

Dear Senators MCKENZIE, Davis, Stennett, and
Representatives LOERTSCHER, Batt, Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Department of Administration - Division of Purchasing:
IDAPA 38.05.01 - Rules of the Division of Purchasing - Proposed Rule (Docket No. 38-0501-1401).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 10/21/2014. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/19/2014.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate State Affairs Committee and the House State Affairs Committee
FROM: Senior Legislative Research Analyst - Ryan Bush
DATE: October 1, 2014
SUBJECT: Department of Administration - Division of Purchasing

IDAPA 38.05.01 - Rules of the Division of Purchasing - Proposed Rule (Docket No. 38-0501-1401)

The Department of Administration - Division of Purchasing submits notice of proposed rulemaking at IDAPA 38.05.01 - Rules of the Division of Purchasing. The Division states that this rulemaking clarifies the processes of state agency purchasing and addresses new processes for high dollar service contracts and for contract administration and management. Specifically, this rulemaking does the following:

- (1) Defines a high dollar service contract as one in excess of five million dollars;
- (2) Revises procedures for solicitations, specifically for the sealed procedure limit and agency procurement contacts;
- (3) Creates special procedures for high dollar service contracts including, but not limited to, third party validation, an oversight board, training, project management, reporting requirements and an agreement between the requisitioning agency and the Division on roles and responsibilities;
- (4) Revises the terms, procedures and limitations for small purchases;
- (5) Provides for how tie responses are ranked;
- (6) Provides that the administrator may authorize and negotiate price agreements with vendors when in the best interest of the state and provides instances when such agreements are not in the best interest of the state;
- (7) Removes provisions relating to time purchase contracts;
- (8) Lists prohibited contract terms and contract terms that require special consideration; and
- (9) Requires an individual contract manager for a service contract that meets or exceeds the sealed procedure limit and provides limitations on contract renewals and extensions.

The Division states that negotiated rulemaking was conducted and Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June edition of the Idaho Administrative Bulletin. According to

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
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the Division, the fiscal impact associated with this rulemaking will be an estimated \$245,800 annually for the expansion of the training program at the Division and that there will be a fiscal impact for individual agencies for the proposed oversight procedures for high dollar contracts.

The proposed rule appears to be within the statutory authority granted to the Division in Sections 67-5717 and 67-5732, Idaho Code.

cc: Department of Administration - Div. of Purchasing
Teresa Luna

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

38.05.01 - RULES OF THE DIVISION OF PURCHASING

DOCKET NO. 38-0501-1401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-5717(11) and 67-5732, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed rules revisions clarify the processes of state agency purchasing and new rules address processes for high dollar service contracts and for contract administration and management.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

The proposed rules have two predominant areas of fiscal impact:

1. Training Requirement - Proposed required training will require an expansion of the training program at the Division of Purchasing with a total budget impact estimated at less than \$245,800 annually. The current fee structure applied to executive contracts is sufficient to fund the expenditure increase.
2. High Dollar Contract Award and Management - Proposed rules requiring an oversight board, management by a professionally certified project manager and third party validation for service contracts in excess of \$5,000,000 will have a fiscal impact at the agency level. The fiscal impact to individual agencies will vary widely depending on the oversight procedures currently in place and the number of contracts that fall into the high value definition.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014 Idaho Administrative Bulletin, [Vol. 14-6, page 97](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Bill Burns at (208) 332-1610 or Sarah Hilderbrand at (208) 332-1612.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 29th Day of August, 2014.

Bill Burns, Administrator
Division of Purchasing
650 W. State St., Rm. B-15
P. O. Box 83720
Boise, ID 83720-0003
Tel: (208) 332-1610
Fax: (208) 327-7320

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 38-0501-1401
(Only those Sections being amended are shown.)

005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS.

The division of purchasing is located at 650 W. State Street, Lower Level, Room B-15, Boise, Idaho. The division's mailing address is P.O. Box 83720, Boise, Idaho 83720-0075. Office hours are 8 a.m. to 5 p.m., Monday through Friday, except state holidays. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

011. DEFINITIONS.

Unless defined otherwise in these rules, the definitions set forth in Section 67-5716, Idaho Code, shall apply to this chapter. ()

- 01.** ~~**Acquisition.** The process of procuring or purchasing property by the state of Idaho.~~ (3-15-02)
- 02.** ~~**Administrator.** The administrator ~~for~~ of the division of purchasing. ~~The administrator is the chief buyer.~~~~ (3-15-02)()
- 03.** ~~**Agency.** All offices, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding other legislative and judicial branches of government, and excluding the governor, the lieutenant governor, the secretary of state, the state controller, the state treasurer, the attorney general, and the superintendent of public instruction.~~ (3-15-02)
- 04.** ~~**Alternate.** Property or services that are not at least a functional equal in features, performance or use of the brand, model or specification designated as the standard.~~ (3-15-02)
- 05.** ~~**Bid.** A written offer that is binding on the bidder to perform a contract to purchase or supply property or services in response to an invitation to bid.~~ (3-15-02)
- 06.** ~~**Bidder.** A vendor who has submitted a bid or quotation on specific property.~~ (3-15-02)
- 07.** ~~**Brand Name or Equal Specification.** This means a specification that uses a brand name to describe the standard of quality, performance or other characteristics being solicited and that invites the submission of equivalent products.~~ (3-15-02)
- 08.** ~~**Brand Name Specification.** This means a specification calling for one (1) or more products by manufacturers' names or catalogue numbers.~~ (3-15-02)
- 09.** ~~**Buyer.** An employee of the division of purchasing designated as a buyer, contract administrator, purchasing agent, contracting officer, or similar designation by the administrator, including, where appropriate, the administrator and other management personnel. The term also includes authorized employee(s) of a purchasing~~

~~activity authority.~~ (3-15-02)()

~~10. Component. An item of property normally assembled or incorporated with other items into a unified productive whole at the site of use, which items belong to functional classes that may be interchangeable units of similar function but differing operational or productive capabilities.~~ (3-15-02)

~~106. Concession Services.~~ The granting by the purchasing ~~activity authority~~ of a right, franchise, authority, property interest or option to a contractor, regardless of whether an expenditure of state or other funds occurs. (3-15-02)()

~~107. Consultant Services.~~ This means work, rendered by either individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis or advice in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting and planning. The consultant's services, opinions or recommendations will be performed according to the consultant's methods without being subject to the control of the agency except as to the result of the work. (3-15-02)

~~108. Contract.~~ Contract means any state written agreement, including a solicitation or specification documents and the accepted portions of the solicitation, for the acquisition of property. Generally, the term is used to describe term contracts, definite or indefinite quantity or delivery contracts or other acquisition agreements whose subject matter involves multiple payments and deliveries. A contract ~~shall also include~~ any amendments mutually agreed upon purchase orders issued by both parties the state. (3-15-02)()

~~14. Contractor. A bidder or offeror who has been awarded an acquisition contract.~~ (3-15-02)

~~109. Director.~~ The chief officer of the department of administration. (3-15-02)

~~160. Division.~~ The division of purchasing of the department of administration as established by Section 67-5714, Idaho Code. ~~Whenever a purchase is made by the division on behalf of another agency, the division shall be deemed to be acting as the agent for such agency.~~ (3-15-02)()

~~171. Document.~~ When used in these rules, may include electronic documents. (3-15-02)

~~18. Equal. Property that meets or exceeds the quality, performance and use of the brand, model or specifications in the invitation to bid, request for proposals or request for quotation.~~ (3-15-02)

~~19. Equipment. Items of personal property that have a normal useful life expectancy or measurable service life of two (2) or more years.~~ (3-15-02)

~~120. Formal Sealed Procedure.~~ Procedure by which the buyer solicits competitive sealed bids or competitive sealed proposals by means of an invitation to bid or request for proposals. (3-15-02)

~~21. Goods. Items of personal property including concession services, not qualifying as equipment, parts or supplies.~~ (3-15-02)

~~13. High Dollar Service Contract. A contract with a total estimated cost during the initial term and renewals or extensions of five million dollars (\$5,000,000) or more.~~ ()

~~14. Informal Solicitation. Procedure by which the buyer solicits informal quotes by means of a request for quote.~~ ()

~~22. Information Technology Property. Includes, but is not limited to, all present forms of computer hardware, computer software or services used or required for automated data processing, computer related office automation or telecommunications.~~ (3-15-02)

~~2315. Invitation to Bid.~~ Means all documents, whether attached or incorporated by reference, utilized for soliciting formal sealed bids. (3-15-02)

~~24. **Lowest Responsible Bidder.** The responsible bidder whose bid conforms in all material respects to the invitation to bid or request for proposals and reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price. (3-15-02)~~

~~2516. **Offeror.** A vendor who has submitted a proposal in response to a request for quote, invitation to bid, or request for proposals for property to be acquired by the state. (3-15-02)(____)~~

~~2617. **Open Contract.** A contract awarded by the state of Idaho through the division of purchasing to one (1) or more vendors who have agreed to allow all agencies to procure or purchase specified property under the terms and conditions set forth in the contract. (4-7-11)(____)~~

~~27. **Person.** Any business, individual, union, committee, club or other organization or group of individuals, not including a state or public agency. (3-15-02)~~

~~28. **Procurement.** The process of obtaining property for state use by lease, rent or any manner other than by purchase or gift. (3-15-02)~~

~~2918. **Professional Services.** Work rendered by an independent contractor whose occupation is the rendering of such services and who has a professional knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, legal, medical, nursing, education, engineering, actuarial, architecture, veterinarian, information technology, and research. The knowledge is founded upon prolonged and specialized intellectual training that enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skills. (3-15-02)(____)~~

~~30. **Property.** Goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights and interests in such property. Includes concession services and rights to access or use state property or facilities for business purposes. (3-15-02)~~

~~319. **Proposal.** A written response including pricing information to a request for proposals that describes the solution or means of providing the property requested and which proposal is considered an offer to perform a contract in full response to the request for proposals. Price may be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award. (3-15-02)~~

~~320. **Public Agency.** Has the meaning set forth in Section 67-2327, Idaho Code. (3-15-02)~~

~~3321. **Purchase.** The act of acquiring or procuring property for state use or the result of an acquisition action. (3-15-02)~~

~~3422. **Purchase Order.** See also definition of Contract, typically used to acquire property. It is a notification to the contractor to provide the stated property, required material, equipment, supplies or services under the terms and conditions set forth in the purchase order. It may include the form of the state's acceptance of an bidder's offeror's quote, proposal, or bid. See also definition of contract (3-15-02)(____)~~

~~3523. **Purchasing Activity Authority.** The division or an agency delegated that exercising authority based on a delegation of authority by the administrator for or as provided under these rules to an individual within the division or the agency to engage in the conduct of purchasing. (3-15-02)(____)~~

~~3624. **Quotation.** An offer to supply property in response to a request for quotation and generally used for small or emergency purchases informal solicitation procedures. (3-15-02)(____)~~

~~3725. **Request for Proposals.** Includes all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals as a component of the formal sealed procedure and is generally utilized in the acquisition of services or other complex purchases. (3-15-02)(____)~~

~~3826.~~ **Request for Quotation.** The document, form or method generally used for purchases solicited in accordance with ~~small purchase or emergency purchase~~ informal solicitation procedures. (3-15-02)()

~~3927.~~ **Requisition.** A standard state or agency specific form that serves as a purchasing request and that requests that the purchasing ~~activity~~ authority acquire the ~~stated requirements~~ property. (3-15-02)()

~~4028.~~ **Sealed.** Includes invitations to bids and requests for proposals electronically sealed and submitted in accordance with requirements or standards set by the division and bids manually sealed and submitted. (3-15-02)()

~~4129.~~ **Sealed Procedure Limit.** That dollar amount, as established by these rules, above which the formal sealed ~~bid~~ procedure will be used. ~~Said~~ The amount may be lowered by the administrator to maintain full disclosure or competitive purchasing or otherwise achieve overall state efficiency and economy. (3-15-02)()

~~42.~~ **Services.** ~~Personal, general, professional or consultant services, in excess of personnel regularly employed for whatever duration and/or covered by personnel system standards, for which bidding or competition is not prohibited or made impractical by statute, rules and regulations or generally accepted ethical practices.~~ (3-15-02)

~~430.~~ **Small Purchase.** An acquisition that costs less than the sealed procedure limit. (3-15-02)

~~4431.~~ **Solicitation.** Means an invitation to bid, a request for proposals, request for quote, or other document issued by the purchasing ~~activity~~ authority for the purpose of soliciting bids, proposals, quotes, or offers to perform a contract. (3-15-02)()

~~4532.~~ **Specifications.** The explicit ~~requirements furnished with an invitation to bid, request for proposals or request for quotations upon which a purchase order or contract is~~ property to be ~~based. Unless specifically provided in a solicitation,~~ acquired by the state. ~~sSpecifications do not include solicitation conditions or contractual terms including, without limitation, items such as vendor qualification requirements, bid closing times, delivery time or payment terms~~ the scope of work and the performance and physical characteristics of property. (3-15-02)()

~~4633.~~ **State.** This means the state of Idaho including each agency unless the context implies other states of the United States. (3-15-02)

~~47.~~ **Supplies.** ~~Items of personal property having an expendable quality or during their normal use are consumed and that require or suggest acquisition in bulk.~~ (3-15-02)

~~4834.~~ **Telecommunications.** Means all present and future forms of hardware, software or services used or required for transmitting voice, data, video or images. (3-15-02)

~~49.~~ **Vendor.** ~~A person or entity capable of supplying property to the state.~~ (3-15-02)

~~5035.~~ **Written.** When used in these rules, may include an electronic writing. (3-15-02)

012. -- 020. (RESERVED)

021. **DELEGATION CONDUCT OF AUTHORITY OF ADMINISTRATOR PURCHASING.**
The conduct of purchasing encompasses all phases of the process of purchasing property for the state of Idaho under the provisions of Title 67, Chapter 57, Idaho Code, including pre-solicitation planning, solicitation, award, and contract administration. ()

01. Authority of the Administrator. The administrator is the chief buyer of the division. Whenever a purchase is made by the division on behalf of another agency, the division shall be deemed to be acting as the agent for such agency. The division shall administer the conduct of purchasing and the acquisition of all property for agencies except those for which ~~the agencies have~~ an agency has separate statutory purchasing authority. ()

02. Delegation of Authority of the Administrator. The administrator may delegate in writing such authority as deemed appropriate to any employees of the division or of a purchasing activity authority. Such delegations shall remain in effect unless modified or until revoked in writing. All delegations must be given in writing prior to the acquisition of the property. All delegated acquisitions under delegated authority must be made according to these purchasing rules, the policies developed by the division, and the conditions established by the administrator in the delegation. Delegations shall be subject to periodic reporting as directed by the administrator.

(3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

032. ACQUISITION OF CONCESSION SERVICES.

If there is no expenditure of state funds, the acquisition of concession services, including but not limited to, exclusive-rights contracts, franchises, vending services, options, pouring contracts, services contracts, advertising contracts, broadcast rights to sporting events or other similar types of goods property, may be conducted by each purchasing activity authority as it determines to be in its best interest; provided, however, concessions within the definition of a food service facility set forth in Section 67-6902, Idaho Code, shall comply with the provisions of Title 67, Chapter 69, Idaho Code. ~~While there is no statutory requirement for competitive bidding for concession services or the applicability of purchasing statutes to the award of contracts for concession services when no expenditure of state funds is involved,~~ The purchasing activity authority is encouraged to utilize a competitive process if determined to be in its best interest.

(3-15-02)()

033. PURCHASE OF TELECOMMUNICATIONS OR INFORMATION TECHNOLOGY PROPERTY.

Unless otherwise exempted by statute or these rules, all agency requests exceeding the sealed procedure limit for telecommunications or information technology property must be reviewed and approved by the office of the chief information officer within the department of administration before submission to the division. It is the requesting agency's responsibility to attach any approvals to any requisitions submitted to the division. Acquisitions of these types of property are subject to state acquisition requirements, so these rules and agencies should plan long enough in advance to allow for this review by the office of the chief information officer. ~~The department's review and any subsequent~~ All acquisitions of telecommunications and information technology property will conform to the guidelines and policies established or adopted by the Information Technology Resource Management Council or other governing or policy board or council that may be created by statute or directive for the purpose of information technology oversight or review.

(3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

035. -- ~~040~~39. (RESERVED)

0410. PROCEDURE FOLLOWED IN ~~THE~~ SOLICITATIONS ~~OF BIDS AND PROPOSALS.~~

01. Procurements Subject to Formal Sealed Procedure - Sealed Procedure Limit. Except as otherwise provided in these rules, the acquisition of property exceeding at a cost of one hundred thousand dollars (\$100,000) or more (the sealed procedure limit) shall be by the a formal sealed procedure. For the purpose of the sealed procedure limit, costs are determined based on either the total costs of a one-time purchase of property or the total cost of a term contract for property, including all available renewal or extension periods. ()

02. Agency Procurement Contact. Agencies shall assign an individual contact for each solicitation where a requisition amount exceeds the sealed procedure limit, whether the solicitation is conducted by the division or administered by the agency. The procurement contact shall be the individual selected by the agency to monitor the procurement's compliance with these rules, coordinate the development of a solicitation and to serve as the agency's primary contact with the division concerning this procurement. All procurement contacts shall complete a training program approved by the administrator. ()

03. Vendor Qualification. All vendors submitting responses to solicitations issued by the state must be

qualified. All vendors are qualified unless disqualified as defined by Section 67-5730, Idaho Code. ~~(4-7-H)~~()

04. Use of E-procurement System. Unless exempted by the administrator or these rules, all solicitations shall be issued through the division's e-procurement system. ()

05. Vendor Communication. Vendors shall not communicate with the purchasing authority or the requisitioning agency concerning any solicitation during the period from solicitation issuance through contract award unless the communication is allowed by these rules or the terms of the solicitation. Vendors engaging in communication prohibited by this rule and submitting a response to the solicitation will be non-responsive. ()

041. SPECIAL PROCEDURES FOR HIGH DOLLAR SERVICE CONTRACTS.

Unless exempted in writing by the administrator, the following additional procedures apply to high dollar service contracts. Contracts meeting the dollar threshold with a scope including mixed services and goods shall be a high dollar service contract when the scope is primarily for services. The determination of whether the scope is primarily for services shall be made by the administrator in his sole discretion. The administrator will establish a policy identifying guidelines for the award of exemptions and consult with affected agencies in the development and modification of such policy. Exemptions for contracts may require the implementation of one (1) or more of the requirements of this section or Section 125 of these rules. The policy will allow for revocation of exemptions and provide a process for reconsideration of any revocation and escalation to the director. The decision of the director concerning the revocation of an exemption shall be final and shall not be subject to appeal pursuant to Section 67-5733, Idaho Code, or a contested case as that term is defined under the provisions of Title 67, Chapter 52, Idaho Code. ()

01. Third Party Validation. The agency requisitioning property that will result in a high dollar service contract shall engage an independent third party subject matter expert to validate that the project planning process is conducted in accordance with best practices. The engagement of a third party subject matter expert shall comply with these rules. ()

02. Oversight Board. The agency requisitioning property that will result in a high dollar service contract shall establish an oversight board for the solicitation process. The oversight board's duties shall include review of the third party validation received pursuant to Subsection 041.01 of this section. The oversight board shall issue a report to the administrator concerning the conclusions of the third party validation and recommendations concerning modifications to the solicitation. The oversight board shall include no less than two (2) experts in the subject matter of the contract without a potential conflict of interest. For the purposes of this subsection, experts in the subject matter of the contract with a potential conflict of interest include individuals: ()

a. With a direct reporting relationship to any other individual providing supervision or management of the contract resulting from the solicitation, other than the senior official of the agency; or ()

b. Who are interested in or likely to become interested in the contract resulting from the solicitation. An interest in the contract includes the award of a contract to the individual, to a company controlled by or employing the individual, or to a company controlled by or employing the spouse, parent, spouse's parent or a child of the individual. ()

03. Reporting. Solicitations that will result in a high dollar service contract shall provide for contractor reporting. The schedule and content of contractor reporting shall be reviewed in the third party validation process and by the oversight board established under these rules. ()

04. Negotiations. Solicitations that will result in a high dollar service contract shall provide for proposal discussions with individual offerors pursuant to Section 083 of these rules and negotiations pursuant to Section 084 of these rules. ()

05. Approval of Solicitation Release. Solicitations that will result in a high dollar service contract shall be approved for release by a procurement professional who: ()

a. Possesses, at a minimum, certification as a certified professional public buyer (CPPB) by the Universal Public Procurement Certification Council (UPPCC) or an equivalent certification by a public procurement

purchasing certification institution approved by the administrator; and ()

b. Has completed a training program approved by the administrator. ()

06. Administration Agreement. Prior to the award of a high dollar service contract, the requisitioning agency and the division shall enter into an agreement setting forth the roles and responsibilities of each party, the reports to be provided by each party, and the schedule for such reports. This section applies to all high dollar service contracts regardless of the purchasing authority managing the procurement. ()

042. EXCEPTIONS TO FORMAL SEALED PROCEDURE.

Purchases meeting the following criteria need not be purchased by the formal sealed procedure: (3-15-02)

01. Emergency Purchases. Emergency purchases as authorized by Section 67-5720, Idaho Code, and Section ~~043~~ of these rules. ~~(3-15-02)~~()

02. Small Purchases. Small purchases, unless the administrator specifically requires a formal sealed procedure, made in accordance with Section 044 of these rules. ~~(3-15-02)~~()

03. Sole Source Purchases. Sole source purchases made through direct solicitation with documented source selection, in accordance with Section 67-5720, Idaho Code, and Section 045 of these rules. ~~(3-15-02)~~()

04. Reverse Auctions. Purchases through reverse public auctions as authorized by Section 67-5720, Idaho Code. (3-15-02)

05. Federal Government Acquisitions. Acquisitions from the United States of America or any agency thereof. (3-15-02)

06. Rehabilitation Agency Acquisitions. Acquisitions of property that is provided by non-profit corporations and public agencies operating rehabilitation facilities serving the handicapped and disadvantaged and that is offered for sale at fair market price as determined by the administrator in accordance with these rules. (3-15-02)

07. Correctional Industries. Purchases of ~~road or street signs, metal motor license plates, wearing apparel, furniture, articles or containers for state use not for resale on the open market or any other~~ property marketed directly by Correctional Industries in accordance with Section 20-245, Idaho Code. ~~(3-15-02)~~()

08. Purchases from General Services Administration Federal Supply Contractors. Acquisitions of property may be made from General Services Administration federal supply contractors without the use of competitive bid upon written approval of the administrator. The administrator shall determine whether such property meets the ~~purchasing activity's~~ requisitioning agency's requirements and whether the price of acquisition is advantageous to the state. The administrator shall commemorate the determination in a written statement that shall be incorporated in the applicable file. If the administrator determines that the acquisition of property from General Services Administration contractors is not advantageous to the state, the acquisition shall be in accordance with competitive bidding procedures and requirements. ~~(3-15-02)~~()

09. Existing Open Contracts. ~~Supplies, services or other~~ Except as provided in these rules, property available under these contracts shall be purchased under such contracts in accordance with the provisions or requirements for use thereof. ~~(4-7-11)~~()

10. Exempt Purchases. By written policy the administrator may exempt from the formal sealed procedure or the requirement for competitive acquisition that property for which bidding is impractical, disadvantageous or unreasonable under the circumstances. (3-15-02)

a. Examples include, but are not limited to: (3-15-02)

i. Special market conditions; (3-15-02)

- ii. Property requiring special contracting procedures due to uniqueness; (3-15-02)
- iii. Legal advertising, publication or placement of advertisements by state agency personnel directly with media sources; ~~or~~ ~~(3-15-02)~~()
- iv. ~~Services~~ Property for which competitive solicitation procedures are impractical; ~~or~~(3-15-02)()
- v. Used property. ()
- b. Such policy shall describe the property exempted, the duration of the exemption, and any other requirements or circumstances appropriate to the situation. (3-15-02)

11. Interagency Agreements and Agreements for the Joint Exercise of Powers. Acquisitions of property under an interagency agreement pursuant to Section 67-2332, Idaho Code, or an agreement for the joint exercise of powers pursuant to Section 67-2328, Idaho Code. ()

043. EMERGENCY PURCHASES.

01. Definition of Emergency Conditions. An emergency condition is a situation that creates a threat to public health, welfare or safety such as may arise by reason of floods, epidemics, riots, equipment failures or other similar circumstances. The existence of such condition must create an immediate and serious need for property that cannot be met through normal acquisition methods. The buyer or the agency official responsible for purchasing shall make a written determination stating the basis for an emergency purchase and for the selection, if applicable, of the particular supplier. Such determination shall be sent promptly to the administrator for review and written approval that the purchase be undertaken as an emergency purchase. (3-15-02)

02. Conditions. Emergency purchases shall be limited to only that property necessary to meet the emergency. The director or administrator may delegate authority in writing to an agency or purchasing activity authority to make emergency purchases of up to an amount set forth in the delegation of authority. ~~(3-15-02)~~()

044. SMALL PURCHASES.

~~**01. General.** Small purchases are those purchases or procurements expected to cost one hundred thousand dollars (\$100,000) or less. Costs are determined based on the following: (4-7-11)~~

- ~~a. One-time purchases of property; or (3-15-02)~~
- ~~b. Total cost of a contract for services, including renewal or extension periods. (3-15-02)~~

~~**02. Splitting of Requirements.** Acquisition requirements shall not be artificially divided to avoid bid statutes, rules or policies. (3-15-02)~~

~~**03. Procedure.** Unless impractical or impossible and documented in the file, these small purchase procedures require the acquisition to be publicly posted. Except as otherwise provided in this rule, no less than three (3) vendors having a significant Idaho presence as defined by Section 67-2349, Idaho Code, shall be solicited to submit quotations. Award shall be made to the responsible and responsive bidder offering the lowest acceptable quotation. The purchasing file will be fully documented for unacceptable quotations. Should it be impractical or impossible to solicit three (3) vendors, the file shall be fully documented and every effort should still be made to obtain the most favorable terms, conditions and price possible. (3-15-02)~~

~~**04. Form of Request for Quotation.** Unless otherwise prohibited by the buyer, the request for quotation and the quotation may be written, oral, electronic, telephonic or facsimile. (3-15-02)~~

~~**05. Quoting Time.** The quoting time shall be determined by the buyer and should provide sufficient time for the vendor to prepare and return a quotation. The amount of time shall take into consideration such factors as complexity, urgency, availability of property and the number and location of vendors. (3-15-02)~~

~~06. **Open Contracts.** Property available under single agency or open contracts shall be purchased under such contracts and not as a small purchase under this rule unless otherwise authorized by the administrator. (4-7-11)~~

~~07. **Professional, Consultant, and Information Technology Services.** Professional, consultant, and information technology services acquired under this rule, where the services are reasonably expected to cost one hundred thousand dollars (\$100,000) or less through a fixed price/not to exceed price contract for a non-renewable term not to exceed one (1) year, may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state, and if the service is not available under an open contract. (4-7-11)~~

~~08. **Purchases in Amounts Less Than Ten Thousand Dollars.** If the property to be acquired is expected to cost less than ten thousand dollars (\$10,000), it may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state, and if the property is not available under an open contract. (4-7-11)~~

01. Small Purchase Categories. ()

a. Exempt. Property expected to cost less than ten thousand dollars (\$10,000). ()

b. Informal. Purchase of any property expected to cost at least ten thousand dollars (\$10,000) and less than the sealed procedure limit. ()

c. Professional and Consultant Services. The acquisition of professional or consultant services expected to cost less than the sealed purchase limit, for projects limited to one (1) year in duration. ()

02. Procedure. Agencies acquiring property under this rule are encouraged to work with legal counsel to develop solicitation and contract terms that serve the best interests of the state. The terms of procurements under this rule are subject to the provisions of Section 112 of these rules. ()

a. Professional and consultant small purchases and exempt small purchases may be acquired as each agency sees fit, in accordance with good business practice and agency-established policy, in the best interest of the state; subject to the limitations in Subsection 044.03 of this rule. ()

b. Informal small purchases shall be made using informal solicitation procedures, subject to the limitations in Subsection 044.03 of this rule. Unless exempted by the administrator, informal solicitations shall be issued through the division's e-procurement system. The purchasing authority will establish the quoting time based on factors such as complexity, urgency, and the number and location of vendors, in an effort to allow vendors sufficient time to prepare and return a quote. Agencies procuring property under this rule shall maintain a purchasing file containing the following: ()

i. The solicitation document posted and quotes received. If the acquisition was not publicly posted, the agency shall include a statement in the purchasing file describing the basis for determining posting was impractical or impossible. ()

ii. If not posted on the division's e-procurement system, the agency shall document the quotes received from at least three (3) vendors having a significant Idaho economic presence as defined by Section 67-2349, Idaho Code. If there are fewer than three (3) vendors of the property having a significant Idaho economic presence, the agency shall document its attempt to obtain quotes from vendors with a significant Idaho economic presence. ()

03. Limitations. The following limitations apply to all small purchases: ()

a. Property available under single agency or open contracts shall be purchased under such contracts and not as a small purchase under this rule unless otherwise authorized by the administrator. ()

b. Acquisition requirements shall not be artificially divided to avoid bid statutes, rules or policies. ()

c. Small purchases not issued for a fixed price shall include a not to exceed price of no more than the applicable sealed procedure limit. ()

045. SOLE SOURCE PURCHASES.

01. Only a Single Supplier. Sole source purchase shall be used only if ~~a requirement~~ required property is reasonably available from a single supplier. A requirement for a particular proprietary property item does not justify a sole source purchase if there is more than one (1) potential ~~bidder or~~ offeror ~~for~~ that can provide the required property item. (3-15-02)()

02. Examples of Sole Source. Examples of circumstances that could necessitate a sole source purchase are: (3-15-02)

a. Where the compatibility of equipment, components, accessories, computer software, replacement parts or service is the paramount consideration. (3-15-02)

b. Where a ~~sole~~ single supplier's item is needed for trial use or testing. (3-15-02)()

c. Purchase of mass produced movie or video films or written publications distributed or sold primarily by the publisher. (3-15-02)

d. Purchase of property for which it is determined there is no functional equivalent. (3-15-02)

03. Administrator Makes Determination. The determination as to whether an acquisition shall be made as a sole source ~~shall~~ will be made by the administrator. Each request shall be submitted in writing by the ~~using~~ requesting agency. The administrator may specify the application of such determination and its duration, and may apply additional conditions to an approval. In cases of reasonable doubt, competition should be solicited. Any request by an ~~using~~ agency that an acquisition be restricted to ~~one (1) potential contractor~~ a single supplier shall include a justification for the property, as well as an explanation as to why no other ~~contractor~~ vendor is acceptable. (3-15-02)()

04. Negotiation in Sole Source Purchase. ~~The buyer~~ After receipt of authorization from the administrator for a sole source purchase, the agency shall conduct negotiations, as appropriate, as to price, delivery and terms in accordance with the authorization and in the best interests of the state. (3-15-02)()

046. DETERMINATION OF FAIR MARKET PRICE FOR REHABILITATION AGENCY ACQUISITIONS.

Upon receipt of a rehabilitation agency proposal accompanied by detailed cost data, the administrator will conduct a survey of the market ~~place by requesting current prices from at least three (3) vendors currently marketing~~ appropriate for the property being sought. The fair market price of a rehabilitation ~~vendor~~ agency shall not be greater than one hundred twenty-five percent (125%) of the lowest price received during the survey. The administrator will notify by letter the rehabilitation agency concerned advising it as to whether it is offering property at fair market price. ~~The division or purchasing activity, if the acquisition is less than the sealed procedure limit or the contract is one (1) year or less in duration, may then contract with the rehabilitation agency at the proposed price.~~ (3-15-02)()

047. -- 050. (RESERVED)

051. CONTENT OF ~~THE INVITATION TO BID OR REQUEST FOR PROPOSALS~~ SOLICITATIONS ISSUED UNDER A FORMAL SEALED PROCEDURE.

The following shall be included in an invitation to bid or a request for proposals: (3-15-02)

01. Submission Information. Information regarding the applicable opening date, time and location. (3-15-02)

02. Specifications. Specifications developed in accordance with Section 111 of these rules ~~including, if~~

~~applicable, scope of work.~~

~~(3-15-02)()~~

03. Contract Terms. Terms and conditions applicable to the contract, subject to the provisions of Section 112 of these rules.

~~(3-15-02)()~~

04. Evaluation Criteria. Any evaluation criteria to be used in determining property acceptability.

~~(3-15-02)~~

05. Trade-In Property. If trade-in property is to be included, a description of the property and location where it may be inspected.

~~(3-15-02)~~

06. Incorporation by Reference. A brief description of any documents incorporated by reference that specifies where such documents can be obtained.

~~(3-15-02)~~

07. Pre-Proposal Solicitation Conference. The date, time and location of the pre-~~proposal~~ solicitation conference must be included in the Request for Proposals solicitation.

~~(4-7-11)()~~

052. CHANGES TO INVITATION TO BID OR REQUEST FOR PROPOSALS SOLICITATIONS ISSUED UNDER A FORMAL SEALED PROCEDURE.

An ~~invitation to bid or request for proposals~~ solicitation issued under a formal sealed procedure may be changed by the buyer through issuance of an addendum amendment, provided the change is issued in writing prior to the ~~bid opening solicitation closing~~ date and is made available to all vendors receiving the original solicitation. Any material information given or provided to a prospective vendor with regard to an ~~invitation to bid or request for proposals solicitation~~ shall be made available in writing by the buyer to all vendors receiving the original solicitation. Oral interpretations of specifications or contract terms and conditions shall not be binding on the ~~division state~~ unless confirmed in writing by the buyer and acknowledged by the ~~division purchasing authority~~ prior to the date of the ~~opening closing~~. Changes to the ~~invitation to bid or request for proposals solicitation~~ shall be identified as such and shall require that the vendor acknowledge receipt of all addenda issued. The right is reserved to waive any informality.

~~(3-15-02)()~~

~~053. PRICE ESCALATION.~~

~~Contractors shall not be entitled to price escalation except where specifically provided for in writing in the contract or purchase order.~~

~~(3-15-02)~~

~~0543. -- 060. (RESERVED)~~

061. FORM OF SUBMISSION FOR SOLICITATIONS ISSUED UNDER A FORMAL SEALED PROCEDURE.

01. Manual Submissions. Unless otherwise provided in these rules, to receive consideration, in addition to any specific requirements set forth in the invitation to bid or request for proposals, bids or proposals submitted manually must be made on the form provided, which form must be properly completed and signed in ink or contain an electronic signature as defined in Section 28-50-102, Idaho Code. ~~Photocopy or facsimile signatures will be rejected.~~ All changes or erasures on manual submissions shall be initialed in ink. Unsigned or improperly submitted bids or proposals will be rejected. ~~Telegraphed, telephonic or facsimile submissions will not be accepted except for emergency and small purchases.~~ The purchasing ~~activity does not~~ authority assumes no responsibility for failure of ~~any~~ the United States Postal Service, any private or public delivery service, or any computer or other equipment to deliver all or a portion of the bid or proposal at the time or to the location required by the solicitation.

~~(3-15-02)()~~

02. Electronic Submissions. To receive consideration, in addition to any specific requirements set forth in the invitation to bid or request for proposals, bids or proposals submitted electronically must be submitted in accordance with and meet all applicable requirements of these rules and contain an electronic signature as defined in Section 28-50-102, Idaho Code. The purchasing ~~activity does not~~ authority assumes ~~any~~ no responsibility for failure of any electronic submission process, including any computer or other ~~electronic~~ equipment to deliver all or a portion of the bid or proposal at the time or to the location required by the solicitation.

~~(3-15-02)()~~

062. -- 069. (RESERVED)

070. PRE-~~PROPOSAL~~ SOLICITATION CONFERENCE.

All ~~R~~request for ~~P~~proposals' ~~solicitations~~ will have a pre-~~proposal~~ solicitation conference for vendors and will be conducted by the procurement team and project personnel. The conference will consist of a general overview of the procurement process as well as the scope of work and requirements of the ~~subject Request for Proposal~~ solicitation. The procurement team will allow attendees to submit written questions and may provide an opportunity for a verbal question and answer period, provided, however, that only questions submitted and answered in written form and posted to the state's e-~~P~~procurement system as an amendment to the ~~Request for Proposal~~ solicitation, will have any force or effect. (4-7-11)(____)

071. PRE-OPENING WITHDRAWAL OR MODIFICATION.

Manual submissions may be withdrawn or modified only as follows: Bids or proposals may be withdrawn or modified prior to the closing by written communication signed in ink by the submitting vendor. Bids or proposals may be withdrawn prior to closing in person upon presentation of satisfactory evidence establishing the individual's authority to act on behalf of the submitting vendor. Bids or proposals may be withdrawn or modified by ~~telegraphic~~ electronic communication provided the ~~telegraph~~ communication is received prior to the closing. The withdrawal or modification, if done via ~~telegraph~~ electronic communication, must be confirmed in a writing signed in ink ~~or containing an electronic signature as defined in Section 28-50-102, Idaho Code. The written confirmation must be mailed and postmarked no later than the closing date. If the written confirmation of the withdrawal or modification is not received within two (2) working days from the closing date, no consideration will be given to the telegraphic modification.~~ Any withdrawing or modifying communication, including ~~a telegram~~ an electronic communication, must clearly identify the solicitation. A modifying ~~letter or telegram~~ communication should be worded so as not to reveal the amount of the original bid or proposal. ~~No other form of withdrawal or modification (e.g., telephone or facsimile) will be accepted.~~ (3-15-02)(____)

072. LATE BIDS/PROPOSALS, LATE WITHDRAWALS AND LATE MODIFICATIONS.

Any bid or proposal, withdrawal, or modification received after the time and date set for ~~opening~~ closing at the place designated ~~for opening in the solicitation~~ is late. No late bid or proposal, late modification or late withdrawal will be considered. All late bids ~~and proposals~~, other than clearly marked "no bids", will be returned to the ~~bidder offeror~~. Time of receipt will be determined by the official time stamp or receipt mechanism located at the ~~purchasing activity designated place for receipt of responses~~. The purchasing ~~activity does not~~ authority assumes ~~any~~ no responsibility for failure of ~~the United Postal Service, any private or public delivery services, or means or for the failure of any computer or other electronic equipment to deliver all or a portion of the bid or proposal at the time or to the location required by the solicitation.~~ (3-15-02)(____)

073. RECEIPT, OPENING, AND RECORDING OF BIDS AND PROPOSALS.

Upon receipt, all bids, proposals and modifications properly marked and identified will be time stamped, but not opened. They shall be stored in a secure place until ~~bid the time specified for opening~~ time. Time stamping and storage may be through electronic means. Bids shall be opened publicly at the date and time specified in the invitation to bid. Proposals shall be opened publicly, identifying only the names of the offerors unless otherwise stated in the request for proposals. Bid and proposal openings may be electronic virtual openings. (3-15-02)(____)

074. MISTAKES.

The following procedures are established relative to claims of a mistake. (3-15-02)

01. Mistakes in ~~Bids~~ Responses. If a mistake is attributable to an error in judgment, the submission may not be corrected. Correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible, but at the discretion of the administrator and to the extent it is not contrary to the interest of the ~~division~~ state or the fair treatment of other submitting vendors. (3-15-02)(____)

02. Mistakes Discovered Before Opening. Mistakes ~~detected~~ discovered by a vendor prior to ~~opening~~ closing may be corrected by the submitting vendor by submitting a timely modification or withdrawing the original submission and submitting a corrected submission to the purchasing ~~activity~~ authority before the ~~opening~~ closing. Vendors who discover a mistake after closing but prior to opening may withdraw the submission by written notification to the purchasing authority and signed by an individual authorized to bind the vendor if such notification is received by the purchasing authority prior to opening. (3-15-02)(____)

03. Mistakes Discovered After Opening But Before Award. This subsection sets forth procedures to be applied in three (3) situations described below in which mistakes are discovered after opening but before award. (3-15-02)

a. Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid or proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other submitting vendors, that is, the effect of the mistake on price, quantity, quality, delivery or contractual conditions is not significant. The buyer may waive such informalities. Examples include the failure of a submitting vendor to: (3-15-02)

i. Return the required number of signed submissions. (3-15-02)

ii. Acknowledge the receipt of an ~~addendum~~ **amendment**, but only if: ~~(3-15-02)~~()

(1) It is clear from the submission that the submitting vendor received the ~~addendum~~ **amendment** and intended to be bound by its terms; or ~~(3-15-02)~~()

(2) The ~~addendum~~ **amendment** involved had a negligible effect on price, quantity, quality or delivery. ~~(3-15-02)~~()

b. Mistakes Where Intended Submission is Evident. If the mistake and the intended submission are clearly evident on the face of the document, the submission shall be corrected to the intended submission and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the document are typographical errors, errors in extending unit prices (unit prices will always govern in event of conflict with extension), transposition errors and arithmetical errors. (3-15-02)

c. Mistakes Where Intended Submission is not Evident. A vendor may be permitted to withdraw a low bid if: (3-15-02)

i. A mistake is clearly evident on the face of the submission document but the intended submission is not similarly evident; or (3-15-02)

ii. The vendor submits timely proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made. (3-15-02)

04. Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract. (3-15-02)

05. Written Approval or Denial Required. In the event of a mistake discovered after the opening date, the administrator shall approve or deny, in writing, a request to correct or withdraw a submission. (3-15-02)

075. -- 080. (RESERVED)

081. EVALUATION AND AWARD. Any contract award shall comply with these provisions. (3-15-02)

01. General. The contract is to be awarded to the lowest responsible and responsive ~~bidder or~~ offeror. The solicitation shall set forth the requirements and criteria that will be used to make the lowest responsive and responsible determination. ~~No submission shall be evaluated for any requirements or criteria that are not disclosed in the solicitation.~~ (3-15-02)()

02. Standards of Responsibility. Nothing herein shall prevent the buyer from establishing additional responsibility standards for a particular purchase, ~~provided that these additional standards are set forth in the solicitation.~~ Factors to be considered in determining whether a vendor is responsible include whether the vendor has: (3-15-02)()

- a. Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements; (3-15-02)
- b. A satisfactory record of integrity; (3-15-02)
- c. Qualified legally to contract with the purchasing ~~activity~~ authority and qualified to do business in the state of Idaho; ~~(3-15-02)~~()
- d. Unreasonably failed to supply any necessary information in connection with the inquiry concerning responsibility; (3-15-02)
- e. Requisite ~~E~~xperience; or ~~(3-15-02)~~()
- f. A satisfactory prior performance record, if ~~any~~ applicable. ~~(3-15-02)~~()

03. Information Pertaining to Responsibility. A submitting vendor shall supply information requested by the buyer concerning its responsibility. If such submitting vendor fails to supply the requested information, the buyer shall base the determination of responsibility upon any available information or may find the submitting vendor nonresponsible if such failure is unreasonable. (3-15-02)

04. Written Determination of Nonresponsibility Required. If a submitting vendor that otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the buyer. (3-15-02)

05. Extension of Time for Acceptance. After opening, the buyer may request submitting vendors to extend the time during which their bids or proposals may be accepted, ~~provided that, with regard to bids, no other change is permitted.~~ The reasons for requesting such extension shall be documented. ~~(3-15-02)~~()

06. Partial Award. A buyer shall have the discretion to award on an all or nothing basis or to accept any portion of a bid response to a solicitation, excluding others portions of a response and other offerors, unless the bidder offeror stipulates all or nothing in its bid response to a solicitation. ~~(3-15-02)~~()

07. Only One Submission Received. If only one (1) responsive submission is received in response to a solicitation, an award may be made to the single submitting vendor. In addition, the buyer may pursue negotiations in accordance with applicable conditions and restrictions of these rules. Otherwise, the solicitation may be rejected and: (3-15-02)

- a. New bids or offers may be solicited; or (3-15-02)
- b. The proposed acquisition may be canceled. (3-15-02)

082. TIE BIDS RESPONSES.
The following provisions shall apply to tie bids as defined herein. ~~(3-15-02)~~

01. Tie Bids Responses -- Definition. Tie bids responses are low responsive bids, quotes, or proposals from responsible bidders offerors that are identical in price or score. A responsible offeror is determined based upon the standards of responsibility set forth in Section 081 of these rules. The ranking of offers on price or score shall be weighed as set forth in the solicitation. ~~(3-15-02)~~()

02. Award. Award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders offerors. In the discretion of the buyer, award shall be made in any permissible manner that will discourage resolve tie bids responses. Procedures that may be used to discourage tie bids responses include: ~~(3-15-02)~~()

- a. If price is considered excessive or for another reason, such bids responses are unsatisfactory, reject all bids responses, rebid and seek a more favorable contract in the open market or enter into negotiations pursuant to

Paragraph 084.01.d. of these rules;

(3-15-02)()

b. Award to an Idaho resident or an Idaho domiciled ~~bidder offeror~~ or for ~~an~~ Idaho produced ~~product property~~ where other tie ~~bid response(s)~~ are from out of state or to ~~a bidder an offeror~~ submitting ~~a~~ domestic ~~product property~~ where other tie ~~bid is response(s) are~~ for foreign (external to Idaho) manufactured or supplied property;

(3-15-02)()

c. Where identical low ~~bids responses~~ include the cost of delivery, award the contract to the ~~bidder offeror~~ farthest from the point of delivery;

(3-15-02)()

d. Award the contract to the ~~bidder offeror~~ who received the previous award and continue to award succeeding contracts to the same ~~bidder offeror~~ so long as all low ~~bids responses~~ are identical;

(3-15-02)()

e. Award to the ~~bidder offeror~~ with the earliest delivery date.

(3-15-02)()

03. **Drawing Lots.** If no permissible method will be effective in ~~discouraging resolving~~ tie ~~bids responses~~ and a written determination is made so stating, award may be made by drawing lots or tossing a coin in the presence of witnesses if there are only two (2) tie ~~bids responses~~.

(3-15-02)()

083. PROPOSAL DISCUSSION WITH INDIVIDUAL OFFERORS.

01. **Classifying Proposals.** For the purpose of conducting proposal discussions under this rule, proposals shall be initially classified as:

(3-15-02)

a. Acceptable;

(3-15-02)

b. Potentially acceptable, that is reasonably susceptible of being made acceptable; or

(3-15-02)

c. Unacceptable.

(3-15-02)

02. **“Offerors” Defined.** For the purposes of this rule, the term “offerors” includes only those ~~persons vendors~~ submitting proposals that are acceptable or potentially acceptable. The term shall not include ~~persons vendors~~ that submitted unacceptable proposals.

(3-15-02)()

03. **Purposes of Discussions.** Discussions are held to facilitate and encourage an adequate number of potential offerors to offer their best proposals, by amending their original offers, if needed.

(3-15-02)

04. **Conduct of Discussions.** The solicitation document must provide for the possibility of discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The buyer should establish procedures and schedules for conducting discussions. If during discussions there is a need for clarification or change of the request for proposals, it shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror’s price to another) and disclosure of any information derived from competing proposals are prohibited. Any oral clarification or change of a proposal shall be reduced to writing by the offeror.

(3-15-02)

05. **Best and Final Offer.** The buyer shall establish a common time and date for submission of best and final offers. Best and final offers shall be submitted only once unless the buyer makes a written determination before each subsequent round of best and final offers demonstrating another round is in the ~~purchasing agency state’s~~ interest, and additional discussions will be conducted or the ~~agency’s~~ requirements will be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

(3-15-02)()

084. NEGOTIATIONS.

In accordance with Section 67-5717(12), Idaho Code, the administrator may negotiate acquisitions as follows:

(3-15-02)

~~01. **Price Agreements.** The administrator may authorize and negotiate price agreements with vendors when such agreements are deemed appropriate. Price agreements shall provide for termination for any reason upon not more than thirty (30) days' written notice. Price agreements may be appropriate when:~~ (3-15-02)

- ~~a. The dollar value of items or transactions is relatively small; (3-15-02)~~
- ~~b. The property may not be conducive to standard competitive bidding procedures, such as automobile, truck or other equipment parts having individual low unit costs; (3-15-02)~~
- ~~c. There exists a need to establish multiple agreements with vendors supplying property that is similar in nature or function but is represented by different manufacturers or needed in multiple locations; or (3-15-02)~~
- ~~d. Non-exclusive agreements for periods not exceeding two (2) years are deemed necessary to establish consistent general business terms, including without limitation, price, use of catalogs, delivery or credit terms. (3-15-02)~~

021. After a Competitive Solicitation Use of Negotiations. Negotiations may be used under this rule when the administrator determines in writing that negotiations may be in the best interest of the state, ~~and that including but not limited to the following circumstances:~~ (3-15-02)()

- a. A competitive solicitation has been unsuccessful because, without limiting other possible reasons, all offers are unreasonable, noncompetitive or all offers exceed available funds and the available time and circumstances do not permit the delay required for resolicitation; (3-15-02)
- b. There has been inadequate competition; ~~or~~ (3-15-02)()
- c. During the evaluation process it is determined that more than one (1) vendor has submitted an acceptable proposal or bid and negotiations could secure advantageous terms or a reduced cost for the state; ~~or~~ (3-15-02)()
- d. During the evaluation process it is determined that all responsive offers exceed available funds and negotiations could modify the requirements of the solicitation to reduce the cost to available funds and avoid the expenditure of resources for a resolicitation.** ()

032. **Examples.** Examples of situations in which negotiations, ~~as permitted by Subsection 084.02.c. of this rule,~~ may be appropriate include but are not limited to: (3-15-02)()

- a. Ensuring that the offering vendor has a clear understanding of the scope of work required and the requirements that must be met; (3-15-02)
- b. Ensuring that the offering vendor will make available the required personnel and facilities to satisfactorily perform the contract; or (3-15-02)
- c. Agreeing to any clarifications regarding ~~scope of work~~ **specifications** or ~~other~~ contract terms. (3-15-02)()

043. **Conditions of Use.** Negotiations, as permitted by **Subsection Paragraph 084.021.c.** of this rule, are subject to the following: (3-15-02)()

- a. The solicitation must specifically allow for the possibility of negotiation and describe, with as much specificity as possible, how negotiations may be conducted; (3-15-02)
- b. Submissions shall be evaluated and ranked based on the evaluation criteria in the solicitation; (3-15-02)
- c. Only those vendors whose proposals or bids are determined to be acceptable, in accordance with criteria for negotiations set forth in the solicitation, shall be candidates for negotiations; (3-15-02)

d. Negotiations shall be conducted first with the vendor that is the apparent low responsive and responsible bidder; (3-15-02)

e. If one (1) or more responsive offers does not exceed available funds, ~~And~~ negotiations shall be against the requirements of and criteria contained in the solicitation and shall not materially alter those criteria; ~~or the specifications~~ ~~or scope of work;~~ ~~(3-15-02)~~ ()

f. Auction techniques (revealing one vendor's price to another) and disclosure of information derived from competing proposals is prohibited; (3-15-02)

g. Any clarifications or changes resulting from negotiations shall be documented in writing; (3-15-02)

h. If the parties to negotiations are unable to agree, the administrator shall formally terminate negotiations and may undertake negotiations with the next ranked vendor; and (3-15-02)

i. If negotiations as provided for in this rule fail to result in a contract, as determined by the administrator, the solicitation may be cancelled and the administrator may negotiate in the best interest of the state with any qualified vendor. (3-15-02)

054. Timing of Use. If conducted, negotiations are the last step in the procurement process. Use of oral interviews or best and final procedures, as provided for in a solicitation, must precede negotiations as provided for in this rule. (3-15-02)

085. PRICE AGREEMENTS.

The administrator may authorize and negotiate price agreements with vendors when such agreements are deemed in the best interest of the state. Price agreements shall provide for termination for any reason upon not more than thirty (30) days' written notice. Price agreements may be in the best interest of the state when: ()

01. Dollar Value. The dollar value of individual procurements of property is less than the maximum dollar value of an exempt small purchase under Section 044 of these rules and multiple individual procurements are anticipated within a state of Idaho fiscal year; ()

02. Property. The property may not be conducive to standard competitive bidding procedures; ()

03. Multiple Agreements. There exists a need to establish multiple agreements with vendors supplying property that is similar in nature or function but is represented by different manufacturers or needed in multiple locations; or ()

04. Non-exclusive Agreements. Non-exclusive agreements for periods not exceeding two (2) years are deemed necessary to establish consistent general business terms, including without limitation, price, use of catalogs, delivery or credit terms. ()

0856. -- 090. (RESERVED)

091. ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS.

Prior to the issuance of a ~~purchase order or~~ contract, the administrator shall have the right to accept or reject all or any part of a bid or proposal or any and all bids or proposals when: ~~(3-15-02)~~ ()

01. Best Interest. It is in the best interests of the state of Idaho; (3-15-02)

02. Does Not Meet Specifications. The submission does not meet the minimum specifications; (3-15-02)

03. Not Lowest Responsible Bid. The submission is not the lowest responsible submission; (3-15-02)

04. Bidder Is Not Responsible. A finding is made based upon available evidence that a submitting

vendor is not responsible or otherwise capable of currently meeting specifications or assurance of ability to fulfill contract performance; or (3-15-02)

05. Deviations. The item offered deviates to a major degree from the specifications, as determined by the administrator (minor deviations, as determined by the administrator, may be accepted as substantially meeting the requirements of the state of Idaho). Deviations will be considered major when such deviations appear to frustrate the competitive process or provides a submitting vendor an unfair advantage. (3-15-02)

092. CANCELLATION OF SOLICITATION.

Prior to the issuance of a ~~purchase order or~~ contract, the purchasing ~~activity~~ authority reserves the right to reject all bids, proposals, or ~~quotations~~ or to cancel a solicitation ~~or request for quotation~~. In the event of the cancellation of an invitation to bid or request for proposals, all submitting vendors will be notified. Examples of reasons for cancellation are: (3-15-02)()

- 01. Inadequate or Ambiguous Specifications.** (3-15-02)
- 02. Specifications Have Been Revised.** (3-15-02)
- 03. Cancellation Is in the Best Interest of the State.** (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

~~**102. TIME PURCHASE CONTRACTS.**~~

~~**01. Time Purchase for Personal Property.** A time purchase or installment contract, that may include interest charges over a period of time, may be entered into provided: (3-15-02)~~

~~**a.** Such contract is in the best interest of the agency. Installment payments should be used judiciously in order to achieve economy and not to avoid budgetary restraints. (3-15-02)~~

~~**b.** Using agencies shall be responsible for ensuring that all statutory or other applicable requirements are met and that all budgetary or other required approvals are obtained. (3-15-02)~~

~~**c.** Documentation of any required approval shall be submitted to the division with any required requisition. (3-15-02)~~

~~**d.** Provision for installment payments must be included in the solicitation. (3-15-02)~~

~~**02. Lack of Fund Contract Language Required.** An installment or time purchase contract shall include appropriate language stating that the agency is not obligated to make payments beyond the term of any particular appropriation of state or federal funds that may exist from time to time and that the contract may be terminated upon such without any penalty or future liability. (3-15-02)~~

~~**103.**~~ -- **110. (RESERVED)**

111. SPECIFICATIONS -- POLICIES AND DEVELOPMENT.

01. Purpose. Unless exempted by these rules or by the administrator, all solicitations ~~and requests for quotations~~ require specifications. Specifications set forth the characteristics of the property to be acquired. Specifications serve as the basis for obtaining property adequate and suitable for the using agency's needs in a cost effective manner, taking into account the costs of ownership and operation as well as initial acquisition costs. Specifications shall be drafted clearly to describe the agency's needs and to enable the vendors to determine and understand the agency's requirements. Specifications shall, as much as practical, be nonrestrictive to provide an equal basis for participation by an optimum number of vendors and to encourage competition. This information may be in the form of a description of the physical, functional or performance characteristics, a reference brand name or both. It

may include a description of any required inspection, testing or preparation or delivery. Specifications may be incorporated by reference or contained in an attachment. ~~(3-15-02)~~()

02. Use of Functional or Performance Descriptions. Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the agency. To facilitate the use of such criteria, using agencies shall endeavor to include as a part of purchase requisitions their principal functional or performance needs. (3-15-02)

03. Preference for Commercially Available Products. Requirements shall be satisfied by standard commercial products whenever practicable. (3-15-02)

04. Brand Name or Equal Specification. (3-15-02)

a. A brand name or equal specifications may be used when the buyer determines that such a specification is in the agency's best interest. (3-15-02)

b. A brand name or equal specification shall seek to designate as many different brands as are practicable as "or equal" and shall state that products substantially equivalent to those designated will be considered for award. (3-15-02)

c. Unless the buyer authorized to finally approve specifications determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design and functional or performance characteristics required. (3-15-02)

d. Where a brand name or equal specification is used, the document shall contain explanatory language that the use of a brand name is for the purpose of designating the standard of quality, performance, and characteristics desired and is not intended to restrict competition. (3-15-02)

05. Brand Name Specification. (3-15-02)

a. Since use of a brand name specification is restrictive, such a specification may only be used when the administrator or designee makes a written determination. Such determination may be in any form, such as a purchase evaluation or a statement of single manufacturer justification. The written statement must state specific reasons for use of the brand name specification. (3-15-02)

b. The administrator shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one (1) source can supply the requirement, the acquisition shall be made under Section 67-5720, ~~of the~~ Idaho Code. ~~(3-15-02)~~()

06. Specification of Alternates May Be Included. A specification may provide alternate descriptions of property where two (2) or more design, functional or performance criteria will satisfactorily meet the agency's requirements. (3-15-02)

112. CONTRACT TERMS - POLICIES AND LIMITATIONS.

01. Prohibited Terms. Purchasing authorities do not have the authority to bind the state of Idaho or an agency to the following terms. If a contract contains such a term, the term shall be void pursuant to Section 67-5725, Idaho Code. ()

a. Terms waiving the sovereign immunity of the state of Idaho. ()

b. Terms subjecting the state of Idaho or its agencies to the jurisdiction of the courts of other states. ()

c. Terms limiting the time in which the state of Idaho or its agencies may bring a legal claim under the

contract to a period shorter than that provided in Idaho law. ()

d. Terms imposing a payment obligation, including a rate of interest for late payments, less favorable than the obligations set forth in Section 67-2302, Idaho Code. ()

02. Terms Requiring Special Consideration. ()

a. Unless specifically authorized by the Idaho legislature, terms requiring an agency or the state of Idaho indemnify a vendor shall be subject to the provisions of Section 59-1015, Idaho Code, and require an appropriation by the Idaho legislature. Indemnification terms not specifically authorized by the Idaho legislature or subject to appropriation shall be void pursuant to Section 67-5725, Idaho Code, and Section 59-1016, Idaho Code. ()

b. Purchasing authorities shall consult with legal counsel prior to accepting terms submitting the contract to arbitration or waiving the state of Idaho's right to a jury trial. ()

113. -- 124. (RESERVED)

125. CONTRACT ADMINISTRATION.

01. General. Agencies shall assign an individual contract manager for each service contract that meets or exceeds the sealed procedure limit established by Subsection 040.01 of these rules. A contract manager shall be the individual selected by the agency to administer the contract on behalf of the agency, including monitoring compliance with the contract terms and serving as the primary agency contact with the division for the procurement. All contract managers shall complete a training program approved by the administrator. ()

02. Contract Renewals and Extensions. Unless approved by the administrator or specified in the contract, a contract renewal or extension may not be executed more than six (6) months prior to the expiration of the contract. ()

03. High Dollar Service Contracts. ()

a. Project Management. Contract performance for high dollar service contracts shall be managed by a project manager engaged by the requisitioning agency. Project managers shall, at a minimum, be certified as a project management professional (PMP) through the Project Management Institute, other project management certification institution accepted by the administrator, or have demonstrated prior performance in the execution of projects similar in scope and complexity accepted by the administrator. If the project manager is not an agency employee, the engagement of a project manager shall comply with these rules. ()

b. Project Oversight Board. The requisitioning agency shall establish an oversight board for management of the contract. The oversight board's duties shall include monitoring the project manager, review of the reports of third party project monitors, and review of reporting provided to the division. The oversight board shall include no less than two (2) experts in the subject matter of the contract without a potential conflict of interest. For the purposes of this subsection, experts in the subject matter of the contract with a potential conflict of interest include individuals: ()

i. With a direct reporting relationship to any other individual providing supervision or management of the contract, other than the senior official of the agency; or ()

ii. Who are interested in the contract. An interest in the contract includes ownership in or employment by the company performing the contract of the individual or a spouse, parent, spouse's parent or a child of the individual. ()

c. Training. The project manager for a high dollar service contract shall complete a training program approved by the administrator. ()

d. Reporting. The project manager for a high dollar service contract shall ensure the division's buyer

designated to administer the contract receives the reports, best practice checklists, and other information on the schedule set forth in the project administration agreement executed pursuant to Section 041 of these rules. ()

e. Third Party Project Monitoring. High dollar service contracts shall be monitored by an independent third party subject matter expert overseen by the project oversight board. The engagement of a third party subject matter expert shall comply with these rules. ()

~~1426~~. -- 999. (RESERVED)