dictate. The delegation will specify any limits and the designated employee may only make purchases within the scope of the delegated authority.

- b. The procurement department is responsible for enforcing this procedure and ensuring proper documentation of purchasing transactions. Requesting departments shall provide all necessary supporting documentation required by the procurement department. Requests without adequate documentation may not be processed.

2. Procurement Officer Responsibilities

Procurement Officers duties include the following:

- a. Reasonable estimated value must be assigned to a purchase to endure that the proper level of authority, competition and documentation is achieved. For commodities, the entire amount of the purchase price, including shipping and handling and all other related charges, such as installation or maintenance agreements, is to be included. For services, the entire amount of a service contract included the initial term and all possible extension and renewal options. *For example, the value of a one-year contract estimated at \$15,000 per year with 3 renewal options is \$60,000.*
- b. The procurement officer will determine the appropriate method of procurement based upon the circumstances of the procurement (informal/formal, bid/RFP or alternate procurement)
- c. All commodity and service contracts for a term in excess of three years shall include a provision for review of contract performance at specified intervals, not less frequently than once every two years. Commodity and service contracts may not exceed a term of ten years.
- d. The procurement office shall apply applicable laws to procurements as follows:
 - i. North Dakota bidder preference pursuant to N.D.C.C. §44-08-01, §44-08-01.1 and §46-02-15.
 - ii. Public improvements are subject to N.D.C.C §48-01.2.
 - iii. Architect, engineering and land surveying services are subject to N.D.C.C §54-44.1.
 - iv. Concessions are subject to N.D.C.C §48-09.
 - v. Goods and services are subject to the provision of N.D.C.C §54-44.4 applicable to higher education institutions.

3. Procurement Requirements

With the exception of direct purchases as defined in (4) of this procedure, the following procurement requirements apply to commodities and services. In accordance with N.D.C.C. §54-44.4-11(3), procurement requirements may not be artificially divided as to constitute a lesser purchase under these requirements.

Purchase Price	Quote/Bid Requirement	Documentation Maintenance Requirement
Less than \$10,000	At least one fair and reasonable quote. Note: Equipment and software must be added to	Documentation not required. Alternate Procurement form

	inventory if \$5,000 or greater.	not required if multiple quotes are solicited.
At least \$10,000 but less than \$50,000	Solicit informal quotes/bids or proposals from at least three vendors, or post on SPO Online with appropriate state Bidders List. May send to additional vendors.	Documentation is required. Alternate Procurement form required if competition not solicited from at least three vendors. The form is not required if fewer than three bids or proposals are received.
At least \$50,000 but less than \$100,000	Solicit informal bids or proposals using SPO online with appropriate state Bidders List. May send to additional vendors.	Documentation is required. Alternate Procurement form required if: 1. Competition is not solicited 2. SPO Online is not used
\$100,000 and over	Must be purchased using formal sealed bids or Request for Proposal (RFP). Solicitations must be posted using SPO Online with appropriate state Bidders List. May send to additional vendors.	Documentation is required. Alternate Procurement form required if: 1. Competition is not solicited 2. SPO Online is not used

4. Direct Purchases:

Institutions can purchase directly from the following sources without obtaining competition or completing an Alternate Procurement Form.

State Contracts	State Contracts established by OMB.
Government Sources of Supply	Government entities , including but not limited to, OMB's Central Supply, Central Duplicating, and Surplus Property divisions, Roughrider Industries, Information Technology Department (ITD), Core Technology Services (CTS), Work Activity Centers, correctional institutions, 1033 Program, 1122 Program.
Cooperative Purchasing Agreements	Approved higher education cooperative purchase agreements. OMB Cooperative purchase agreements are listed as State Contracts.
Statutory Exemptions	N.D.C.C. §54-12-08 – Legal Counsel with attorneys not employed by the state Commodities and services exempted under N.D.C.C. §54-44.4-02.
OMB-approved Limited Competition and Non-Competitive Purchases	Commodities and services listed in North Dakota Administrative Code Chapter 4-12-09-01 .

5. Non-Competitive Purchases:

A procurement officer shall prepare and retain in the procurement file a justification for noncompetitive procurements, as documented on the Alternate Procurement Request form. The alternate procurement must be approved by the appropriate official prior to the purchase. Noncompetitive or sole source requests based on personal preference, cost or price, perceived quality, vendor performance, delivery time, trade-in allowance or no cost options or accessories or other special packages or deals are not permitted; rather, these items may be considered in evaluating bids or proposals.

6. Emergency Purchasing:

Purchasing procedures may be waived by the university system and its institutions when the purchasing agent or other person delegated by that authority determines that an emergency exists. An "emergency" means when the immediate demand for supplies, materials, or services is necessary to:

- a. Prevent or respond to a public health or public safety issue;
- b. Repair losses or protect against future loss or damage to state property; and
- c. Prevent or minimize serious disruption to institution operations.

The nature of the emergency and determination that the circumstances justifying waiver of purchase procedures shall be documented in writing.

References: N.D.C.C. §44-08-01; N.D.C.C. §44-08-01.1; N.D.C.C. §54-44.4-02; N.D.C.C. §54-44.4-10; N.D.C.C. §54-44.4-11(3)

INFORMATION TECHNOLOGY CENTRAL (ITC) PURCHASING

Items listed below, in most cases, will be purchased by ITC. All Information technology purchases are subject to SBHE 1901.3

1. Computer hardware, computer software, computer peripherals, computer parts and repairs
2. Wireless functions
3. Network infrastructure
4. Telephone, cable TV, and satellite services
5. Audio/visual equipment
6. Electronics and appliances will be purchased with an "Energy Star" rating when possible

PURCHASING GUIDELINES

1. All departments must adhere to the [allowable and unallowable expenditures policy](#). Please see link for the most accurate list. The following items cannot be purchased from any University funds regardless of the source (appropriated, local, grants, etc.) Exceptions can be made for certain situations if prior approval is received from the Vice President for Administration and Finance. If an employee is uncertain whether an expense is allowable, please seek prior approval from the Business Office. **This list is not all-inclusive.**
 - a. Alcoholic beverages
 - b. Car washes

- c. Cards, pictures, frames, decorations, balloons and wrapping paper
 - d. Clothing
 - e. Coffee pots, coffee and cups
 - f. Fans, heaters, lamps, clocks and occasional/accent furniture items
 - g. Flowers and plants
 - h. Food and beverages including meals, snacks and refreshments for departmental activities
 - i. Gifts and donations
 - j. Parking permits or tickets
 - k. Personal care items (e.g., tissues, bandages and aspirin)
 - l. Personal dues and memberships (memberships related to an employee's job duties and carried in the name of the University are allowable)
 - m. Phone cards
 - n. Scantron cards for resale to students
 - o. Stamps
 - p. Water coolers and water
 - q. Gift Certificates and Gift Cards
2. Retirement and farewell gifts can be purchased with MSU local funds when an employee has a minimum of fifteen years of service to MSU. The value of the gift per employee is limited to \$100 and must be purchased with local funds. The \$100 can be used towards a reception, a gift or a combination of both. Gifts cannot be in the form of a gift certificate.
 3. Purchasing food and beverages from Sodexo is allowable only when non-employees are part of a business-related function. Local funds should be used if available. Before a department can pay Sodexo, a list of attendees must be supplied directly to the Purchasing Agent in the Business Office.

Sodexo always has the right of first refusal. Purchasing food and beverages from outside vendors (e.g., Pizza Hut and Applebees) is allowable only when Sodexo chooses not to provide food. Then an off-campus vendor may be used, a copy of Sodexo's refusal must be submitted. The employee will be reimbursed the entire amount (including sales tax) if the expense is reasonable, a detailed invoice/receipt is submitted, and attendees are listed. Direct billing is unallowable unless prior approval is received from Accounts Payable.

RECEIPT AND INSPECTION

1. The proper receipt and inspection of equipment and supplies is important to every department on campus. It is essential that every department of the university assign personnel to receiving and inspection duties. Receipt and inspection is the close and critical examination of items delivered. Receiving personnel must determine that:
 - a. Delivery consists of new and unused merchandise unless otherwise ordered.
 - b. Commodities of the quality, quantity, grade or standard specified have been delivered.
 - c. Design, construction, size, type, model, color, etc. of the commodities conform to the requirements of the purchase order.
 - d. The packaging and labeling met the specifications or conformed to the best commercial practices for protecting the items during transport, storage, handling and distribution.
 - e. The commodities comply with specification requirements in all essential respects and are in good condition, and delivery has been made in accordance with the terms and conditions of the purchase order or the contract.

2. It is important to note any damage to containers or merchandise at time of delivery to enable a proper claim to be filed with the freight company. A damage claim should be filed immediately when in receipt of the merchandise, or claims may not be honored by the delivery company.
 - a. The requesting and receiving department is responsible to file appropriate damage claims, and copy the Purchasing Department if necessary.
 - b. The following information are items which may be needed to file a claim:
 - i. Description of loss or damage
 - ii. Quantities involved, or equipment involved
 - iii. Copy of the purchase order/purchase requisition
 - iv. Copy of the freight bill
 - v. Bill of lading

SBHE 804 – EQUIPMENT AND PERSONAL PROPERTY LEASES

1. All equipment and personal property leases shall be classified as either capital or operating leases. If at its inception, a lease meets one or more of the following criteria, the lease shall be classified as a capital lease by the lessee; otherwise, it shall be classified as an operating lease:
 - a. The lease transfers or permits transfer of ownership of the property to the lessee by the end of the lease term;
 - b. The lease contains a bargain purchase option;
 - c. The lease term is equal to seventy-five percent or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last twenty-five percent of the total estimated economic life of the leased property, including earlier years of use, this criterion may not be used for purposes of classifying the lease; or
 - d. The present value at the beginning of the lease term of the minimum lease payments, excluding that portion of the payments representing executor costs, such as insurance, maintenance, and taxes to be paid by the lessor, including any profit, equals or exceeds ninety percent of the excess of the fair value of the leased property to the lessor at the inception of the lease over any related investment tax credit retained by the lessor and expected to be realized by him. However, if the beginning of the lease term falls within the last twenty-five percent of the total estimated economic life of the leased property, including earlier years of use, this criterion may not be used for purposes of classifying the lease. A lessor shall compute the present value of the minimum lease payments using his incremental borrowing rate, unless:
 - i. It is practicable to learn the implicit rate computed by the lessor, and
 - ii. The implicit rate computed by the lessor is less than the lessee's incremental borrowing rate.

If both of those conditions are met, the lessee shall use the implicit rate.

2. Leases of equipment or personal property by an institution must be approved and executed by an officer delegated that authority pursuant to institution policy. Leases of equipment or personal property in the NDUS office must be approved and executed by the Chancellor or the chief financial officer. In addition to approval by

an institution officer delegated such responsibility or the chief financial officer, a lease or lease renewal, including transactions under a master lease, requires Chancellor approval if;

- a. A lease entered into by NDSU or UND provides for total payments by the institution, including lease or rental, interest and all other payments over the lease term, of \$500,000 or more; or
- b. A lease entered into by the NDUS office or NDUS institution other than NDSU or UND provides for total payments by the NDUS or institution, including lease or rental, interest and all other payments over the lease term, of \$250,000 or more.
- c. Leases required Chancellor approval under SBHE Policy 804(2)(a)-(b) shall be submitted in the form attached as equipment and personal property lease.

The Chancellor may, in the Chancellor's discretion, submit a lease to the SBHE for SBHE consideration and approval in lieu of Chancellor approval.

3. Master leases and tax-exempt financing agreements are governed by SBHE Policy 804.1 and must be approved by the SBHE pursuant to that policy. Real property leases are governed by SBHE Policy 909. Leases made without the required approval are not binding on the institution or SBHE.
4. Master leases and lease purchase agreements must also include:
 - a. The purchase price at the termination of the lease;
 - b. When and under what terms title to the property transfers to the state;
 - c. In master leases and other leases under which interest rates are variable, the maximum rate; and
 - d. In master leases, the maximum amount financed or total amount of all transactions.
5. Leases of equipment or personal property shall comply with applicable policies and procedures governing purchasing, including competitive bidding requirements.
6. Before acquisition of an asset as the result of a lease agreement or other debt financing arrangement, the responsible institution official shall, unless the decision is dictated by funding limitations, prepare a written analysis documenting the decision to acquire the use of the asset, which shall be filed with the lease agreement or other document setting forth the terms of the agreement. If the decision is dictated by funding limitations, the official shall document those limitations. Consistent with N.D.C.C. §54-44.1-06, each institution shall provide to the state office of management and budget (OMB) as part of the biennial budget process a list of every individual asset, excluding real estate, with a value of at least fifty thousand dollars and every group of leased assets comprising a single system with a combined value of at least fifty thousand dollars acquired through a capital or operating lease arrangement.
7. The Chancellor shall adopt procedures defining required or recommended terms for lease agreements and defining the content and format for leases requiring chancellor approval.
8. As part of the semi-annual budget status report to the SBHE's budget and finance committee, institutions shall disclose all equipment and personal property lease agreements in a format determined by the Chancellor.
9. Computer cloud hosting arrangements that meet the following criteria are accounted for as service contracts and are exempt from this policy:

- a. The NDUS office or NDUS institution does not have the contractual right to take possession of the software at any time during the hosting period without incurring significant costs or a significant reduction in utility or value; and
- b. It is not feasible to run the software on the NDUS office or NDUS institution's hardware or contract with another party unrelated to the vendor to host the software.

REFERENCE: N.D.C.C. Section 54-44.1-06, SBHE policy 804

NDUS 804 – LEASES

1. All leases shall be on file in the office of the institution's chief financial officer or designee.
2. As required under SBHE Policy 804, prior to acquisition of an asset as the result of a lease agreement or other debt financing arrangement, the responsible institution official shall, unless the decision is dictated by funding limitations, prepare a written analysis documenting the decision to acquire the use of the asset which shall be filed with the lease agreement or other document setting forth the terms of the agreement. If the decision is dictated by funding limitations, the official shall document those limitations. Each institution shall also keep on file a list of every individual leased asset, excluding real estate, with a value of at least fifty thousand dollars and every group of leased assets comprising a single system with a combined value of at least fifty thousand dollars acquired through a capital or operating lease arrangement. All lease agreements concerning equipment or personal property must include the following:
 - a. An adequate description of the parties which identifies the lessor or seller and names the institution as the lessee or buyer;
 - b. A complete description of the property subject to the lease, including appropriate procedures for acceptance by the institution after delivery and inspection;
 - c. A statement of the estimated purchase price of the leased property on the date of the lease, the total amount of payments to be paid by the institution for the leased property, the date that the payment or payments are due, the periodic payment amounts, the interest rate used by the lessor, estimated economic life of the property and the office and address to which the payment(s) shall be mailed;
 - d. A statement of the term of the lease, with definite beginning and ending dates and the options each party has, if any, for termination of the agreement prior to the end of the term. Whenever the term is proposed to continue into a future biennium, the agreement must provide the institution with the right to terminate the agreement in the event of loss of legislative appropriations; and
 - e. Execution by an authorized institution officer as well as by a clearly authorized officer or representative of the lessor.
3. SBHE Policy 804 provides that lease agreements may also contain clauses designed to protect the lessor's interest in the leased property. So long as they are acceptable to the lessee institution, these clause may:
 - a. Define or restrict the nature of location of use of the property;
 - b. Allow the lessor to inspect the property;
 - c. Require the lessee institution to maintain or repair the property;

- d. Prohibit the lessee from altering the property;
 - e. Impose the risk of loss or destruction of, or damage to, the property on the lessee;
 - f. Require the lessee to carry adequate fire, theft, and liability insurance on the property;
 - g. To the extent permitted by North Dakota law and subject to available appropriations or the limits of liability insurance, hold the lessor harmless, and require indemnification of the lessor by the lessee, for any liability resulting from negligent operation of the property. If used, this clause should not be stated so broadly as to waive the lessor's responsibility or liability resulting from defects in the property itself;
 - h. Prohibit the lessee from assigning the right to use the property to another party;
 - i. Prohibit the lessee from mortgaging the property or subjecting it to any liens;
 - j. Require the lessee to pay any taxes or license fees due against the property; or
 - k. Reserve into the lessor a security interest in the property.
4. Under SBHE Policy 804, master leases and lease purchase agreements must also include:
- a. The purchase price at the termination of the lease;
 - b. When and under what terms title to the property transfers to the state;
 - c. In master leases and other leases under which interest rates are variable, the maximum rate; and
 - d. In master leases, the maximum amount financed or total amount of all transactions
5. Computer cloud hosting arrangements are accounted for as service contracts and are exempt from this policy if:
- a. The NDUS office or institution does not have the contractual right to take possession of the software at any time during the hosting period without incurring significant costs or a significant reduction in utility or value; and
 - b. It is not feasible to run the software on the NDUS office or NDUS institution's hardware or contract with another party unrelated to the vendor to host the software.

Reference: SBHE Policy – 804

CONTRACTS

All contracts must be signed by the President or Vice President for Administration and Finance. All contracts will be reviewed through the Business Office.

PREPAY PURCHASES

Prepayments are for a one-time purchase to one vendor with funds paid at the time of order. Prepayment orders must be required by the company and presented in writing.

EXCLUSIVE SERVICES

MSU functions; namely Publications & Design Services (PADS), Sodexo, Student Health Center, Residence Life and Barnes & Noble Bookstore, have all invested heavily in infrastructure in order to serve MSU. MSU has provided these units exclusive rights to be sole providers of their services on campus. MSU departments and MSU related entities receiving services on MSU property must use these units.

All photocopying, duplicating, and printing of official MSU stationary, envelopes (letterhead and business cards) must be performed by PADS. PADS will outsource the work if it is determined that they are unable to do the job.

Exceptions to this policy may be made when the unit does not provide the service, or with the approval of the affected unit, along with the Vice President for Administration and Finance, or the Vice President for Student Affairs. Exceptions may also be required due to governing law or regulation due to contractual commitments by MSU.

SURPLUS PROPERTY

All property that becomes excess or surplus to the needs of a department shall be reported to Facilities Management using Notification of Change in Inventory Form. All university property cannot be used for trade-in purpose unless approved by the Purchasing Department.

1. The Work Order and Change of Inventory Process

- a. Reporting of surplus property requires the completion of a Notification of Change in Inventory form. Submit the completed to Facilities Management.
 - i. Upon receipt of notification, Facilities Management will pick up the item(s) notes as surplus. Facilities will maintain a log of surplus property in storage.
 - ii. The disposition of university surplus property will be at the discretion of Facilities Management, with approval of the Vice President for Administration and Finance. Generally, distribution is based on budgetary considerations and need, and will be reused on campus.
 - iii. The surplus item may be transferred to another university department.
 - iv. If not disposed of under the above procedures, Facilities will deem the item campus surplus. The item will be disposed of under N.D.C.C §54-44-04.6 with the approval of OMB requirements.

2. Sale of Surplus Property

- a. Facilities Management will coordinate and request approval to trade-in, dispose of, or sell excess surplus property from appropriate OMB personnel in accordance with NDCC requirements.
- b. Please see Grant and Contracts for procedures on property purchased with federal funds.
- b. It is the policy of the State of North Dakota that disposition of state surplus property will be accomplished in such manner as to prevent material benefit to any employee by virtue of their employment.