

IN THE SENATE

SENATE BILL NO. 1118

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO PROCUREMENT BY POLITICAL SUBDIVISIONS; AMENDING SECTION
2 67-2803, IDAHO CODE, TO REVISE A PROVISION REGARDING CERTAIN EXCLUSIONS
3 FROM CERTAIN PROCUREMENT REQUIREMENTS; AMENDING SECTION 67-2805, IDAHO
4 CODE, TO REVISE PROVISIONS REGARDING PROCUREMENT OF PUBLIC WORKS CON-
5 STRUCTION; AMENDING SECTION 67-2806, IDAHO CODE, TO REVISE PROVISIONS
6 REGARDING PROCURING SERVICES OR PERSONAL PROPERTY; AND DECLARING AN
7 EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
8

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

10 SECTION 1. That Section 67-2803, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 67-2803. EXCLUSIONS. The procurement requirements established in
13 this chapter shall not be applicable to:

14 (1) The acquisition of personal property when the procurement dupli-
15 cates the price and substance of a contract for like goods or services that
16 has been competitively bid by the state of Idaho, one (1) of its political
17 subdivisions, or an agency of the federal government;

18 (2) Contracts or purchases where expenditures to procure public works
19 construction are less than ~~fifty thousand dollars (\$50,000)~~ one hundred
20 thousand dollars (\$100,000) or where expenditures to procure services or
21 personal property are less than ~~seventy-five thousand dollars (\$75,000)~~ one
22 hundred thousand dollars (\$100,000), provided such contracts or purchases
23 shall be guided by the best interests of the political subdivision procuring
24 the goods and services as determined by the governing board;

25 (3) Disbursement of wages or compensation to any employee, official or
26 agent of a political subdivision for the performance of personal services
27 for the political subdivision;

28 (4) Procurement of personal or professional services to be performed by
29 an independent contractor for the political subdivision;

30 (5) Procurement of an interest in real property;

31 (6) Procurement of insurance;

32 (7) Costs of participation in a joint powers agreement with other units
33 of government;

34 (8) Procurement of used personal property;

35 (9) Procurement from federal government general services administra-
36 tion (GSA) schedules or federal multiple award schedules (MAS);

37 (10) Procurement of personal property or services through contracts en-
38 tered into by the division of purchasing of the department of administration
39 of the state of Idaho;

40 (11) Procurement of goods for direct resale;

41 (12) Procurement of travel and training;

- 1 (13) Procurement of goods and services from Idaho correctional indus-
2 tries;
- 3 (14) Procurement of repair for heavy equipment;
- 4 (15) Procurement of software maintenance, support and licenses of an
5 existing system or platform that was bid in compliance with state law;
- 6 (16) Procurement of public utilities;
- 7 (17) Procurement of food for use in jails or detention facilities; or
- 8 (18) Procurement of used equipment at an auction if authorized by the
9 governing board.

10 SECTION 2. That Section 67-2805, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 67-2805. PROCUREMENT OF PUBLIC WORKS CONSTRUCTION. (1) When a po-
13 litical subdivision contemplates an expenditure to procure public works
14 construction valued at or in excess of ~~fifty thousand dollars (\$50,000) but~~
15 ~~not to exceed two hundred thousand dollars (\$200,000)~~ one hundred thousand
16 dollars (\$100,000) but not to exceed two hundred fifty thousand dollars
17 (\$250,000), the procurement procedures of this subsection shall apply:

18 (a) The solicitation for bids for the public works construction to be
19 performed shall be supplied to no fewer than three (3) owner-design-
20 ated licensed public works contractors by written means, either by
21 electronic or physical delivery. The solicitation shall describe the
22 construction work to be completed in sufficient detail to allow an expe-
23 rienced public works contractor to understand the construction project
24 the political subdivision seeks to build.

25 (b) The solicitation for bids shall describe the electronic or physi-
26 cal delivery method or methods authorized to submit a bid, the date and
27 time by which a bid proposal must be received by the clerk, secretary or
28 other authorized official of the political subdivision, and shall pro-
29 vide a reasonable time to respond to the solicitation, provided that ex-
30 cept in the event of an emergency, such time shall not be less than three
31 (3) business days.

32 (c) Written objections to specifications or bid procedures must be re-
33 ceived by the clerk, secretary or other authorized official of the po-
34 litical subdivision at least one (1) business day before the date and
35 time upon which bids are scheduled to be received.

36 (d) When written bids have been received, by either physical or elec-
37 tronic delivery, they shall be submitted to the governing board or a de-
38 signee of the governing board who shall present the lowest responsive
39 bid to the governing board for approval or, if authorized, approve the
40 bid. The governing board or the board's designee shall approve the re-
41 sponsive bid proposing the lowest procurement price or reject all bids
42 and publish notice for bids, as before.

43 (e) If the political subdivision finds that it is impractical or impos-
44 sible to obtain three (3) bids for the proposed public works procure-
45 ment, the political subdivision may acquire the work in any manner the
46 political subdivision deems best from a qualified public works contrac-
47 tor quoting the lowest price. When fewer than three (3) bids are consid-
48 ered, a description of the efforts undertaken to procure at least three
49 (3) bids shall be documented by the political subdivision and such docu-

1 mentation shall be maintained for at least six (6) months after the pro-
2 curement decision is made. If two (2) or more price quotations offered
3 by different licensed public works contractors are the same and the low-
4 est responsive bids, the governing board or governing-board authorized
5 official may accept the one (1) it chooses.

6 (2) When a political subdivision contemplates an expenditure to pur-
7 chase public works construction valued in excess of ~~two hundred thousand~~
8 dollars ~~(\$200,000)~~ two hundred fifty thousand dollars (\$250,000), the
9 procurement procedures of this subsection shall apply. The purchase of
10 construction services shall be made pursuant to a competitive sealed bid
11 process with the purchase to be made from the qualified public works contrac-
12 tor submitting the lowest bid price complying with bidding procedures and
13 meeting the prequalifications, if any are provided, established by the bid
14 documents. Competitive bidding for public works may proceed through either
15 of two (2) alternative procedures as set forth below:

16 (a) Category A. Competitive bidding procedures shall be open to receipt
17 of bids from any licensed public works contractor desiring to bid upon a
18 public works project. For a category A bid, the political subdivision
19 may only consider the amount bid, bidder compliance with administrative
20 requirements of the bidding process, and whether the bidder holds the
21 requisite license, and shall award the bid to the qualified bidder sub-
22 mitting the lowest responsive bid.

23 (i) The request for bids for a category A procurement shall set
24 a date and place for the public opening of bids. Two (2) notices
25 soliciting bids shall be published in the official newspaper of
26 the political subdivision. The first notice shall be published
27 at least two (2) weeks before the date for opening bids, with the
28 second notice to be published in the succeeding week at least seven
29 (7) days before the date that bids are scheduled to be opened. The
30 notice shall succinctly describe the project to be constructed.
31 Copies of specifications, bid forms, bidder's instructions, con-
32 tract documents, and general and special instructions shall be
33 made available upon request and payment of a reasonable plan copy
34 fee by any interested bidder.

35 (ii) Written objections to specifications or bidding procedures
36 must be received by the clerk, secretary or other authorized of-
37 ficial of the political subdivision at least three (3) business
38 days before the date and time upon which bids are scheduled to
39 be opened. The administrative officer or governing board super-
40 vising the bidding process shall respond to any such objection
41 in writing and communicate such response to the objector and all
42 other plan holders, adjusting bidding timeframes if necessary.

43 (iii) All bids shall be presented or otherwise delivered under
44 sealed cover to the clerk of the political subdivision or other au-
45 thorized agent of the political subdivision designated by the in-
46 formation provided to bidders by the political subdivision with a
47 concise statement marked on the outside generally identifying the
48 project to which the bid pertains.

49 (iv) If the political subdivision deems it is in the political
50 subdivision's best interest, it may require the bidder to provide

1 bid security in an amount equal to at least five percent (5%) of the
2 amount bid. If required, a bid shall not be considered unless one
3 (1) of the forms of bidder's security is enclosed with it, and un-
4 less the bid is submitted in a form which substantially complies
5 with the form provided by the political subdivision. The politi-
6 cal subdivision may require that the bid security be in one (1) of
7 the following forms:

8 (A) Cash;

9 (B) A cashier's check made payable to the political subdivi-
10 sion;

11 (C) A certified check made payable to the political subdivi-
12 sion; or

13 (D) A bidder's bond executed by a qualified surety company,
14 made payable to the political subdivision.

15 (v) Any bid received by the political subdivision may not be
16 withdrawn after the date and time set in the notice for opening of
17 bids. When sealed bids have been received, they shall be opened in
18 public at a designated place and time, thereafter to be compiled
19 and submitted to the governing board for award or, if a designee is
20 authorized, for approval of the award.

21 (vi) If the successful bidder fails to execute the contract, the
22 amount of his bidder's security may be forfeited to the political
23 subdivision at the sole discretion of the political subdivision
24 and the proceeds shall be deposited in a designated fund out of
25 which the expenses of procuring substitute performance are paid.

26 (vii) The political subdivision may, on the refusal or failure of
27 the successful bidder to execute the contract, award the contract
28 to the qualified bidder submitting the next lowest responsive bid.
29 If the governing board awards the contract to the next lowest qual-
30 ified bidder, the amount of the lowest qualified bidder's secu-
31 rity may be applied by the political subdivision to the difference
32 between the lowest responsive bid and the next lowest responsive
33 bid, and the surplus, if any, shall be returned to the lowest bid-
34 der if cash or check is used, or to the surety on the bidder's bond
35 if a bond is used, less reasonable administrative costs not to ex-
36 ceed twenty-five percent (25%) of the amount of the bidder's secu-
37 rity to the owner.

38 (viii) In its discretion, the governing board may reject all bids
39 presented and re-bid, or the governing board may, after finding it
40 to be a fact, pass a resolution declaring that the project sought
41 to be accomplished by the expenditure can be performed more eco-
42 nomically by purchasing goods and services on the open market. If
43 identical bids are received, the governing board may choose the
44 bidder it prefers. If no bids are received, the governing board
45 may procure the goods or services without further competitive bid-
46 ding procedures.

47 (ix) If the governing board of any political subdivision chooses
48 to award a competitively bid contract involving the procurement of
49 public works construction to a bidder other than the apparent low
50 bidder, the political subdivision shall declare its reason or rea-

1 sons on the record and shall communicate such reason or reasons in
2 writing to all persons who have submitted a competing bid.

3 (x) If any participating bidder objects to such award, such bid-
4 der shall respond in writing to the notice from the political sub-
5 division within seven (7) calendar days of the date of transmittal
6 of the notice, setting forth in such response the express reason
7 or reasons that the award decision of the governing board is in er-
8 ror. Thereafter, staying performance of any procurement until af-
9 ter addressing the contentions raised by the objecting bidder, the
10 governing board shall review its decision and determine whether to
11 affirm its prior award, modify the award, or choose to re-bid, set-
12 ting forth its reason or reasons therefor. After completion of the
13 review process, the political subdivision may proceed as it deems
14 to be in the public interest.

15 (b) Category B. Competitive bidding procedures shall be open to li-
16 censed public works contractors only after meeting preliminary supple-
17 mental qualifications established by the political subdivision. The
18 solicitation for bids in a category B procurement shall consist of two
19 (2) stages, an initial stage determining supplemental prequalifica-
20 tions for licensed contractors, either prime or specialty contractors,
21 followed by a stage during which bid prices will be accepted only from
22 prequalified contractors.

23 (i) Notice of the prequalification stage of the category B com-
24 petitive bidding process shall be given in the same manner that
25 notice of competitive bidding is provided for a category A com-
26 petitive bid request, providing a specific date and time by which
27 qualifications statements must be received. Political subdivi-
28 sions may establish prequalification standards premised upon
29 demonstrated technical competence, experience constructing simi-
30 lar facilities, prior experience with the political subdivision,
31 available nonfinancial resources, equipment and personnel as
32 they relate to the subject project, and overall performance his-
33 tory based upon a contractor's entire body of work. Such request
34 must include the standards for evaluating the qualifications of
35 prospective bidders.

36 (ii) During the initial stage of the category B bidding process,
37 licensed contractors desiring to be prequalified to bid on a
38 project must submit a written response to a political subdivi-
39 sion's request for qualifications.

40 (iii) Written objections to prequalification procedures must be
41 received by the clerk, secretary or other authorized official of
42 the political subdivision at least three (3) business days before
43 the date and time upon which prequalification statements are due.
44 The administrative officer or governing board supervising the
45 bidding process shall respond to any such objection in writing
46 and communicate such response to the objector and all other con-
47 tractors seeking to prequalify, adjusting bidding timeframes if
48 necessary. After a review of qualification submittals, the po-
49 litical subdivision may select licensed contractors that meet the
50 prequalification standards. If any licensed contractor submits

1 a statement of qualifications but is not selected as a qualified
2 bidder, the political subdivision shall supply a written state-
3 ment of the reason or reasons why the contractor failed to meet
4 prequalification standards.

5 (iv) Any licensed contractor that fails the prequalification
6 stage can appeal any such determination to the governing board
7 within seven (7) days after transmittal of the prequalification
8 results to contest the determination. If the governing board
9 sustains the decision that a contractor fails to meet prequali-
10 fication standards, it shall state its reason or reasons for the
11 record. A governing board decision concerning prequalification
12 may be appealed to the public works contractors license board
13 no more than fourteen (14) days following any decision on appeal
14 made by the governing board. The public works contractors license
15 board shall decide any such appeal within thirty-five (35) days
16 of the filing of a timely appeal. The public works contractors
17 license board shall allow participation, written or oral, by the
18 appealing contractor and the political subdivision, either by
19 employing a hearing officer or otherwise. The public works con-
20 tractors license board shall not substitute its judgment for that
21 of the political subdivision, limiting its review to determining
22 whether the decision of the governing board is consistent with the
23 announced prequalification standards, whether the prequalifi-
24 cation standards comport with the law and whether the governing
25 board's decision is supported by the entirety of the record. The
26 decision of the public works contractors license board shall be
27 written and shall state the reason or reasons for the decision.
28 Category B prequalification procedures that are appealed shall be
29 stayed during the pendency of the prequalification appeal until
30 the public works contractors license board completes its review,
31 but in no instance more than forty-nine (49) days after the appel-
32 late decision of the governing board regarding prequalification.
33 Any licensed public works contractor affected by a decision on
34 appeal by the public works contractors license board may, within
35 twenty-eight (28) days of the final decision, seek judicial review
36 as provided by chapter 52, title 67, Idaho Code.

37 (v) Following the conclusion of the prequalification adminis-
38 trative procedures, the bidding stage shall proceed by the setting
39 of a time, date and place for the public opening of bids. In cir-
40 cumstances involving prequalified prime contractors, a notice
41 soliciting bids shall be transmitted to prequalified bidders at
42 least fourteen (14) days before the date of opening the bids. In
43 circumstances involving prequalified specialty or subordinate
44 contractors, the notice soliciting bids shall be published in the
45 same manner applicable to category A bids. The notice shall suc-
46 cinctly describe the project to be constructed. Copies of speci-
47 fications, bid forms, bidder's instructions, contract documents,
48 and general and special instructions shall be made available upon
49 request and payment of a reasonable plan copy fee by any eligible
50 bidder.

1 (vi) Written objections to specifications or bidding procedures
2 must be received by the clerk, secretary or other authorized of-
3 ficial of the political subdivision at least three (3) business
4 days before the date and time upon which bids are scheduled to be
5 opened.

6 (vii) All category B bids shall be presented or otherwise deliv-
7 ered under sealed cover to the clerk or other authorized agent
8 of the political subdivision designated by the instructions to
9 bidders with a concise statement marked on the outside generally
10 identifying the project to which the bid pertains.

11 (viii) If the political subdivision deems it is in the political
12 subdivision's best interest, it may require the bidder to provide
13 bid security in an amount equal to at least five percent (5%) of the
14 amount bid. If required, a bid shall not be considered unless one
15 (1) of the forms of bidder's security is enclosed with it, and un-
16 less the bid is submitted in a form which substantially complies
17 with the form provided by the political subdivision. The politi-
18 cal subdivision may require that the bid security be in one (1) of
19 the following forms:

20 (A) Cash;

21 (B) A cashier's check made payable to the political subdivi-
22 sion;

23 (C) A certified check made payable to the political subdivi-
24 sion; or

25 (D) A bidder's bond executed by a qualified surety company,
26 made payable to the political subdivision.

27 (ix) Any category B bid received by a political subdivision may
28 not be withdrawn after the date and time set in the notice for open-
29 ing of bids. When sealed bids have been received, they shall be
30 opened in public by the governing board or the board's designee at
31 a designated place and time. The governing board's designee shall
32 thereafter compile and submit to the governing board for award or,
33 if authorized, approve the award. If identical bids are received,
34 the governing board may choose the bidder it prefers. If the suc-
35 cessful bidder fails to execute the contract, the amount of his
36 bidder's security may be forfeited to the political subdivision,
37 in the sole discretion of the political subdivision, and the pro-
38 ceeds shall be deposited in a designated fund out of which the ex-
39 penses for procuring substitute performance are paid.

40 (x) The political subdivision may, on the refusal or failure of
41 the successful bidder to execute the contract, award the contract
42 to the qualified bidder submitting the next lowest responsive bid.
43 If the governing board awards the contract to the next lowest qual-
44 ified bidder, the amount of the lowest qualified bidder's secu-
45 rity, if forfeited, shall be applied by the political subdivision
46 to the difference between the lowest responsive bid and the next
47 lowest responsive bid, and the surplus, if any, shall be returned
48 to the lowest bidder if cash or check is used, or to the surety on
49 the bidder's bond if a bond is used, less reasonable administra-

1 tive costs not to exceed twenty-five percent (25%) of the amount of
2 the bidder's security.

3 (xi) In its discretion, the governing board may reject all bids
4 presented and re-bid, or the governing board may, after finding it
5 to be a fact, pass a resolution declaring that the project sought
6 to be accomplished by the expenditure can be performed more eco-
7 nomically by purchasing goods and services on the open market. If
8 no bids are received, the governing board may make the expenditure
9 without further competitive bidding procedures.

10 (xii) If the governing board of any political subdivision chooses
11 to award a competitively bid contract involving the procurement of
12 public works construction to a bidder other than the apparent low
13 bidder, the political subdivision shall declare its reason or rea-
14 sons on the record and shall communicate such reason or reasons in
15 writing to all persons who have submitted a competing bid.

16 (xiii) If any participating bidder objects to such award, such
17 bidder shall respond in writing to the notice from the political
18 subdivision within seven (7) calendar days of the date of trans-
19 mittal of the notice, setting forth in such response the express
20 reason or reasons that the award decision of the governing board
21 is in error. Thereafter, staying performance of any procurement
22 until after addressing the contentions raised by the objecting
23 bidder, the governing board shall review its decision and deter-
24 mine whether to affirm its prior award, modify the award, or choose
25 to re-bid, setting forth its reason or reasons therefor. After
26 completion of the review process, the political subdivision may
27 proceed as it deems to be in the public interest.

28 SECTION 3. That Section 67-2806, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 67-2806. PROCURING SERVICES OR PERSONAL PROPERTY. (1) When a polit-
31 ical subdivision contemplates an expenditure to purchase or lease personal
32 property or to procure services, other than personal property or services
33 excluded pursuant to section 67-2803, Idaho Code, valued at or in excess of
34 ~~seventy-five thousand dollars (\$75,000) but not to exceed one hundred fifty~~
35 ~~thousand dollars (\$150,000)~~ one hundred thousand dollars (\$100,000) but not
36 to exceed two hundred fifty thousand dollars (\$250,000), the procurement
37 procedures of this subsection shall apply.

38 (a) The solicitation for bids shall be supplied to no fewer than three
39 (3) vendors by written means, either by electronic or physical deliv-
40 ery. The solicitation shall describe the personal property or services
41 to be purchased or leased in sufficient detail to allow a vendor dealing
42 in such goods or services to understand what the political subdivision
43 seeks to procure.

44 (b) The solicitation for bids shall describe the electronic or physi-
45 cal delivery method or methods authorized to submit a bid, the date and
46 time by which a bid proposal must be received by the clerk, secretary or
47 other authorized official of the political subdivision, and shall pro-
48 vide a reasonable time to respond to the solicitation, provided that ex-

1 cept in the event of an emergency, such time shall not be less than three
2 (3) business days.

3 (c) Written objections to specifications or bid procedures must be re-
4 ceived by the clerk, secretary or other authorized official of the po-
5 litical subdivision at least one (1) business day before the date and
6 time upon which bids are scheduled to be received.

7 (d) When written bids have been received, by either physical or elec-
8 tronic delivery, they shall be compiled and submitted to the governing
9 board or governing board-authorized official which shall approve the
10 responsive bid proposing the lowest procurement price or reject all
11 bids and publish notice for bids, as before.

12 (e) If the political subdivision finds that it is impractical or im-
13 possible to obtain three (3) bids for the proposed procurement, the
14 political subdivision may acquire the property in any manner the polit-
15 ical subdivision deems best from a qualified vendor quoting the lowest
16 price. When fewer than three (3) bids are considered, a description
17 of the efforts undertaken to procure at least three (3) bids shall be
18 documented by the political subdivision and such documentation shall
19 be maintained for at least six (6) months after any such procurement is
20 made. If two (2) or more bids are the same and the lowest responsive
21 bids, the authorized decision maker may accept the one (1) it chooses.

22 (2) When a political subdivision contemplates an expenditure to pur-
23 chase or lease personal property or to procure services, other than personal
24 property or services excluded pursuant to section 67-2803, Idaho Code, val-
25 ued in excess of ~~one hundred fifty thousand dollars (\$150,000)~~ two hundred
26 fifty thousand dollars (\$250,000), the procurement procedures of this sub-
27 section shall apply.

28 (a) The purchase or lease shall be made pursuant to an open competitive
29 sealed bid process with the procurement to be made from the qualified
30 bidder submitting the lowest bid price complying with bidding pro-
31 cedures and meeting the specifications for the goods and/or services
32 sought to be procured.

33 (b) The request for bids shall set a date, time and place for the opening
34 of bids. Two (2) notices soliciting bids shall be published in the of-
35 ficial newspaper of the political subdivision. The first notice shall
36 be published at least two (2) weeks before the date for opening bids,
37 with the second notice to be published in the succeeding week at least
38 seven (7) days before the date that bids are scheduled to be opened. The
39 notice shall succinctly describe the personal property and/or service
40 to be procured. Copies of specifications, bid forms, bidder's instruc-
41 tions, contract documents, and general and special instructions shall
42 be made available upon request by any interested bidder.

43 (c) Written objections to specifications or bidding procedures must be
44 received by the clerk, secretary or other authorized official of the po-
45 litical subdivision at least three (3) business days before the date and
46 time upon which bids are scheduled to be opened.

47 (d) If the political subdivision deems it is in the political subdi-
48 vision's best interest, it may require the bidder to provide bid secu-
49 rity in an amount equal to at least five percent (5%) of the amount bid.
50 If required, a bid shall not be considered unless one (1) of the forms

1 of bidder's security is enclosed with it, and unless the bid is submit-
2 ted in a form which substantially complies with the form provided by the
3 political subdivision. The political subdivision may require that the
4 bid security be in one (1) of the following forms:

5 (i) Cash;

6 (ii) A cashier's check made payable to the political subdivision;

7 (iii) A certified check made payable to the political subdivision;

8 or

9 (iv) A bidder's bond executed by a qualified surety company, made
10 payable to the political subdivision.

11 (e) Any bid received by the political subdivision may not be withdrawn
12 after the time set in the notice for opening of bids. When sealed bids
13 have been received, they shall be opened in public at a designated place
14 and time, thereafter to be compiled and submitted to the governing board
15 for award or, if a designee is authorized, for approval of the award.

16 (f) If the successful bidder fails to execute the contract, the amount
17 of his bidder's security may be forfeited to the political subdivision
18 at the sole discretion of the governing board and thereafter the pro-
19 ceeds may be deposited in a designated fund out of which the reasonable
20 expenses for procuring substitute performance are paid.

21 (g) The political subdivision may, on the refusal or failure of the suc-
22 cessful bidder to execute the contract, award the contract to the next
23 lowest qualified bidder. If the governing board awards the contract to
24 the next lowest qualified bidder, the amount of the lowest qualified
25 bidder's security may be applied by the political subdivision to the
26 difference between the lowest responsive bid and the next lowest re-
27 sponsive bid, and the surplus, if any, shall be returned to the lowest
28 bidder if cash or check is used, or to the surety on the bidder's bond
29 if a bond is used, less reasonable administrative costs not to exceed
30 twenty-five percent (25%) of the amount of the bidder's security.

31 (h) In its discretion, the governing board or its designee may reject
32 all bids presented and re-bid or, after finding it to be a fact, the gov-
33 erning board may pass a resolution declaring that the subject goods or
34 services can be procured more economically on the open market. If two
35 (2) or more bids are the same and the lowest responsive bids, the gov-
36 erning board or its designee may accept the one (1) it chooses. In its
37 discretion, the governing board of a political subdivision may preau-
38 thorize the purchase of equipment at a public auction.

39 (i) If the governing board of any political subdivision chooses to
40 award a competitively bid contract involving the procurement of per-
41 sonal property or services to a bidder other than the apparent low
42 bidder, the political subdivision shall declare its reason or reasons
43 on the record and shall communicate such reason or reasons in writing to
44 all who have submitted a competing bid.

45 (j) If any participating bidder objects to such award, such bidder
46 shall respond in writing to the notice from the political subdivision
47 within seven (7) calendar days of the date of transmittal of the notice,
48 setting forth in such response the express reason or reasons that the
49 award decision of the governing board is in error. Thereafter, staying
50 performance of any procurement until after addressing the contentions

1 raised by the objecting bidder, the governing board shall review its
2 decision and determine whether to affirm its prior award, modify the
3 award, or choose to re-bid, setting forth its reason or reasons there-
4 for. After completion of the review process, the political subdivision
5 may proceed as it deems to be in the public interest.

6 SECTION 4. An emergency existing therefor, which emergency is hereby
7 declared to exist, this act shall be in full force and effect on and after
8 July 1, 2025.