

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 546

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO PURCHASING BY POLITICAL SUBDIVISIONS; AMENDING SECTION 67-2803,  
2 IDAHO CODE, TO REVISE PROVISIONS RELATING TO PROCUREMENT REQUIREMENTS  
3 FOR CERTAIN CONTRACTS OR PURCHASES BY SCHOOL DISTRICTS AND TO PROVIDE  
4 THAT PROCUREMENT REQUIREMENTS SHALL NOT APPLY TO THE PROCUREMENT OF  
5 CERTAIN FINANCIAL SERVICES; AMENDING SECTION 67-2806, IDAHO CODE,  
6 TO PROVIDE FOR AN EXCEPTION, TO PROVIDE THAT CERTAIN PROCUREMENT  
7 PROVISIONS SHALL APPLY TO SCHOOL DISTRICTS, TO PROVIDE FOR THE AWARD OF  
8 CONTRACTS, TO PROVIDE THAT A POLITICAL SUBDIVISION MAY ACQUIRE PROPERTY  
9 FROM A RESPONSIBLE BIDDER WHOSE BID MEETS CERTAIN REQUIREMENTS, TO  
10 PROVIDE THAT CERTAIN PROCUREMENT PROCEDURES SHALL APPLY TO SCHOOL  
11 DISTRICTS, TO PROVIDE FOR PROCUREMENT TO BE MADE FROM THE LOWEST  
12 RESPONSIBLE BIDDER COMPLYING WITH CERTAIN REQUIREMENTS, TO REVISE  
13 TERMINOLOGY AND TO DEFINE A TERM; AND DECLARING AN EMERGENCY.  
14

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

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

18 67-2803. EXCLUSIONS. The procurement requirements established in  
19 this chapter shall not be applicable to:

20 (1) The acquisition of personal property when the procurement  
21 duplicates the price and substance of a contract for like goods or services  
22 that has been competitively bid by the state of Idaho, one (1) of its  
23 political subdivisions, or an agency of the federal government;

24 (2) Contracts or purchases by political subdivisions, other than  
25 school districts, wherein expenditures are less than twenty-five thousand  
26 dollars (\$25,000), provided such contracts or purchases shall be guided  
27 by the best interests of the political subdivision procuring the goods and  
28 services as determined by the governing board;

29 (3) Contracts or purchases by school districts wherein expenditures  
30 are less than the greater of thirty dollars (\$30.00) per student enrolled  
31 in the district at the beginning of the academic year in which the contract  
32 or purchase is made or twenty-five thousand dollars (\$25,000). Provided  
33 however, that such contracts or purchases shall be guided by the best  
34 interests of the school district as determined by the local board of  
35 trustees.

36 (4) Disbursement of wages or compensation to any employee, official or  
37 agent of a political subdivision for the performance of personal services  
38 for the political subdivision;

39 (45) Procurement of personal or professional services to be performed  
40 by an independent contractor for the political subdivision;

41 (56) Procurement of an interest in real property;

42 (67) Procurement of insurance;

1 (78) Costs of participation in a joint powers agreement with other  
2 units of government; ~~or~~

3 (89) Procurement of used personal property by irrigation districts and  
4 their boards of control;

5 (10) Procurement of banking, investment or other financial services;  
6 or

7 (11) Procurement of goods or services by school districts by  
8 lease-purchase arrangement in accordance with the provisions of section  
9 33-601A, Idaho Code.

10 SECTION 2. That Section 67-2806, Idaho Code, be, and the same is hereby  
11 amended to read as follows:

12 67-2806. PROCURING SERVICES OR PERSONAL PROPERTY. (1) When a  
13 political subdivision, other than a school district, contemplates an  
14 expenditure to purchase or lease personal property or to procure services,  
15 other than those services excluded pursuant to section 67-2803, Idaho  
16 Code, valued in excess of twenty-five thousand dollars (\$25,000) but not  
17 to exceed fifty thousand dollars (\$50,000), the procurement procedures of  
18 this subsection (1) shall apply. When a school district contemplates an  
19 expenditure to purchase or lease personal property or to procure services,  
20 other than those services excluded pursuant to section 67-2803, Idaho Code,  
21 valued in excess of the greater of thirty dollars (\$30.00) per student  
22 enrolled in the district at the beginning of the academic year in which the  
23 purchase or procurement is made or twenty-five thousand dollars (\$25,000);  
24 but not to exceed the greater of sixty dollars (\$60.00) per student enrolled  
25 in the district at the beginning of the academic year in which the purchase  
26 or procurement is made or fifty thousand dollars (\$50,000), the procurement  
27 provisions of this subsection (1) shall apply.

28 (a) The solicitation for bids shall be supplied to no fewer than  
29 three (3) vendors by written means, either by electronic or physical  
30 delivery. The solicitation shall describe the personal property  
31 or services to be purchased or leased in sufficient detail to allow  
32 a vendor dealing in such goods or services to understand what the  
33 political subdivision seeks to procure.

34 (b) The solicitation for bids shall describe the electronic or physical  
35 delivery method or methods authorized to submit a bid, the date and time  
36 by which a bid proposal must be received by the clerk, secretary or other  
37 authorized official of the political subdivision, and shall provide a  
38 reasonable time to respond to the solicitation, provided that except in  
39 the event of an emergency, such time shall not be less than three (3)  
40 business days.

41 (c) Written objections to specifications or bid procedures must be  
42 received by the clerk, secretary or other authorized official of the  
43 political subdivision at least one (1) business day before the date and  
44 time upon which bids are scheduled to be received.

45 (d) When written bids have been received, by either physical or  
46 electronic delivery, they shall be compiled and submitted to the  
47 governing board or governing board-authorized official. ~~which shall~~  
48 ~~approve the responsive bid proposing the lowest procurement price or~~  
49 The contract shall be awarded to the lowest responsible bidder whose

1 bid meets the requirements provided for in the solicitation for bids.  
2 If the governing board fails to award the contract, it shall reject all  
3 bids and publish notice for bids, as before.

4 (e) If the political subdivision finds that it is impractical or  
5 impossible to obtain three (3) bids for the proposed procurement,  
6 the political subdivision may acquire the property in any manner the  
7 political subdivision deems best from a ~~qualified vendor~~ responsible  
8 bidder quoting the lowest price whose bid meets the requirements  
9 provided for in the solicitation for bids. When fewer than three (3)  
10 bids are considered, a description of the efforts undertaken to procure  
11 at least three (3) bids shall be documented by the political subdivision  
12 and such documentation shall be maintained for at least six (6) months  
13 after any such procurement is made. If two (2) or more price quotations  
14 are the same and the lowest responsive bids, the authorized decision  
15 maker may accept the one (1) it chooses.

16 (2) When a political subdivision, other than a school district,  
17 contemplates an expenditure to purchase or lease personal property or to  
18 procure services, other than those services excluded pursuant to section  
19 67-2803, Idaho Code, valued in excess of fifty thousand dollars (\$50,000),  
20 the procurement procedures of this subsection (2) shall apply. When a  
21 school district contemplates an expenditure to purchase or lease personal  
22 property or to procure services, other than those services excluded pursuant  
23 to section 67-2803, Idaho Code, valued in excess of the greater of sixty  
24 dollars (\$60.00) per student enrolled in the district at the beginning of  
25 the academic year in which the expenditure is made or fifty thousand dollars  
26 (\$50,000), the procurement procedures of this subsection (2) shall apply.

27 (a) The purchase or lease shall be made pursuant to an open competitive  
28 sealed bid process with the procurement to be made from the ~~qualified~~  
29 lowest responsible bidder ~~submitting the lowest bid price~~ complying  
30 with bidding procedures and meeting the specifications for the  
31 goods and/or services sought to be procured as provided for in the  
32 solicitation for bids.

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

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

48 (d) If the political subdivision deems it is in the political  
49 subdivision's best interest, it may require the bidder to provide  
50 bid security in an amount equal to at least five percent (5%) of the

1 amount bid. If required, a bid shall not be considered unless one (1) of  
2 the forms of bidder's security is enclosed with it, and unless the bid is  
3 submitted in a form which substantially complies with the form provided  
4 by the political subdivision. The political subdivision may require  
5 that the bid security be in one (1) of the following forms:

6 (i) Cash;

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

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

9 or

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

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

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

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

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

42 (i) If the governing board of any political subdivision chooses  
43 to award a competitively bid contract involving the procurement of  
44 personal property or services to a bidder other than the apparent lowest  
45 responsible bidder, the political subdivision shall declare its reason  
46 or reasons on the record and shall communicate such reason or reasons in  
47 writing to all who have submitted a competing bid.

48 (j) If any participating bidder objects to such award, such bidder  
49 shall respond in writing to the notice from the political subdivision  
50 within seven (7) calendar days of the date of transmittal of the notice,

1 setting forth in such response the express reason or reasons that the  
2 award decision of the governing board is in error. Thereafter, staying  
3 performance of any procurement until after addressing the contentions  
4 raised by the objecting bidder, the governing board shall review  
5 its decision and determine whether to affirm its prior award, modify  
6 the award, or choose to re-bid, setting forth its reason or reasons  
7 therefor. After completion of the review process, the political  
8 subdivision may proceed as it deems to be in the public interest.

9 (3) "Solicitation for bids" means all documents, whether attached  
10 or incorporated by reference, utilized for soliciting or requesting  
11 bids. The solicitation for bids may specify criteria related to quality,  
12 service, workmanship and suitability to the purpose for which such bids are  
13 requested.

14 SECTION 3. An emergency existing therefor, which emergency is hereby  
15 declared to exist, this act shall be in full force and effect on and after its  
16 passage and approval.