

## **FINAL REPORT**

### **State Procurement Laws Interim Committee HCR 48 (2016)**

#### **Members of the Committee**

Senator Fred Martin, Co-Chair  
Senator Bart Davis  
Senator Abby Lee  
Senator Lori Den Hartog  
Senator Maryanne Jordan

Representative Neil Anderson, Co-Chair  
Representative Maxine Bell  
Representative Brent Crane  
Representative John Vander Woude  
Representative Mark Nye  
Representative Elaine Smith (Ad Hoc)

#### **Staff**

Elizabeth Bowen, Senior Legislative Research Analyst  
Robyn Lockett, Principal Budget and Policy Analyst  
Jennifer Kish, Committee Secretary

November 17, 2016

## **I. Committee Charge**

The State Procurement Laws Interim Committee was authorized in 2016 by House Concurrent Resolution 48. The purpose of the committee was to undertake and complete a study of issues relating to public procurement and to report its findings and recommendations, including any proposed legislation, to the First Regular Session of the Sixty-Fourth Idaho Legislature.

## **II. Meetings**

The committee met four times on the following dates and at the following places:

1. August 22, 2016 – State Capitol, Boise;
2. September 14, 2016 – City Council Chamber, Twin Falls;
3. October 27, 2016 – State Capitol, Boise; and
4. November 17, 2016 – State Capitol, Boise.

## **III. Scope of Study**

At its August 22 meeting, the committee reviewed the status of state procurement after the 2016 Legislature enacted the State Procurement Act (chapter 92, title 67, Idaho Code). The committee also reviewed administrative rules proposed by the Division of Purchasing to enforce the State Procurement Act. The committee then heard presentations on:

- Idaho's void contracts statute;
- Procurement compliance review and enforcement; and
- The process for reviewing procurement challenges and appeals.

The August meeting concluded with a discussion of issues to be addressed by the committee this interim.

On September 14, the committee considered draft legislation on:

- Procurement by political subdivisions;
- Cooperative purchasing agreements;
- Review of procurement challenges and appeals;
- Multiple contract awards; and
- Contracts that violate state law.

Each draft was discussed by the committee members, but no vote was taken to recommend legislation at that time. Also at the September meeting, the committee heard a presentation on quasi-public entities and the state's liability on contracts entered into by such entities.

On October 27, the committee heard presentations on:

- Information technology procurement;
- Recommendations for review of procurement challenges and appeals; and
- The application of the State Procurement Act to various agencies.

Additionally, the committee took remarks on cybersecurity from Lieutenant Governor Brad Little and considered draft legislation regarding void contracts, procurement by state institutions of higher education, cooperative purchasing agreements, and multiple contract awards. The committee voted to recommend the latter two drafts, which may be found in Appendix I and Appendix II of this report.

*[insert description of November 17 meeting]*

A list of all persons who presented to the committee may be found in Appendix [X] of this report.

#### IV. Findings

Having concluded its authorized study, the State Procurement Laws Interim Committee finds the following:

1. Section 67-9211, Idaho Code, regarding multiple contract awards, should be revised to clarify the circumstances under which the state may award multiple contracts under a single solicitation;
2. [Section 67-9213, Idaho Code, regarding void contracts, should be repealed and replaced;]
3. Section 67-9224, Idaho Code, regarding group discount purchasing, should be revised in order to enable the state to participate in cooperative purchasing; and
4. [Certain issues in public procurement require further study. These include:
  - Procurement of information technology;
  - Procurement by political subdivisions;
  - Procurement by state institutions of higher education;
  - Administrative and judicial review of procurement challenges and appeals;
  - Whether there should be greater clarity in the Idaho Code on the persons and entities that may obligate the state on a contract; and
  - Whether there should be greater clarity in the Idaho Code on the persons and entities that are subject to the provisions of the State Procurement Act.]

#### V. Recommendations

It is the [unanimous] recommendation of the members of the State Procurement Laws Interim Committee that:

1. The Legislature enact the committee's proposed legislation; and
2. The Legislature reauthorize the committee to conduct further study of public procurement in Idaho.

**APPENDIX I**

Proposed Legislation

**DRELB034**

Cooperative Purchasing

DRAFT

DRELB034

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LEGISLATURE OF THE STATE OF IDAHO  
Sixty-fourth Legislature First Regular Session - 2017  
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IN THE \_\_\_\_\_

BILL NO. \_\_\_\_\_

BY \_\_\_\_\_

AN ACT

1 RELATING TO STATE PROCUREMENT; AMENDING SECTION 67-9224, IDAHO CODE, TO PRO-  
2 VIDE THAT THE ADMINISTRATOR MAY AUTHORIZE AN AGENCY TO PARTICIPATE IN  
3 A COOPERATIVE PURCHASING AGREEMENT, TO PROVIDE THAT THE ADMINISTRATOR  
4 MAY AUTHORIZE AN AGENCY TO UTILIZE CONTRACTS OF CERTAIN OTHER AGENCIES,  
5 TO PROVIDE THAT CERTAIN AGREEMENTS BE MADE IN WRITING, TO REVISE PROVI-  
6 SIONS REGARDING ENTRANCE OR PARTICIPATION FEES, TO PROVIDE THAT CERTAIN  
7 AGREEMENTS SHALL BE MAINTAINED ON FILE AND TO REMOVE PROVISIONS REGARD-  
8 ING PROPERTY ACQUIRED PURSUANT TO THIS SECTION.  
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Section 67-9224, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 67-9224. COOPERATIVE AND GROUP DISCOUNT PURCHASING. (1) The adminis-  
14 trator may authorize an agency to:

15 (a) Become a participating member of a group discount purchasing or-  
16 ganization if the administrator finds that:

17 ~~(a) The property to be acquired is at least equal in quality to same or~~  
18 ~~similar property that the agency uses;~~

19 ~~(b) The property to be acquired is less costly to the state than if ac-~~  
20 ~~quired by other means authorized in this chapter~~ Participate in, spon-  
21 sor, conduct or administer a cooperative purchasing agreement for prop-  
22 erty with one (1) or more public agencies, independent of the require-  
23 ments of section 67-2329, Idaho Code; or

24 (c) Utilize contracts of other public agencies within this state, upon  
25 determining that the contract was let in a manner that constitutes com-  
26 petitive bidding consistent with the requirements of this chapter and  
27 is otherwise in the best interest of the state.

28 (2) The state's participation in the a cooperative purchase or group  
29 discount purchasing organization is must be formalized by a written contract  
30 that extends for no longer than one (1) year at a time; and agreement.

31 ~~(d3)~~ (3) The state's entrance fee or participation fee in the a group dis-  
32 count purchasing organization is must be based on criteria applied to all  
33 other members of the organization.

34 (24) Any contract agreement entered into pursuant to subsection (2) of  
35 this section shall be maintained on file with the division as well as with the  
36 agency entering into the contract agreement.

37 ~~(3) Property acquired pursuant to this section shall be used solely~~  
38 ~~by the state and may not be transferred from state ownership until it is no~~  
39 ~~longer of use to the state. Such property may not be provided to individuals~~  
40 ~~except those in the custody of the state or those receiving direct personal~~  
41 ~~services from the state.~~

**APPENDIX II**

Proposed Legislation

**DRELB032**

Multiple Contract Awards

DRAFT

DRELB032

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LEGISLATURE OF THE STATE OF IDAHO  
Sixty-fourth Legislature First Regular Session - 2017  
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IN THE \_\_\_\_\_

BILL NO. \_\_\_\_\_

BY \_\_\_\_\_

AN ACT

RELATING TO STATE PROCUREMENT; AMENDING SECTION 67-9211, IDAHO CODE, TO RE-  
VISE PROVISIONS REGARDING MULTIPLE AWARDS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-9211, Idaho Code, be, and the same is hereby amended to read as follows:

67-9211. MULTIPLE AWARDS. (1) Notwithstanding any provision of this chapter to the contrary, the administrator may make an award of a contract to two (2) or more bidders ~~to furnish the same or similar property when more than one (1) contractor is necessary~~ under a single solicitation if a multiple award would:

(a) ~~To~~ More effectively furnish the types of property and quantities required by state agencies based on immediacy of need, geographic location or other factors;

(b) ~~To provide~~ Promote the expeditious and cost-efficient acquisition of property for state agencies; ~~or~~

(c) ~~To e~~Enable state agencies to acquire property that is compatible with property previously acquired;

(d) Enable contracts to be awarded on a regional basis; or

(e) In some other manner serve the best interest of the state.

(2) No award of a contract to multiple bidders shall be made under this section unless the administrator makes a written determination showing that multiple awards satisfy one (1) or more of the criteria set forth in subsection (1) of this section.

(3) When a contract for property has been awarded under a single solicitation to two (2) or more bidders in accordance with this section, a state agency shall make purchases from the contractor awarded in its region whose property meets the agency's functional and business requirements and whose terms and conditions regarding price, availability, support services and delivery are most advantageous to the agency.

(4) A multiple award of a contract for property under this section shall not be made when a single bidder can reasonably serve the acquisition needs of state agencies. A multiple award of a contract shall only be made to the number of bidders necessary to serve the acquisition needs of state agencies.

**APPENDIX [X]**

Persons who presented to the  
State Procurement Laws Interim Committee



**Persons who presented to the committee (date of presentation)**

1. April Renfro, Legislative Services Office (8.22.16)
2. Bob Perkins, Ada County (9.14.16; 11.17.16)
3. Brad Little, Lieutenant Governor (10.27.16)
4. Brian Kane, Office of the Attorney General (8.22.16; 10.27.16)
5. Doug Robinson, NASCIO (10.27.16)
6. Elizabeth Bowen, Legislative Services Office (9.14.16; 11.17.16)
7. Jennifer Saha, CompTIA (10.27.16)
8. Jeremy Chou, Givens Pursley LLP (10.27.16)
9. John Foster, Kestrel West (11.17.16)
10. Jordan Kroll, IT Alliance for Public Sector (10.27.16)
11. Keith Watts, City of Meridian (9.14.16; 11.17.16)
12. Mike Nugent, Legislative Services Office (10.27.16)
13. Rakesh Mohan, Office of Performance Evaluations (8.22.16)
14. Robert Geddes, Department of Administration (8.22.16)
15. Robyn Lockett, Legislative Services Office (9.14.16; 10.27.16)
16. Sarah Hilderbrand, Division of Purchasing (8.22.16; 9.14.16; 10.27.16)
17. Valerie Bollinger, Division of Purchasing (9.14.16)