

**ANSWERS TO QUESTIONS FROM NCGA JLTOC IN APRIL 4, 2024 LETTER TO DOT
SENIOR DEPUTY GENERAL COUNSEL**

1) How does credential production fall under the system modernization exemption in House Bill 650?

Answer: As argued by legal counsel in open court on April 2, 2024¹ over one month after the legislative committee meeting, the agency believes that S.L. 2021-134 (House Bill 650) was enacted by the North Carolina General Assembly to assist DMV with projects pertaining to IT-related goods and services at a time when many DMV modernization projects had been or were being slowed down or were otherwise taking an extraordinary amount of time to implement.

More specifically, the system modernization exemption in House Bill 650 provides:

*Notwithstanding Part 3 and Part 4 of Article 15 of Chapter 143 of the General Statutes or any other provision of law to the contrary, the Department of Transportation may manage, procure **information technology goods and services**, and enter into contracts for up to five information technology projects for **Division of Motor Vehicles system modernization**, and these projects are exempt from Department of Information Technology oversight and requirements. These projects **may include modernization of the Division of Motor Vehicles' electronic services and the Division's mail intake, handling, and management systems and practices**. (emphasis added)*

The process of creating and maintaining millions of customer records that constitute all active and inactive North Carolina Driver License or ID credentials (including interfacing with SADLS); the online and systems communications occurring and ultimately converting that data to the manufacturing of and mailing of a secure credential to each individual DMV customer; digital and electronic services related thereto; and all of the information technology-engagement involved with seeking a duplicate or renewal or changes to information appearing on or the validity of that credential over the lifetime of the DMV customer are all IT-related goods and services that involve IT systems and practices. (The process of creating and maintaining millions more records for registered and titled vehicles in North Carolina – and performance other DMV statutory duties – are also goods and services that involve IT systems and practices.)

Based on the above, credential production necessarily falls within DMV system modernization and the exemption in House Bill 650.

2) For each of the four projects utilizing the exemption under House Bill 650, (1) did DMV have an open bid process, (2) how many vendors submitted bids for each contract, and (3) what other contracting requirements was DMV required to follow? Please provide a legal basis for each of these projects.

Answer: This matter was discussed by legal counsel in open court at the April 2nd preliminary injunction hearing; more specifically, that under the driver license credential issuance contract and under S.L. 2021-134 (House Bill 650), DMV was not required to adhere to the procurement

¹ References to “open court” in this document pertain to civil proceedings in Wake County Superior Court on 2 April 2024 before Judge Rozier. Please see the accompanying April 12, 2024 cover letter from DOT Senior Deputy General Counsel William A. Marsh, III.

manuals. DOT/DMV, nonetheless, mirrored DOT procurement procedures in multiple instances. This same rationale applies to the other projects commenced under this Session Law. There was no open bid process, no vendors who submitted bids, and there were no other contracting requirements for the selected projects because of the plain language reading of House Bill 650.

3) Why did DMV contract with Canadian Bank Note Secure Technologies, Inc. (“CBN”) to produce monochromatic photos when state law requires that driver license photos are in color?

Answer: As discussed in open court by legal counsel on April 2nd, DMV ultimately contracted with CBNSTI, an American-incorporated company with its manufacturing facility in Virginia, because (a) DMV believed that particular company would best address and best meet the State’s needs for more highly secure, higher quality, updated, reliable credentials that meet industry standards and (b) CBNSTI would not have the ongoing production errors as the current vendor who moved its credential manufacturing facility to California. DMV believed and still believes that CBNSTI provides the best value for North Carolinians, all things being considered.

Further, as DMV has, on information and belief, previously testified or provided or referenced in communications in whole or in part to legislative inquiries, the United States government itself – via the U.S. Department of State – upgraded its new U.S. passports to use laser-engraved, gray-scale (not color), polycarbonate credentials because that change is the next-generation credential and biometrics and facial recognition systems do not require color photographs. For that reason and because North Carolina’s own applicable statute, G.S. § 20-7(n), states that the credential must be “*tamperproof*” and, among a long list of other requirements, must contain “A color photograph of the license holder *applied to material that is measured by the industry standard of security and durability and is resistant to tampering and reproduction,*” and because DMV had heard that simple color photographs were less secure, DMV had a good faith belief at the time prior to and shortly after entering the contract that the State might be amenable to amending that statute, if in fact it was necessary. DMV also subsequently learned that “grayscale” is the more accurate term, not monochromatic.

Please see the answer to Question 6, below.

4) Is CBN capable of producing colored driver license photos?

Answer: Upon information and belief, and as stated in open court by legal counsel on April 2nd, yes.

5) Do the materials used by CBN align with industry standards?

Answer: This matter was discussed by the attorneys appearing in open court for the April 2nd preliminary injunction hearing, and this subject was specifically briefed by counsel for CBNSTI in its Response to Idemia’s request for preliminary injunction. Therefore, DMV is now able to provide its answer to you: Yes.

6) Was an amended agreement reached between DMV and CBN to reflect that CBN would produce colored photos?

Answer: This matter was discussed by legal counsel in open court at the April 2nd preliminary injunction hearing; more specifically, such an amendment to the NCDMV / CBNSTI contract was

an exhibit to CBNSTI's Response to the Idemia's request for preliminary injunction. Accordingly, the answer is yes.

7) What procurement manual does DMV utilize for competitive bids?

Answer: As legal counsel discussed in open court on April 2nd, certain policies and procedures from DIT or DOA (or DOT if delegated by DOA) normally apply depending on the nature of the procurement. DOT and DIT's manuals for procurements are the *NCDOT Purchasing Manual* and *NCDIT Statewide IT Procurement Office / Procurement Policies and Procedures Manual*, respectively. Given S.L. 2021-134, such policies and procedures were not applicable to the specified projects.