

PURCHASING LAWS
INTERIM COMMITTEE

Notes on Draft Legislation to
Recodify the State Purchasing Laws

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Draft Summary

Draft ELB020 repeals the current purchasing laws and creates the State Procurement Act at Chapter 92, Title 67, Idaho Code. The new act incorporates language from the current purchasing laws; however, some of the language has been revised for purposes of clarity and modernization. Additionally, the draft updates other sections of the Idaho Code to provide correct references to the new act. This draft does not include substantive changes to the purchasing laws.

Draft Section 1

This language repeals the following sections of the Idaho Code:

- 67-5714 – Creates the Division of Purchasing
- 67-5715 – Legislative purpose of the purchasing laws
- 67-5716 – Definitions
- 67-5717 – Powers/duties of the administrator
- 67-5718 – Requisitions for property, bidding, and award of contract
- 67-5718A – Multiple award contracts
- 67-5719 – Supplies on hand, inventories
- 67-5720 – Open market (noncompetitive) and emergency acquisitions
- 67-5721 – Nonowned property

Notes

- Section 1 ends with the repeal of 67-5721 because 67-5722 is being amended, not repealed. The amended 67-5722 will remain in Chapter 57.
- Each repealed section has an equivalent section in the new Chapter 92.

Draft Section 2

This language repeals the following sections of the Idaho Code:

- 67-5723 – Discounts
- 67-5724 – Contracts with federal government
- 67-5724A – Acquisitions under federal supply schedule contracts
- 67-5725 – Preservation of records
- 67-5726 – Prohibitions
- 67-5727 – Maintenance of stocks
- 67-5727A – Group discount purchasing
- 67-5728 – Purchasing by institutions of higher education
- 67-5729 – Application of the Administrative Procedure Act
- 67-5730 – Disqualification of vendors
- 67-5732 – Rulemaking

Notes

- Section 2 ends with the repeal of 67-5732 because the next two sections of code, 67-5732A and 67-5732B, will remain in Chapter 57.
- Most of the repealed sections have equivalent sections in the new Chapter 92.
- 67-5727 (maintenance of stocks) is being repealed without being reenacted in the new Chapter 92. This language is obsolete per the Division of Purchasing.
- 67-5732 (rulemaking) is being repealed without being reenacted. The rulemaking language will be incorporated in the section on powers and duties of the administrator.

Draft Section 3

This language repeals the following sections of the Idaho Code:

- 67-5733 – Appeals
- 67-5734 – Penalties
- 67-5735 – Payment of contractors
- 67-5736 – Acceptance of property

Notes

- Section 3 ends with the repeal of 67-5736 because the next section on severability will remain in Chapter 57. The new Chapter 92 will also have a severability section.
- Each repealed section has an equivalent section in the new Chapter 92.

Equivalent Sections

<i>Current</i>	<i>Draft</i>
67-5714 (creates DOP)	67-9204
67-5715 (purpose)	67-9202
67-5716 (definitions)	67-9203
67-5717 (powers/duties)	67-9205
67-5718 (requisitions, bids, contracts)	67-9206 (solicitations) 67-9207 (bids) 67-9208 (award of contract)
67-5718A (multiple awards)	67-9209
67-5719 (inventories)	67-9217
67-5720 (noncompetitive purchases)	67-9218
67-5721 (nonowned property)	67-9219
67-5723 (discounts)	67-9223
67-5724 (contracts with feds)	67-9224
67-5724A (fed supply schedule)	67-9225
67-5725 (preservation of records, written	67-9210 (contracts shall be in writing)

contracts, void contracts)	67-9211 (void contracts) 67-9213 (preservation/disclosure of records)
67-5726 (prohibitions)	67-9227
67-5727 (maintenance of stocks)	None – obsolete language
67-5727A (group discount purchasing)	67-9221
67-5728 (higher ed purchasing)	67-9222
67-5729 (APA application)	67-9226
67-5730 (disqualifying vendors)	67-9215
67-5732 (rulemaking)	None – incorporated in 67-9205
67-5733 (appeals)	67-9229
67-5734 (penalties)	67-9228
67-5735 (payment)	67-9216
67-5736 (acceptance of property)	67-9212

Note

- 67-5722 is not being repealed; however, some of its language is being moved to a new section, 67-9220.

Draft Section 4

This language creates the new State Procurement Act, located at Chapter 92, Title 67, Idaho Code. Chapter 92 will consist of Sections 67-9201 through 67-9230, Idaho Code.

General Provisions

- 67-9201 – Short title
- 67-9202 – Declaration of policy
- 67-9203 – Definitions
- 67-9204 – Creates Division of Purchasing and the administrator
- 67-9205 – Powers and duties of the administrator

The Procurement Process – Solicitations, Bids, and Contracts

- 67-9206 – Solicitations
- 67-9207 – Bids
- 67-9208 – Award of contract
- 67-9209 – Multiple awards
- 67-9210 – Contracts shall be in writing
- 67-9211 – Void contracts
- 67-9212 – Acceptance of property
- 67-9213 – Preservation and disclosure of records
- 67-9214 – Open contracts

- 67-9215 – Disqualification of vendors
- 67-9216 – Payment of contractors

Miscellaneous Provisions

- 67-9217 – Inventories
- 67-9218 – Noncompetitive procurements
- 67-9219 – Nonowned property
- 67-9220 – Exchange of state property
- 67-9221 – Group discount purchasing
- 67-9222 – Procurement by institutions of higher education
- 67-9223 – Discounts
- 67-9224 – Contracts with federal government
- 67-9225 – Federal supply schedule contracts

Procedures and Penalties

- 67-9226 – Application of Administrative Procedure Act
- 67-9227 – Prohibitions
- 67-9228 – Penalties
- 67-9229 – Appeals

Severability

- 67-9230

Draft Sections 5-16, 19-20

This language updates references in the Idaho Code to the new State Procurement Act. Sections affected:

- 18-1359
- 33-125B
- 33-2503
- 33-3406
- 33-5402
- 33-5504
- 39-130
- 54-2013
- 54-2013
- 60-103
- 67-455A
- 67-5711C

- 67-5711D
- 67-7451
- 74-511

Draft Sections 17 and 18

This language amends two sections from the purchasing laws, 67-5722 and 67-5737, that will remain in Chapter 57.

Notes on the Proposed
State Procurement Act
(Chapter 92, Title 67, Idaho Code)

Section 67-9201

Equivalent Section: None

67-9201. SHORT TITLE.¹ This chapter shall be known and may be cited as the "State Procurement² Act."

¹ Short title provided to allow for easy reference to the act in code, rule, and elsewhere.

² "Procurement" is more commonly used than "purchasing" nationally, and it's a broader term, encompassing lease and rent as well as purchase. DOP suggests using the term "procure" in code.

Section 67-9202

Equivalent Section: 67-5715

Draft

67-9202. DECLARATION OF POLICY. The Idaho legislature, recognizing that an offered low price is not always indicative of the greatest value, declares it to be the policy of the state:

- (1) To engage in open, competitive acquisitions of property;
and
- (2) To maximize the value received by the state with attendant benefits to the citizens.

Current

67-5715. PURPOSE OF ACT.³ The Idaho legislature, recognizing that an offered low price is not always indicative of the greatest value, declares it to be the policy of the state⁴ to expect open competitive bids⁵ in acquisitions of property, and to maximize competition⁶, and maximize the value received by the government of the⁷ state with attendant benefits to the citizens.

³ This language is a declaration of policy, not a statement of purpose. The draft caption has been revised to reflect this.

⁴ Subsections inserted to improve readability.

⁵ The practice of the state is to seek and promote competition, not merely to expect it. This language has been revised to reflect the active role of the state.

⁶ Deleted for redundancy.

⁷ Deleted for redundancy.

Section 67-9203

Equivalent Section: 67-5716

Draft

67-9203. DEFINITIONS. As used in this chapter:

(1) "Acquisition" means the process of procuring property.

(2) "Administrator" means the administrator of the division of purchasing as created by section 67-9204, Idaho Code.⁸

(3) "Agency" means all officers, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding:

(a) The legislative and judicial branches of government;

(b) The governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general and superintendent of public instruction; and

(c) A state institution of higher education that complies with the provisions of section 67-9222, Idaho Code.

(4) "Bid" means a written offer to perform a contract to sell or otherwise supply property in response to a solicitation.

(5) "Bidder" means a vendor who has submitted a bid on property to be acquired by the state.

(6) "Contract" means an agreement for the acquisition of property, including a purchase order.⁹

(7) "Contractor" means a vendor who has been awarded a contract.

(8) "Director" means the director of the department of administration as created by section 67-5701, Idaho Code.¹⁰

(9) "Lowest responsible bidder" means the responsible bidder whose bid reflects the lowest acquisition price to be paid by the state, except that when specifications are valued or comparative performance evaluations 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.

(10) "Open contract" means a contract awarded by the state through the division of purchasing to one (1) or more vendors who have agreed to allow all agencies to procure specified property under the terms and conditions set forth in the contract.

(11) "Procure" means to obtain property for state use in a manner other than by gift, including, but nonexclusively,

⁸ New definition in the draft to allow for easy reference to the administrator.

⁹ New definition in the draft provided for clarity; "contract" is used but isn't defined in the current purchasing laws.

¹⁰ New definition in the draft to allow for easy reference to the director.

purchase, lease or rent.¹¹

(12) "Property" means goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights or interests in such property.

(13) "Sole source" means the only vendor from whom specific property is available to procure.¹²

(14) "Solicitation" means an invitation to bid, a request for proposal or a request for quote issued pursuant to this chapter for the purpose of procuring property.¹³

(15) "Specifications" means the standards or requirements for property to be procured as explicitly stated in a solicitation or contract.¹⁴

(16) "Vendor" means a person or entity capable of supplying property to the state.

Current

67-5716. DEFINITIONS. (1) Acquisition. The process of procuring or purchasing¹⁵ property by the state of Idaho¹⁶.

(2) Agency. All officers, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding¹⁷ 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, and, as provided in section [67-5728](#), Idaho Code, excluding Lewis-Clark State College, Idaho State University, Boise State University and Eastern Idaho Technical College.

(3) Bid. A written offer to perform a contract to purchase¹⁸ or supply property or services¹⁹ in response to an invitation for bid or request for proposal²⁰.

¹¹ Revised definition in the draft to reflect modern usage of "procure."

¹² New definition in the draft provided for clarity; "sole source" is used but isn't defined in the current purchasing laws.

¹³ New definition in the draft provided for clarity; "solicitation" is used but isn't defined in the current purchasing laws.

¹⁴ New definition in the draft provided for clarity; "specifications" is used but isn't defined in the current purchasing laws.

¹⁵ Removed "or purchasing" in the draft since purchasing is included in the new definition of "procure."

¹⁶ Removed in draft; superfluous language.

¹⁷ In the draft, the exempt officers, branches, and entities are listed in paragraphs (a), (b), and (c) to improve readability.

¹⁸ Changed from "purchase" to "sell" to avoid confusion – the bidder isn't the one who's purchasing.

¹⁹ Removed in draft; "services" are included in the definition of "property."

²⁰ Revised to "solicitation" in the draft.

(4) Bidder. A vendor who has submitted a bid on a specific item or items of²¹ property to be acquired by the state.

(5) Component²². An item of property normally assembled 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 of differing operational or productive capabilities.

(6) Contractor. A bidder²³ who has been awarded an acquisition²⁴ contract.

(7) Equipment²⁵. Items of personal property that have a normal useful life expectancy of two (2) or more years.

(8) Goods²⁶. Items of personal property, not qualifying as equipment, parts or supplies.

(9) Lowest responsible bidder. The responsible bidder whose bid 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.

(10) Open contract. A contract awarded by the state of Idaho²⁷ through the division of purchasing to one (1) or more vendors who have agreed to allow all agencies to procure or purchase²⁸ specified property under the terms and conditions set forth in the contract.

(11) Parts²⁹. Items of personal property acquired for repair or replacement of unserviceable existing items.

(12) Postconsumer waste³⁰. A finished material which would normally be disposed of as a solid waste, having completed its life cycle as a consumer item.

(13) Procurement³¹. Obtaining property for state use by lease, rent or any manner other than by purchase or gift.

(14) 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.

²¹ Removed in draft; superfluous language.

²² Definition removed in draft; term not used in code.

²³ Changed to "vendor" in the draft.

²⁴ Removed in draft; superfluous language.

²⁵ Definition removed in draft; term not used in code.

²⁶ Definition removed in draft; term not used in code.

²⁷ Removed in draft; superfluous language.

²⁸ Removed in draft; see new definition of "procure," which includes purchasing.

²⁹ Definition removed in draft; term not used in code.

³⁰ Definition removed in draft; term not used in code.

³¹ See revised definition of "procure" in draft.

(15) **Recyclable**³². Materials that still have useful physical, chemical or biological properties after serving their original purposes and can, therefore, be reasonably reused or recycled for the same or other purposes.

(16) **Recycled-content product**³³. A product containing postconsumer waste and/or secondary waste as defined in this section.

(17) **Secondary waste**³⁴. Fragments of products or finished products of a manufacturing process, which has converted a virgin resource into a commodity of real economic value and may include a postconsumer waste.

(18) **Services**³⁵. Personal services, in excess of personnel regularly employed for whatever duration and/or covered by personnel system standards, for which bidding is not prohibited or made impractical by statute, rules or generally accepted ethical practices.

(19) **Supplies**³⁶. Items of personal property having an expendable quality or during their normal use are consumed and which require or suggest acquisition in bulk.

(20) Vendor. A person or entity capable of supplying property to the state.

³² Definition removed in draft; term not used in code.

³³ Definition removed in draft; term not used in code.

³⁴ Definition removed in draft; term not used in code.

³⁵ Definition removed in draft; term not used in code.

³⁶ Definition removed in draft; term not used in code.

Section 67-9204

Equivalent Section: 67-5714

Draft

67-9204. DIVISION OF PURCHASING -- ADMINISTRATOR. (1)³⁷
There is hereby created within the department of administration the division of purchasing. The director shall appoint an administrator for the division, subject to the approval of the governor.

(2) The administrator shall be exempt from the provisions of the state merit system.

(3) The administrator may employ additional personnel as may be necessary.

(4) The administrator may enter contracts for professional services or assistance when necessary or desirable.

Current

67-5714. DIVISION OF PURCHASING. There is hereby created within the department of administration the division of purchasing. The director of the department of administration shall appoint an administrator for the division of purchasing, subject to the approval of the governor. The administrator shall be exempt from the provisions of the state merit system. The administrator of the division may employ additional personnel as may be necessary, and may contract for professional services or assistance when necessary or desirable.

³⁷ The caption is revised in the draft to signal that the statute includes language regarding the administrator. Subsections have also been inserted in the draft to improve readability.

Section 67-9205

Equivalent Section: 67-5717

Draft

67-9205. POWERS AND DUTIES OF THE ADMINISTRATOR. The administrator of the division of purchasing:

(1) Shall acquire all property for state agencies according to the provisions of this chapter;

(2) Shall acquire all property by competitive solicitation, except as otherwise provided;

(3) Shall determine, based on the specifications and matters relating to responsibility, the lowest responsible bidder in all competitive solicitations;

(4) Shall enter into contracts and any modifications thereto for the acquisition of property on behalf of and in the name of state agencies;

(5) Shall, when economically feasible and practical, consolidate solicitations and acquire property in amounts as large as can be efficiently managed and controlled;

(6) May, in the evaluation of paper product bids, give those items that meet the recycled content standards as specified by the administrator a five percent (5%) purchasing preference. As such, those qualifying paper products may be considered to cost five percent (5%) less when choosing the lowest responsible bidder;

(7) May appoint a deputy, who shall have the power to act for the administrator and in the administrator's place while absent, which deputy shall be bonded to the state of Idaho as prescribed by chapter 8, title 59, Idaho Code;

(8) May require from any contractor the submission of a performance bond for such sum as will, in the opinion of the administrator, guarantee the faithful performance of such contract, and the amount and requirement therefor shall be set out in the specifications;

(9) May enter into open contracts based on actual or estimated requirements;

(10) May enter into contracts, including leases and rentals, for periods of time exceeding one (1) year, provided that such contracts contain no penalty to or restriction upon the state in the event cancellation is necessitated by a lack of funding for any such contract;

(11) Is authorized and empowered to formulate rules, subject to the approval of the director, to effect the provisions of this chapter³⁸;

³⁸ This subsection combines the rulemaking language of 67-5717(11) and 67-5732.

(12) May enter into negotiations for acquisitions in accordance with established rules of the division;

(13) May inspect property supplied by a contractor to determine whether it meets specifications;

(14) May classify, after review with the various agencies, the requirements of the state for all property that may be acquired, and may adopt standards of quality for property, and may establish specifications for acquisition. Each specification shall, until revised or rescinded, apply alike in terms and effect to each future acquisition of the classified property;

(15) May delegate authority to an employee of the division or to an employee of an agency;³⁹ and

(16) May carry out such acts as are necessary to enforce the provisions of this chapter.⁴⁰

Current

67-5717. POWERS AND DUTIES OF THE ADMINISTRATOR OF THE DIVISION OF PURCHASING. The administrator of the division of purchasing:

(1) Shall acquire, according to the provisions of this chapter, all property for state agencies;

(2) Shall acquire all property, unless excepted, by competitive bid⁴¹, and shall specifically require competitive bids for property to be rented, leased or purchased through a deferred payment plan⁴²;

(3) Shall determine, based upon the requirements contained in⁴³ the specification and matter relating to responsibility, the lowest responsible bidder in all competitively bid acquisition contracts⁴⁴;

(4) Shall enter into all contracts and agreements, and any modifications thereto, for the acquisition of any and all property on behalf of and in the name of the state⁴⁵;

(5) Shall, when economically feasible and practical, consolidate requisitions⁴⁶ and acquire property in amounts as large as can be efficiently managed and controlled;

(6) May, in the evaluation of paper product bids, give those items that meet the recycled content standards as

³⁹ This subsection, new in the draft, makes explicit the administrator's power to delegate authority.

⁴⁰ This subsection, new in the draft, explicitly grants the administrator the authority necessary to carry out the provisions of the act. It replaces language that's currently found elsewhere in the purchasing laws.

⁴¹ Changed to "solicitation" in the draft. The state solicits; vendors bid.

⁴² Removed in the draft; superfluous language.

⁴³ Removed for brevity in draft.

⁴⁴ Changed to "competitive solicitations" in the draft.

⁴⁵ Changed to "state agencies" in the draft to avoid confusion with exempt officers and agencies.

⁴⁶ Changed to "solicitations" in the draft.

specified by the administrator a five percent (5%) purchasing preference. As such, those qualifying paper products may be considered to cost five percent (5%) less when choosing the lowest responsible bidder;

(7) May appoint a deputy, who shall have power to act for him and in his⁴⁷ place while absent, which deputy shall be bonded to the state of Idaho as prescribed by [chapter 8, title 59](#), Idaho Code;

(8) May require from any contractor the submission of a performance bond for such sum as will, in the opinion of the administrator, guarantee the faithful performance of such contract, and the amount and requirement therefor shall be set out in the specifications;

(9) May enter into open contracts for the acquisition of property commonly used by the various agencies⁴⁸, based upon actual or estimated requirements;

Unless an acquiring agency can show a substantial difference between the required capabilities and the capabilities provided by such property available on open contract, all agencies must utilize such property available on such contracts and failure to comply with this provision will subject the officers responsible for the acquisition to the penalties set forth in this chapter;⁴⁹

(10) May enter into contracts, including leases and rentals, for periods of time exceeding one (1) year provided that such contracts contain no penalty to or restriction upon the state in the event cancellation is necessitated by a lack of financing⁵⁰ for any such contract or contracts;

(11) Is authorized and empowered to formulate rules in the conduct of purchasing, subject to the approval of the director of the department of administration;

(12) In accordance with established rules of the division, may enter into negotiations for acquisitions;

(13) May inspect property delivered⁵¹ by a contractor to determine whether it meets minimum bid specifications;

(14) May classify, after review with the various agencies, the requirements of the state for all property which may be acquired and adopt standards of quality for property, and establish standard specifications for acquisition. Each standard specification shall, until revised or rescinded, apply alike in

⁴⁷ Changed to gender-neutral language in the draft.

⁴⁸ Removed in the draft for brevity.

⁴⁹ This language has been moved to its own section in the draft, 67-9214, as it relates to a duty of state agencies, not to a duty of the administrator.

⁵⁰ Changed to "funding" in the draft.

⁵¹ "Delivered" is changed to "supplied" in the draft.

terms and effect to each future acquisition of the classified property.

Section 67-9206

Equivalent Section: 67-5718(1) and (2)

Draft

67-9206. SOLICITATIONS.⁵² (1) The administrator shall not make or cause to be made any acquisition until a requisition for the property to be acquired has been submitted to the administrator's office by the requisitioning agency. The requisition shall certify to the administrator's satisfaction that there are sufficient funds or balance in appropriations out of which the amount of the requisition may lawfully be paid, except as provided in section 67-9218(3), Idaho Code⁵³.

(2) Upon determining that an agency's requisition complies with the provisions of subsection (1) of this section, the administrator shall issue a solicitation.⁵⁴ Notice shall be posted of the solicitation in a conspicuous manner as prescribed by rule⁵⁵. The notice shall describe the property to be acquired in sufficient detail to apprise a vendor of the exact nature of the property being sought and shall set forth the bid closing⁵⁶ date, time and location.

(3) The administrator may establish by rule exceptions to the notice provisions in subsection (2) of this section; provided however, that the procurements excepted from the notice provisions must be minor in nature.⁵⁷

Current

67-5718. REQUISITIONS FOR PROPERTY -- NOTICE -- FORM -- GUARANTEE -- PROCEDURE FOR BIDDING. (1) The administrator of the division of purchasing shall not make or cause to be made any acquisition until a requisition for the property to be acquired has been submitted to his office by the requisitioning agency, certifying to the satisfaction of the administrator that there are proper funds or sufficient balance in appropriations out of

⁵² The draft breaks up the current Section 67-5718 into three separate sections to improve readability. The first section is on solicitations, the second is on bids, and the third is on contracts.

⁵³ The draft includes a direct reference to the emergency procurements statute, rather than the general language found in the current statute.

⁵⁴ This new language is included to directly spell out the solicitation/bidding/contracting process as recommended by OPE.

⁵⁵ This revised language allows notice procedures to be adopted in rule, so the statute doesn't have to change every time technology is upgraded.

⁵⁶ The current statute says "opening." This change is made at the recommendation of DOP. The bid closing date is the deadline to submit bids.

⁵⁷ Some procurements are so small that they're exempt from formal bidding requirements. This new language clarifies that in statute.

which the amount of the requisition may lawfully be paid, except as provided to the contrary under provisions of this chapter allowing emergency purchases.

(2) Notice shall be posted of all acquisitions of property, unless otherwise excepted by rules of the division. The notice may be posted electronically. The administrator shall also cause all invitations to bid and requests for proposals to be posted manually in a conspicuous place in the office. The notice shall describe the property to be acquired in sufficient detail to apprise a bidder of the exact nature or functionality of the property required; and shall set forth the bid opening date, time and location.

Section 67-9207

Equivalent Section: 67-5718(3) and (4)

Draft

67-9207. BIDS. (1) In response to a solicitation issued pursuant to section 67-9206, Idaho Code, a vendor seeking to supply the property solicited shall submit a bid in a manner prescribed by rule.⁵⁸

(2) To enhance small business bidding opportunities, the administrator shall seek a minimum of three (3) bids from vendors having a significant Idaho economic presence as defined in section 67-2349, Idaho Code.

(3) All bids received shall be opened at the time and place specified in the solicitation. The bids shall be opened in public view⁵⁹, and a record of each bid shall then and there be made. The administrator shall have the right to reject any and all bids pursuant to rules established for the division.

Current

(3) To enhance small business bidding opportunities, the administrator shall seek a minimum of three (3) bids from vendors having a significant Idaho economic presence as defined in section [67-2349](#), Idaho Code.

(4) All sealed⁶⁰ bids received shall be opened at the time and place specified, and in the public view, and a record of each bid shall then and there be made. Contracts shall be awarded to and orders placed with the lowest responsible bidder on the basis of initial proposals received or, if applicable, following receipt and evaluation of best and final offers or negotiations.⁶¹ The administrator shall have the right to reject any and all bids pursuant to rules established for the division.

⁵⁸ New language to expressly outline the solicitation/bidding/contracting process as recommended by OPE.

⁵⁹ Does this reflect modern practice? Are electronic bids “opened in public view?”

⁶⁰ Removed “sealed” in the draft, as it isn’t defined or clarified in code.

⁶¹ This language is moved to the section on contracts.

Section 67-9208

Equivalent Section: 67-5718(4) and (5)

Draft

67-9208. AWARD OF CONTRACT. (1) The administrator shall award contracts to, and place orders for property with, the lowest responsible bidder. Qualifications for responsibility shall be prescribed by rule.⁶²

(2) Where both the bids and quality of property offered are the same, preference shall be given to property of local and domestic production and manufacture or from bidders having a significant Idaho economic presence as defined in section 67-2349, Idaho Code. In connection with the award of any contract for the placement of any order for state printing, binding, engraving or stationery work, the provisions of sections 60-101 and 60-103, Idaho Code, shall apply to the extent that the same may be inconsistent with any requirements contained in this section.

Current

(4) All sealed bids received shall be opened at the time and place specified, and in the public view, and a record of each bid shall then and there be made. Contracts shall be awarded to and orders placed with the lowest responsible bidder on the basis of initial proposals received or, if applicable, following receipt and evaluation of best and final offers or negotiations. The administrator shall have the right to reject any and all bids pursuant to rules established for the division.

(5) Where both the bids and quality of property offered are the same, preference shall be given to property of local and domestic production and manufacture or from bidders having a significant Idaho economic presence as defined in the Idaho Code. In connection with the award of any contract for the placement of any order for state printing, binding, engraving or stationery work, the provisions of sections [60-101](#) and [60-103](#), Idaho Code, shall apply to the extent that the same may be inconsistent with any requirements contained in this section.

⁶² “Responsibility” and “lowest responsible bidder” are mentioned frequently in the current code, but the qualifications for responsibility are never expressly discussed. This new language requires some clarification in rule.

Section 67-9209

Equivalent Section: 67-5718A

Draft

67-9209. MULTIPLE AWARDS. (1) Notwithstanding any provision of this chapter to the contrary, the administrator may make an award of a contract to two (2) or more bidders to furnish the same or similar property **when**⁶³ more than one (1) contractor is necessary:

(a) To furnish the types of property and quantities required by state agencies;

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

(c) To enable state agencies to acquire property that is compatible with property previously acquired.

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

(3) **When** a contract for property has been awarded to two (2) or more bidders in accordance with this section, a state agency shall make procurements from the contractor whose terms and conditions regarding price, availability, support services and delivery are most advantageous to the agency.

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

Current

67-5718A. ACQUISITION OF PROPERTY BY CONTRACT -- AWARD TO MORE THAN ONE BIDDER -- STANDARDS FOR MULTIPLE AWARDS -- APPROVAL BY ADMINISTRATOR. (1) Notwithstanding any provision of this chapter to the contrary, the administrator of the division of purchasing may make an award of a contract to two (2) or more bidders to furnish the same or similar property where more than one (1) contractor is necessary:

(a) To furnish the types of property and quantities required by state agencies;

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

⁶³ The current statute says "where."

(c) To enable state agencies to acquire property which is compatible with property previously acquired.

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

(3) Where a contract for property has been awarded to two (2) or more bidders in accordance with this section, a state agency shall make purchases from the contractor whose terms and conditions regarding price, availability, support services and delivery are most advantageous to the agency.

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

Section 67-9210

Equivalent Section: 67-5725 (second paragraph)

Draft

67-9210. CONTRACTS SHALL BE IN WRITING. Every contract made by the administrator on behalf of the state shall be in writing and shall be signed manually or electronically by the contracting parties. Every contract shall be filed in the office of the administrator, together with all bids, specifications, and other documents and records associated with the acquisition or intended acquisition.

Current

67-5725. PRESERVATION OF RECORDS -- WRITTEN CONTRACTS -- VOID CONTRACTS. The administrator shall preserve all records of bids and acquisitions in his office, and information with respect thereto, in such form as he shall prescribe for a period of three (3) years after the date of final action, or for a period of time as may be proscribed by the record retention guideline schedule approved by the director of the department of administration. The records shall be subject to disclosure according to [chapter 1, title 74](#), Idaho Code. Notwithstanding the foregoing, when an invitation to bid or a request for proposals is canceled prior to award of a purchase order or contract, the administrator shall immediately return all bids or proposals to the submitting vendor and those bids or proposals shall not be subject to disclosure under [chapter 1, title 74](#), Idaho Code.

Every contract made by the administrator in behalf of the state shall be reduced to writing and signed by the contracting parties with their names at the end thereof and filed in the office of the administrator, together with all bids, specifications, and all other documents and records associated with the acquisition or intended acquisition.⁶⁴

All contracts or agreements made in violation of the provisions of this chapter shall be void and any sum of money advanced by the state of Idaho in consideration of any such contract or agreement shall be repaid forthwith. In the event of refusal or delay when repayment is demanded by the proper officer of the state of Idaho, under whose authority such contract or agreement shall have been made or entered into, every person so refusing or delaying, together with his surety

⁶⁴ This is the language that appears in Section 67-9210, but it's revised to reflect modern practice, such as electronic signatures.

or sureties, shall be forthwith prosecuted at law for the recovery of such sum of money so advanced.

Section 67-9211

Equivalent Section: 67-5725 (third paragraph)

Draft

67-9211. VOID CONTRACTS. (1) All contracts made in violation of the provisions of this chapter shall be void. Any sum of money advanced by the state in consideration of a void contract shall be repaid forthwith.

(2) In the event of a refusal or delay when repayment is demanded by the proper officer of the state of Idaho, under whose authority such contract shall have been made or entered into, every person so refusing or delaying, together with his surety or sureties, shall be prosecuted⁶⁵ at law for the recovery of such sum of money so advanced.

Current

67-5725. PRESERVATION OF RECORDS -- WRITTEN CONTRACTS -- VOID CONTRACTS. The administrator shall preserve all records of bids and acquisitions in his office, and information with respect thereto, in such form as he shall prescribe for a period of three (3) years after the date of final action, or for a period of time as may be proscribed by the record retention guideline schedule approved by the director of the department of administration. The records shall be subject to disclosure according to [chapter 1, title 74](#), Idaho Code. Notwithstanding the foregoing, when an invitation to bid or a request for proposals is canceled prior to award of a purchase order or contract, the administrator shall immediately return all bids or proposals to the submitting vendor and those bids or proposals shall not be subject to disclosure under [chapter 1, title 74](#), Idaho Code.

Every contract made by the administrator in behalf of the state shall be reduced to writing and signed by the contracting parties with their names at the end thereof and filed in the office of the administrator, together with all bids, specifications, and all other documents and records associated with the acquisition or intended acquisition.

All contracts or agreements⁶⁶ made in violation of the provisions of this chapter shall be void and any sum of money advanced by the state of Idaho in consideration of any such

⁶⁵ Neither the current statute nor the draft clarifies how or by whom the prosecution shall occur, or even if the intent is for there to be a criminal prosecution. In its most general sense, "prosecute" can mean to pursue any legal claim, including a civil claim.

⁶⁶ "Agreements" removed from draft for redundancy.

contract or agreement shall be repaid forthwith. In the event of refusal or delay when repayment is demanded by the proper officer of the state of Idaho, under whose authority such contract or agreement shall have been made or entered into, every person so refusing or delaying, together with his surety or sureties, shall be forthwith prosecuted at law for the recovery of such sum of money so advanced.⁶⁷

⁶⁷ This is the language that appears in Section 67-9211 in the draft.

Section 67-9212

Equivalent Section: 67-5736

Draft

67-9212. ACCEPTANCE OF PROPERTY. No property to be acquired by an agency shall be accepted by the agency unless the property meets the specifications set forth in the solicitation or contract.

Current

67-5736. ACCEPTANCE. No property to be acquired by an agency shall be accepted by the acquiring⁶⁸ agency which does not meet the minimum bid specifications.⁶⁹

⁶⁸ Deleted in draft; superfluous.

⁶⁹ Revised because the specifications are in the solicitation or the contract, not the bid.

Section 67-9213

Equivalent Section: 67-5725 (first paragraph)

Draft

67-9213. PRESERVATION AND DISCLOSURE OF RECORDS -- EXCEPTION. (1) The administrator shall preserve all records relating to solicitations in his office, and information with respect thereto, in such form as the administrator shall prescribe by rule, for a period of three (3) years after the date of final action, or for a period of time as may be prescribed by a record retention guideline schedule approved by the director. Records preserved under the provisions of this section shall be subject to disclosure according to chapter 1, title 74, Idaho Code.

(2) If a solicitation is canceled prior to award of a contract, the administrator shall immediately return all bids to the submitting vendors or delete bids that were received electronically. Bids returned or deleted pursuant to this subsection shall not be subject to disclosure under chapter 1, title 74, Idaho Code.

Current

67-5725. PRESERVATION OF RECORDS -- WRITTEN CONTRACTS -- VOID CONTRACTS. The administrator shall preserve all records of bids and acquisitions in his office, and information with respect thereto, in such form as he shall prescribe for a period of three (3) years after the date of final action, or for a period of time as may be proscribed⁷⁰ by the record retention guideline schedule approved by the director of the department of administration. The records shall be subject to disclosure according to [chapter 1, title 74](#), Idaho Code. Notwithstanding the foregoing, when an invitation to bid or a request for proposals is canceled prior to award of a purchase order or contract, the administrator shall immediately return all bids or proposals to the submitting vendor and those bids or proposals shall not be subject to disclosure under [chapter 1, title 74](#), Idaho Code.⁷¹

Every contract made by the administrator in behalf of the state shall be reduced to writing and signed by the contracting parties with their names at the end thereof and filed in the office of the administrator, together with all bids,

⁷⁰ This should be "prescribed." The error is in the current code.

⁷¹ This is the language that appears in Section 67-9213 in the draft, with minor revisions and subsections included for readability.

specifications, and all other documents and records associated with the acquisition or intended acquisition.

All contracts or agreements made in violation of the provisions of this chapter shall be void and any sum of money advanced by the state of Idaho in consideration of any such contract or agreement shall be repaid forthwith. In the event of refusal or delay when repayment is demanded by the proper officer of the state of Idaho, under whose authority such contract or agreement shall have been made or entered into, every person so refusing or delaying, together with his surety or sureties, shall be forthwith prosecuted at law for the recovery of such sum of money so advanced.

Section 67-9214

Equivalent Section: 67-5717(9)

Draft

67-9214. **OPEN CONTRACTS.**⁷² (1) If property is available on an open contract, then all agencies seeking to procure such property must do so from the open contract. Provided however, that if there is a **substantial difference in quality or sufficiency**⁷³ between the property available on the open contract and property available elsewhere, the **administrator**⁷⁴ may, at his discretion, grant an exemption to a requesting agency.

(2) Any person who fails to comply with this section shall be subject to penalties pursuant to sections 67-9227(5) and 67-9228(3), Idaho Code.

Current

(9) May enter into open contracts for the acquisition of property commonly used by the various agencies, based upon actual or estimated requirements;

Unless an acquiring agency can show a substantial difference between the required capabilities and the capabilities provided by such property available on open contract, all agencies must utilize such property available on such contracts and failure to comply with this provision will subject the officers responsible for the acquisition to the penalties set forth in this chapter;

⁷² The draft creates a section for open contracts, rather than burying the open contracts language in the section on powers and duties of the administrator.

⁷³ The “substantial difference/required capabilities” language currently in code is somewhat confusing. This is an attempt to clarify it.

⁷⁴ The current statute is silent as to who can permit an agency to purchase in the market rather than from an open contract. This clarifies that the administrator is the one who can grant an exemption.

Section 67-9215

Equivalent Section: 67-5730

Draft

67-9215. DISQUALIFICATION OF VENDORS. (1) A disqualified vendor may not submit a bid.

(2) A vendor may be disqualified by the administrator⁷⁵ for any of the following reasons:

(a) Failure to perform according to the terms of any contract;

(b) Attempts by whatever means to cause specifications to be drawn so as to favor a specific vendor;

(c) Use of the provisions of this chapter to obstruct or unreasonably delay acquisitions by the state;

(d) Perjury in a vendor disqualification hearing;

(e) Knowing violation of the provisions of this chapter; or

(f) Debarment, suspension or ineligibility from federal contracting of the vendor, its principals or affiliates.

(3) A vendor shall be notified by registered mail within ten (10) days of the vendor's disqualification by the administrator. The vendor may, within thirty (30) days of the receipt of such notice, request a hearing, which shall be held in accordance with chapter 52, title 67, Idaho Code.

(4) In lieu of disqualification, the determinations officer at a hearing conducted pursuant to subsection (3) of this section may recommend to the director specific conditions to the vendor's continued participation in acquisitions by the state.

(5) Disqualification or conditions may be imposed for a period of not less than six (6) months or not more than five (5) years.

(6) For purposes of this section, "obstruction" means a lack of success in more than fifty percent (50%) of the specification challenges made in each of three (3) different acquisitions during any twenty-four (24) month period.

Current

67-5730. QUALIFICATION OF VENDORS -- DISQUALIFICATION OF VENDORS -- NOTICE -- APPEALS. (1) No vendor shall be allowed to submit a bid unless such vendor is qualified. All vendors are qualified unless disqualified.⁷⁶

⁷⁵ The current statute is silent as to who can disqualify vendors. This clarifies that the administrator is the one who can disqualify.

⁷⁶ Removed from draft; unnecessary language.

(2) Vendors may be disqualified for any of the following reasons:

(a) Failure to perform according to the terms of any agreement;

(b) Attempts by whatever means to cause acquisition specifications to be drawn so as to favor a specific vendor;

(c) Use of the provisions of this chapter to obstruct or unreasonably delay acquisitions by the state. **Obstruction is hereby defined as a lack of success in more than fifty percent (50%) of the specification challenges made in each of three (3) different acquisitions during any twenty-four (24) month period;**⁷⁷

(d) Perjury in a vendor disqualification hearing;

(e) To knowingly violate the provisions of this chapter; or

(f) Debarment, suspension or ineligibility from federal contracting of the vendor, its principals or affiliates.

(3) A vendor shall be notified by registered mail within ten (10) days of disqualification and may, within thirty (30) days of the receipt of such notice, request of the director of the department of administration a hearing before a determinations officer. Any hearings shall be held in accordance with [chapter 52, title 67](#), Idaho Code.

(4) In lieu of disqualification, the determinations officer may recommend to the director of the department of administration specific conditions to the vendor's continued participation in acquisitions by the state.

(5) Disqualification or conditions may be imposed for a period of not less than six (6) months or not more than five (5) years.

⁷⁷ This language appears in subsection (6) in the draft to improve readability.

Section 67-9216

Equivalent Section: 67-5735

Draft

67-9216. PAYMENT OF CONTRACTORS. (1)⁷⁸ Within ten (10) days after the property acquired is delivered as called for by the specifications, the acquiring agency shall complete all processing required of that agency to permit the contractor to be paid according to the terms of the contract.

(2) Within ten (10) days of receipt of the documents necessary to permit payment of the contractor according to the terms of the contract, the state controller shall cause a warrant to be issued in favor of the contractor and delivered.

(3) Contracts let or entered into by or through the division of purchasing are exempt from the provisions of section 67-2302, Idaho Code; provided however, that late contract payments may be assessed interest by the contractor at the rate set forth in section 63-3045, Idaho Code, unless another rate is established by the contract.

Current

67-5735. PROCESSING -- REIMBURSEMENT⁷⁹ OF CONTRACTOR. Within ten (10) days after the property acquired is delivered as called for by the bid specifications, the acquiring agency shall complete all processing required of that agency to permit the contractor to be reimbursed according to the terms of the bid⁸⁰. Within ten (10) days of receipt of the documents necessary to permit reimbursement of the contractor according to the terms of the contract, the state controller shall cause a warrant to be issued in favor of the contractor and delivered. Contracts let or entered into by or through the division of purchasing are exempt from the provisions of section [67-2302](#), Idaho Code; provided, however, that late contract payments may be assessed interest by the vendor at the rate set forth in section [63-3045](#), Idaho Code, unless another rate is established by contract.

⁷⁸ Subsections inserted to improve readability.

⁷⁹ Changed to "payment" in the draft.

⁸⁰ "Contract" in draft. It's the contract that sets out the terms of payment, not the bid.

Section 67-9217

Equivalent Section: 67-5719

Draft

67-9217. **INVENTORIES.**⁸¹ Every agency shall submit to the administrator, at such times as the administrator may require, a written statement containing full information as to all property then in the agency's possession and the estimated requirements of the agency for such period as the administrator may designate. Further, the administrator may, at any time, inspect or cause to be inspected and inventoried all such property in any agency, and it shall be the duty of each officer and employee thereof to assist and furnish to the administrator full information for purposes of such examination or investigation.

Current

67-5719. STATEMENT OF SUPPLIES ON HAND -- ESTIMATED REQUIREMENTS -- INSPECTIONS AND INVENTORIES. Every agency shall submit to the administrator, at such times as he may require, a written statement containing full information as to all property then **in such agency**⁸² and the estimated requirements of such agency for such period as the administrator may designate. Further, the administrator may, at any time, inspect or cause to be inspected and inventoried all such property in any agency and it shall be the duty of each officer and employee thereof to assist and furnish to the administrator full information for purposes of such examination or investigation.

⁸¹ Caption simplified in the draft.

⁸² Changed to "in the agency's possession" in the draft.

Section 67-9218

Equivalent Section: 67-5720

Draft

67-9218. **NONCOMPETITIVE AND EMERGENCY PROCUREMENTS.**⁸³ (1) The administrator may allow noncompetitive procurements when:

- (a) A particular savings to the state may be obtained through the use of educational discounts, reverse public auctions, or acquisition of federal surplus or excess property;
- (b) The property is available only from a sole source;
- (c) Immediate delivery of the property is required by public exigencies, and the administrator has declared that an emergency exists; or
- (d) Other circumstances justify a noncompetitive procurement in the opinion of the director and the administrator.

(2) Prior to procuring property from a sole source, the administrator shall post notice of a sole source procurement, unless the property is required for a life-threatening situation or a situation that is immediately detrimental to the public welfare or property. The notice shall be posted in a conspicuous manner as prescribed by rule.

(3) When the administrator has declared an emergency, payment vouchers may be issued on behalf of an agency without sufficient funds to make an emergency procurement. A payment voucher shall include a statement of justification for the emergency procurement.⁸⁴

Current

67-5720. ACQUISITION IN OPEN MARKET -- EMERGENCY PURCHASES. (1) The administrator may allow:

- (a) The purchase of property in the open market, provided such items are not available from the maintenance of stocks authorized by section [67-5727](#), Idaho Code,⁸⁵ where the administrator finds that a particular savings to the state may be had through the use of educational discounts, acquisition of federal surplus or excess property, reverse

⁸³ This section is about noncompetitive procurements and when they're allowed. The caption is changed in the draft to more clearly reflect that.

⁸⁴ The current statute is vague on the matter of payment vouchers. This attempts to provide some clarification. See draft Section 67-9206(1).

⁸⁵ This language is removed in the draft, as Section 67-5727 is obsolete and is being repealed without being reenacted elsewhere.

public auctions, where there is only one (1) vendor for the property to be acquired⁸⁶ or under other circumstances approved by the director of the department of administration⁸⁷.

(b) The purchase of property by open purchase when immediate delivery of property is required by the public exigencies and the administrator of the division of purchasing has declared that an emergency exists, but at all times such purchases shall be made under the direction of the administrator.

(2) When there is only one (1) vendor for the property to be acquired, unless the property is required for a life-threatening situation or a situation that is immediately detrimental to the public welfare or property, notice of a sole source procurement shall be published. The notice may be electronic.⁸⁸ Payment vouchers for emergency acquisitions must contain upon their faces the justification for such purchases.

⁸⁶ Changed to “sole source” in the draft, since “sole source” is now a defined term.

⁸⁷ Changed in the draft to “other circumstances justify a noncompetitive procurement in the opinion of the director and the administrator.” Current language doesn’t require justification, only approval; however, since the policy of the state is that the procurement process should be competitive, the implication is that there should be justification.

⁸⁸ The draft clarifies that notice requirements will be prescribed by rule.

Section 67-9219

Equivalent Section: 67-5721

Draft

67-9219. **NONOWNED PROPERTY.**⁸⁹ (1) Bids submitted for the acquisition of any property, the terms of payment for which are other than those of a procurement with attendant passage of title, shall be prepared on a basis that will allow the state full unlimited use, except for those periods required by the owner of such property for normal maintenance, without incurring additional costs to the state beyond those included in the bid price submitted.

(2) Any exercise by the state of an option to acquire previously nonowned property, or any other procedure that shall serve to pass title to the state where no passage of title existed before, shall be deemed to be a new acquisition and, prior to execution, all applicable provisions and procedures of this chapter shall be exercised.

Current

67-5721. ACQUISITION OF NONOWNED PROPERTY -- OPTIONS TO ACQUIRE -- DETERMINATION OF OPTION COSTS. Bids submitted for the acquisition of any property, the terms of payment for which are other than those of a purchase with attendant passage of title, shall be prepared on a basis which will allow the state full unlimited use, except for those periods required by the owner of such property for normal maintenance, without incurring additional costs to the state beyond those included in the bid price submitted.

Any exercise of an option to acquire, or any other procedure which shall serve to pass title to the state where no passage of title existed before, shall be deemed to be a new acquisition and prior to execution all applicable provisions and procedures of this chapter shall be exercised.

⁸⁹ This section applies to property that is *procured* but not *owned* by the state – for example, property that the state is renting. It’s an example of how “procure” is a broader term than “purchase.”

Section 67-9220

Equivalent Section: 67-5722

Draft

67-9220. EXCHANGE OF STATE PROPERTY. (1) Whenever an agency owns property no longer economical to use, the administrator may dispose of such property by exchanging the same in part payment for new property, as provided for in this section. The administrator shall include in the solicitation a full description of the property to be exchanged as part payment and shall permit vendors to examine the same. The contract shall be awarded on the basis of net cost to the state after allowance for the property to be exchanged in part payment. In addition, the administrator may permit an exchange of property in part payment for new property acquisitions from contracts for the same or similar property.

(2) Exchange of property pursuant to this section will be permitted only when it is determined by the administrator that all other methods of disposal of the property sought to be exchanged will yield less value⁹⁰ to the state.

Current

67-5722. SALE, TRADE-IN OR EXCHANGE OF STATE PERSONAL PROPERTY. Whenever any agency owns any property no longer economical to use, the administrator of the division of purchasing may dispose of such property by exchanging the same in part payment for new property, as provided for in this section. The administrator of the division of purchasing shall include in his request for bids a full description of the property to be exchanged as part payment and shall permit vendors to examine the same, and the contract shall be awarded on the basis of net cost to the state after allowance for the property to be exchanged in part payment. In addition, the administrator of the division of purchasing may permit an exchange of property in part payment for new property acquisitions from contracts for the same or similar property.

Exchange of property will be permitted only when it is determined by the administrator of the division of purchasing that all other methods of disposal of the property sought to be exchanged will yield a lesser monetary return to the state.

In accordance with the internal management policies, guidelines or instructions of the board of examiners, the head

⁹⁰ In the current statute, the language here is "lesser monetary return." Changed to "value" in draft to reflect that not all value is necessarily monetary.

of any agency may declare as surplus any item of personal property.⁹¹

⁹¹ This language, which doesn't relate to procurement or the DOP, will remain in Chapter 57. See Section 17 of the draft bill.

Section 67-9221

Equivalent Section: 67-5727A

Draft

67-9221. GROUP DISCOUNT PURCHASING. (1) The administrator may authorize an agency to become a participating member of a group discount purchasing organization if the administrator finds that:

- (a) The property to be acquired is at least equal in quality to same or similar property that the agency uses;
- (b) The property to be acquired is less costly to the state than if acquired by other means authorized in this chapter;
- (c) The state's participation in the organization is formalized by a written contract that extends for no longer than one (1) year at a time; and
- (d) The state's entrance fee, or participation fee, in the organization is based on criteria applied to all other members of the organization.

(2) Any contract entered pursuant to this section shall be maintained on file with the division, as well as with the agency entering into the contract.

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

Current

67-5727A. PARTICIPATION IN GROUP DISCOUNT PURCHASING. (1) In addition to other means of procuring stocks of commonly used items, the division administrator may authorize an agency to become a participating member of a group discount purchasing organization, if the administrator finds that:

- (a) The items to be acquired are at least equal in quality to similar items or the same items⁹² that the agency uses;
- (b) The items to be acquired are less costly to the state than if acquired by other means authorized in this chapter;
- (c) The state's participation in the organization is formalized by a written contract that extends for no longer than one (1) year at a time; and

⁹² Changed to "same or similar property" in the draft, since "property," not "items," is the term used consistently throughout the chapter.

(d) The state's entrance fee, or participation fee, in the organization is based on criteria applied to all other members of the organization, **provides no ownership rights⁹³**.

(2) Any contract entered into under the provisions of this section shall be maintained on file with the division, as well as with the agency entering into the contract.

(3) Items acquired shall be used solely by state departments and agencies and may not be transferred from state ownership until useful life is extinguished and may not be provided to individuals except those in the custody of the state or to those receiving direct personal services from the state.

⁹³ This language is unclear and has been removed from the draft.

Section 67-9222

Equivalent Section: 67-5728

Draft

67-9222. PROCUREMENT BY STATE INSTITUTIONS OF HIGHER EDUCATION. (1) For purposes of this section, "state institution of higher education" means Boise State University, Eastern Idaho Technical College, Idaho State University or Lewis-Clark State College.

(2) A state institution of higher education may establish policies and procedures for procuring property that shall be substantially consistent with the requirements for procuring property as set forth in this chapter and that shall be approved by the state board of education. When the state board of education has approved such policies and procedures for a state institution of higher education, the institution shall not be subject to the provisions of this chapter, except as provided in subsection (3) of this section.

(3) When the state enters into an open contract, no state institution of higher education that has established policies and procedures pursuant to subsection (2) of this section shall fail to use⁹⁴ such contract without justifiable cause as determined by the state board of education⁹⁵.

Current

67-5728. PROCURING AND PURCHASING BY STATE INSTITUTION OF HIGHER EDUCATION. (1) For the purposes of this section, "state institution of higher education" means Lewis-Clark State College, Idaho State University, Boise State University and Eastern Idaho Technical College.

(2) Any state institution of higher education may establish policies and procedures for procuring and purchasing property that shall be substantially consistent with the requirements for procuring and purchasing property as set forth in this chapter and that shall be approved by the state board of education. When the state board of education has approved such policies and procedures for a state institution of higher education, such institution shall not be subject to the provisions of this chapter, except as provided in subsection (3) of this section.

⁹⁴ Current statute says "utilize," but "use" is the correct term.

⁹⁵ The current statute doesn't say who determines whether there's justifiable cause. The draft clarifies that the SBOE makes the determination.

(3) When the state enters into an open contract, no state institution of higher education that has established policies and procedures pursuant to subsection (2) of this section shall fail to utilize such contract without justifiable cause for such action, pursuant to the provisions of subsection (4) of section [67-5726](#), Idaho Code.

Section 67-9223

Equivalent Section: 67-5723

Draft

67-9223. DISCOUNTS. (1) Whenever an employee of an agency is charged with the responsibility of procuring property for and on behalf of the state, the employee shall, if possible, negotiate discounts normally given in the ordinary course of business, including, but not limited to, discounts for prompt payment and discounts for bulk acquisitions.

(2) It shall be the duty of the administrator to prescribe by rule the manner by which to obtain discounts.

Current

67-5723. DISCOUNTS -- NEGOTIATIONS FOR REQUIRED RULES, REGULATIONS AND PROCEDURES. Whenever any employee of an agency is charged with the responsibility of acquiring property for and in behalf of the state, he shall, whenever and wherever possible, negotiate discounts normally given in the ordinary course of business, including, but not limited to, discounts for prompt payment and discounts for bulk acquisitions.

It shall be the duty of the administrator to prescribe by rules and regulations⁹⁶ the manner by which to obtain such discounts, and to do whatever is necessary to implement such rules and regulations⁹⁷.

⁹⁶ Deleted in draft; "regulations" are generally federal, not state.

⁹⁷ Similar language now appears in the "powers and duties" section, 67-9205(16), rather than here.

Section 67-9224

Equivalent Section: 67-5724

Draft

67-9224. CONTRACTS WITH FEDERAL GOVERNMENT EXEMPT FROM CERTAIN PROVISIONS. The administrator, on behalf of any agency, and the comparable purchasing officers of the several political subdivisions, municipal corporations and public agencies of the state on behalf of such political subdivisions, municipal corporations and public agencies, within the limits of available appropriations and requisitions made for acquisition thereof, may enter into any contract with the United States of America, or with any agency thereof, or with any agency established for disposition or distribution of surplus federal properties within this state, for the acquisition of any property, real or personal, without regard to provisions of law that require:

- (1)⁹⁸ The posting of notices;
- (2) Public advertising;
- (3) Inviting or receiving competitive bids; or
- (4) Delivery of property acquired before payment in any case in which delivery may be constructively accomplished without manual possession.

Current

67-5724. CONTRACTS WITH FEDERAL GOVERNMENT OR ITS AGENCIES EXEMPT FROM CERTAIN PROVISIONS. The administrator of the division of purchasing, on behalf of any agency, and the comparable purchasing officers of the several political subdivisions, municipal corporations and public agencies of the state on behalf of such political subdivisions, municipal corporations and public agencies, within the limits of available appropriations and requisitions made for acquisition thereof, may enter into any contract with the United States of America, or with any agency thereof, or with any agency established for disposition or distribution of surplus federal properties within this state, for the acquisition of any property, real or personal, without regard to provisions of law which require either (1) the posting of notices, (2) public advertising, (3) inviting or receiving of competitive bids, or (4) delivery of property acquired before payment, in any case where delivery may be constructively accomplished without manual possession.

⁹⁸ Aside from a few minor grammatical changes (such as “that” instead of “which”), the draft language is identical to the current statute. Subsections have been inserted for readability.

Section 67-9225

Equivalent Section: 67-5724A

Draft

67-9225. ACQUISITION OF PROPERTY -- GENERAL SERVICES ADMINISTRATION FEDERAL SUPPLY SCHEDULE CONTRACTS. Notwithstanding any provision in this chapter to the contrary, the administrator may, instead of soliciting bids, contract for property at a price equal to or less than the contractor's current federal supply contract price for sales to the general services administration of the United States without the use of competitive bids, so long as the contractor has indicated a willingness in writing to extend such contractor pricing, terms and conditions to the administrator, and the administrator considers the price to be advantageous to the state.

Current

67-5724A. ACQUISITION OF PROPERTY -- GENERAL SERVICES ADMINISTRATION FEDERAL SUPPLY SCHEDULE CONTRACTS. Notwithstanding any provision in this chapter to the contrary, the administrator of the division of purchasing may, instead of soliciting bids, contract for **services or**⁹⁹ property at a price equal to or less than the contractor's current federal supply contract price for sales to the general services administration of the United States without the use of competitive bids so long as the contractor has indicated a willingness in writing to extend such contractor pricing, terms and conditions to the administrator and the administrator considers the price to be advantageous to the state.

⁹⁹ This language is deleted in the draft, since services are included in the definition of "property." Otherwise, the draft statute is essentially identical to the current statute.

Section 67-9226

Equivalent Section: 67-5729

Draft

67-9226. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (1) All rules of the division of purchasing shall be adopted in accordance with the provisions of chapter 52, title 67, Idaho Code. Only appeals conducted as contested cases pursuant to section 67-9229(1)(c)(iii), Idaho Code, shall be subject to the judicial review provisions of chapter 52, title 67, Idaho Code. This section shall not impair any contract right or contract remedy that may exist between the state and a properly licensed contractor or vendor.

(2) A determinations officer appointed by the director pursuant to the provisions of this chapter¹⁰⁰ may subpoena witnesses and evidence and administer oaths.

(3) In the event that a determinations officer is appointed pursuant to the provisions of section 67-9229, Idaho Code, any vendor who has submitted a bid in the process under review shall, notwithstanding any other disability, have standing to intervene in the proceeding as a party, and such intervenor may participate in the purchase appeal or appeal from any final order entered in a contested case conducted under section 67-9229(1)(c)(iii), Idaho Code.

Current

67-5729. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. All rules of the division of purchasing shall be adopted in accordance with the provisions of [chapter 52, title 67](#), Idaho Code. Only appeals conducted as contested cases pursuant to section [67-5733](#)(1)(c)(iii), Idaho Code, shall be subject to the judicial review provisions of [chapter 52, title 67](#), Idaho Code. This section shall not impair any contract right or contract remedy which may exist between the state and a properly licensed contractor or vendor.

The determinations officer provided in this chapter may subpoena witnesses and evidence and administer oaths.

In the event that a determinations officer is appointed pursuant to the provisions of section [67-5733](#), Idaho Code, any vendor who has submitted a bid in the process under review shall, notwithstanding any other disability, have standing to intervene in the proceeding as a party and such intervenor may

¹⁰⁰ The code references have been changed and the language regarding the determinations officer has been slightly revised; otherwise, the draft statute is essentially identical to the current statute.

participate in the purchase appeal or appeal from any final order entered in a contested case conducted under section [67-5733](#)(1)(c)(iii), Idaho Code.

Section 67-9227

Equivalent Section: 67-5726

Draft

67-9227. PROHIBITIONS. (1) No contract or any interest therein shall be transferred by the contractor to whom such contract is given to any other party without approval in writing by the administrator. Transfer of a contract without approval shall cause the annulment of the contract so transferred, at the option of the state. All rights of action, however, for any breach of such contract by the contracting parties are reserved to the state.

(2) No member of the legislature or any officer or employee of any branch of the state government shall directly, himself, or by any other person in trust for him or for his use or benefit or on his account, undertake, execute, hold or enjoy, in whole or in part, any contract made or entered into by or on behalf of the state of Idaho, if made by, through, or on behalf of the department in which he is an officer or employee; or if made by, through or on behalf of any other department unless the same is made after competitive bids.

(3) Except as provided in this chapter, no officer or employee shall influence or attempt to influence the award of a contract to a particular vendor, or to deprive or attempt to deprive any vendor of a contract.

(4) No officer or employee shall conspire with a vendor or its agent, and no vendor or its agent shall conspire with an officer or employee, to influence or attempt to influence the award of a contract, or to deprive or attempt to deprive a vendor of a contract.

(5) No officer or employee shall fail to use an open contract except as provided in this chapter.

(6) No officer or employee shall accept property knowing that the property does not meet specifications or other acceptance criteria set forth in the contract.

(7) Deprivation, influence or attempts thereat shall not include written reports, based upon substantial evidence, sent to the administrator concerning matters relating to the responsibility of vendors.

(8) No vendor or related party, or subsidiary, or affiliate of a vendor may submit a bid to obtain a contract to provide property to the state, if the vendor or related party, or affiliate or subsidiary was paid for services used in preparing the specifications or if the services influenced the procurement process.

Current

67-5726. PROHIBITIONS. (1) No contract or order¹⁰¹ or any interest therein shall be transferred by the contractor or vendor¹⁰² to whom such contract or order is given to any other party, without the approval in writing of the administrator. Transfer of a contract without approval shall cause the annulment of the contract so transferred, at the option of the state. All rights of action, however, for any breach of such contract by the contracting parties are reserved to the state. No member of the legislature or any officer or employee of any branch of the state government shall directly, himself, or by any other person in trust for him or for his use or benefit or on his account, undertake, execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the state of Idaho, if made by, through, or on behalf of the department in which he is an officer or employee; or if made by, through or on behalf of any other department unless the same is made after competitive bids.¹⁰³

(2) Except as provided by section 67-5718¹⁰⁴, Idaho Code, no officer or employee shall influence or attempt to influence the award of a contract to a particular vendor, or to deprive or attempt to deprive any vendor of an acquisition contract.

(3) No officer or employee shall conspire with a vendor or its agent, and no vendor or its agent shall conspire with an officer or employee, to influence or attempt to influence the award of a contract, or to deprive or attempt to deprive a vendor of an acquisition award.

(4) No officer or employee shall fail to utilize an open contract without justifiable cause for such action¹⁰⁵. No officer or employee shall accept property which he knows does not meet specifications or substantially meet the original performance test¹⁰⁶ results.¹⁰⁷

(5) Deprivation, influence or attempts thereat shall not include written reports, based upon substantial evidence, sent to the administrator of the division of purchasing concerning matters relating to the responsibility of vendors.

¹⁰¹ Deleted in the draft; purchase orders are specifically included in the definition of contract.

¹⁰² Deleted in the draft; superfluous language.

¹⁰³ This language is moved to the new subsection (2) in the draft.

¹⁰⁴ Changed in the draft to "in this chapter," as Section 67-5718 has been divided into three new sections.

¹⁰⁵ Changed in the draft to "except as provided in this chapter." Only the section on colleges/universities allows for justifiable cause – the standard for agencies is different – so the justifiable cause language in the existing statute could be confusing.

¹⁰⁶ Performance test results aren't really discussed elsewhere, so the draft changes this to "other acceptance criteria set forth in the contract."

¹⁰⁷ This language is moved to the new subsection (6) in the draft.

(6) No vendor or related party, or subsidiary, or affiliate of a vendor may submit a bid to obtain a contract to provide property to the state, if the vendor or related party, or affiliate or subsidiary was paid for services utilized in preparing the bid specifications or if the services influenced the procurement process.

Section 67-9228

Equivalent Section: 67-5734

Draft

67-9228. PENALTIES. (1) Any person convicted of a violation of subsection (1), (2), (3) or (8) of section 67-9227¹⁰⁸, Idaho Code, shall be guilty of a misdemeanor.

(2) Any person convicted of a violation of subsection (4) of section 67-9227, Idaho Code, shall be guilty of a felony.

(3) Any officer or employee found to have violated the provisions of subsection (5) or (6) of section 67-9227, Idaho Code, may, by order of a determinations officer appointed by the director, be suspended without pay for not more than ninety (90) working days, have a reprimand entered in his personnel file, or both.

Current

67-5734. PENALTIES. (1) Any person convicted of a violation of subsection (1), (2), or (6) of section [67-5726](#), Idaho Code, shall be guilty of a misdemeanor.

(2) Any person convicted of a violation of subsection (3) of section [67-5726](#), Idaho Code, shall be guilty of a felony.

(3) Any officer or employee found to have violated the provisions of subsection (4) of section [67-5726](#), Idaho Code, may, by order of the determinations officer, be suspended without pay for not more than ninety (90) working days, have a reprimand entered in his personnel file, or both.

¹⁰⁸ The references to the prohibitions statute have been updated to reflect the changes in the draft; otherwise, this language is virtually identical to the current statute.

Section 67-9229

Equivalent Section: 67-5733

Draft

67-9229. APPEALS.¹⁰⁹

(1)(a) There shall be, beginning with the day of receipt of notice, a period of not more than ten (10) working days in which any vendor, qualified and able to sell or supply the items to be acquired, may notify in writing the administrator of his intention to challenge the specifications and shall specifically state the exact nature of his challenge. The specific challenge shall describe the location of the challenged portion or clause in the specification document, unless the challenge concerns an omission, explain why any provision should be struck, added or altered, and contain suggested corrections.

Upon receipt of the challenge, the administrator shall either deny the challenge, and such denial shall be considered the final agency decision, or he shall present the matter to the director for appointment of a determinations officer. If the director appoints a determinations officer, then all vendors, who are invited to bid on the property sought to be acquired, shall be notified of the appeal and the appointment of a determinations officer and may indicate in writing their agreement or disagreement with the challenge within five (5) days. The notice to the vendors may be electronic. Any vendor may note his agreement or disagreement with the challenge. The determinations officer may, on his own motion, refer the challenge portion and any related portions of the challenge to the author of the specification to be rewritten with the advice and comments of the vendors capable of supplying the property, rewrite the specification himself and/or reject all or any part of any challenge. If specifications are to be rewritten, the matter shall be continued until the determinations officer makes a final determination of the acceptability of the revised specifications.

The administrator shall reset the bid opening no later than fifteen (15) days after final determination of challenges or the amendment of the specifications. If the administrator denies the challenge, then the bid opening date shall not be reset.

The final decision of the determinations officer or administrator on the challenge to specifications shall not be considered a contested case within the meaning of the administrative procedure act; provided that a vendor disagreeing with specifications may include such disagreement as a reason

¹⁰⁹ This statute hasn't been revised except to include updated code references.

for asking for appointment of a determinations officer pursuant to section 67-9229(1)(c), Idaho Code.

(b) There shall be, beginning with the day following receipt of notice of rejection, a period of five (5) working days in which a bidder whose bid was found nonresponsive may appeal such decision to the director of the department of administration. A nonresponsive bid, within the meaning of this chapter, is a bid which does not comply with the bid invitation and specifications and shall not apply to a vendor whose bid is considered but who is determined not to be the lowest responsible bidder as defined in this chapter. The director shall:

- (i) Deny the application; or
- (ii) Appoint a determinations officer to review the record and submit a recommended order to the director to affirm or reverse the administrator's decision of bid nonresponsiveness.

The director shall, upon receipt of a written recommendation from the determinations officer, sustain, modify or reverse the administrator's nonresponsive bid decision. An appeal conducted under the provisions of this subsection shall not be considered a contested case and shall not be subject to judicial review under the provisions of chapter 52, title 67, Idaho Code.

(c) A vendor whose bid is considered may, within five (5) working days following receipt of notice that he is not the lowest responsible bidder, apply to the director for appointment of a determinations officer. The application shall set forth in specific terms the reasons why the administrator's decision is thought to be erroneous. Upon receipt of the application, the director shall within three (3) working days:

- (i) Deny the application, and such denial shall be considered the final agency decision; or
- (ii) Appoint a determinations officer to review the record to determine whether the administrator's selection of the lowest responsible bidder is correct; or
- (iii) Appoint a determinations officer with authority to conduct a contested case hearing in accordance with the provisions of chapter 52, title 67, Idaho Code.

A determinations officer appointed pursuant to section 67-9229(1)(c)(ii), Idaho Code, shall inform the director by written recommendation whether, in his opinion, the administrator's selection of the lowest responsible bidder is correct. The determinations officer in making this recommendation may rely on the documents of record, statements of employees of the state of Idaho participating in any phase of the selection process, and statements of any vendor submitting a bid. A contested case

hearing shall not be allowed and the determinations officer shall not be required to solicit statements from any person. Upon receipt of the recommendation from the determinations officer, the director shall sustain, modify or reverse the decision of the administrator on the selection of the lowest responsible bidder or the director may appoint a determinations officer pursuant to section 67-9229(1)(c)(iii), Idaho Code.

A determinations officer appointed pursuant to section 67-9229(1)(c)(iii), Idaho Code, shall conduct a contested case hearing and upon conclusion of the hearing shall prepare findings of fact, conclusions of law and a recommended order for the director of the department of administration. Upon receipt of the findings of fact, conclusions of law and recommended order, the director shall enter a final order sustaining, modifying or reversing the decision of the administrator on the selection of the lowest responsible bidder.

(d) In the case of a sole source procurement, there shall be a period of not more than five (5) working days from the last date of public notice in which any vendor, able to sell or supply the property to be acquired, may notify the administrator, in writing, of his intention to challenge the sole source procurement and briefly explain the nature of the challenge.

Upon receipt of the challenge, the director shall either:

- (i) Deny the application; or
- (ii) Appoint a determinations officer to review the record and submit a recommended order to the director to affirm or reverse the administrator's sole source determination.

The director shall, upon receipt of a written recommendation from the determinations officer, sustain, modify or reverse the administrator's sole source determination. An appeal conducted under the provisions of this subsection shall not be considered a contested case and shall not be subject to judicial review under the provisions of chapter 52, title 67, Idaho Code.

(e) The administrator may, on his own initiative, file a complaint with the director for a hearing before a determinations officer. The director shall appoint a determinations officer who shall make written recommendations to the director and the director shall render whatever decision is necessary to resolve the complaint.

(2) The director is hereby authorized and directed to appoint a determinations officer whenever one is required by this chapter. The officer shall meet and render whatever determination is called for. When a complaint is filed pursuant to section 67-9229(1)(b), Idaho Code, no bid may be awarded

until the final decision is rendered by the director; provided that in all other cases where a determinations officer is appointed by the director, the director shall have the power to allow the acquisition contract to be awarded to the successful bidder prior to or after the decision of the determinations officer if he determines such award to be in the best interest of the state. Any determinations officer appointed pursuant to this section shall exist only for the duration of unresolved complaints on an acquisition and shall be dismissed upon resolution of all such complaints. The determinations officer shall be guided in his determination by the best economic interests of the state for both the near future and more extended periods of time. In addition to the powers conferred on the determinations officer, the director may: impose the penalty prescribed by section 67-9228(3), Idaho Code; enjoin any activity which violates this chapter; direct that bids be rejected, or sustained; direct that specifications be rejected, sustained or modified; and direct further legal action.

(3) Challenges or appeals conducted pursuant to section 67-9229(1)(a), (1)(b), (1)(c)(i) or (1)(c)(ii), Idaho Code, shall not be considered to be a contested case as that term is defined in the administrative procedure act. An appeal conducted pursuant to section 67-9229(1)(c)(iii), Idaho Code, shall be conducted as a contested case according to the provisions of chapter 52, title 67, Idaho Code.

Current

67-5733. DIVISION OF PURCHASING -- APPEALS.

(1) (a) There shall be, beginning with the day of receipt of notice, a period of not more than ten (10) working days in which any vendor, qualified and able to sell or supply the items to be acquired, may notify in writing the administrator of the division of purchasing of his intention to challenge the specifications and shall specifically state the exact nature of his challenge. The specific challenge shall describe the location of the challenged portion or clause in the specification document, unless the challenge concerns an omission, explain why any provision should be struck, added or altered, and contain suggested corrections.

Upon receipt of the challenge, the administrator of the division of purchasing shall either deny the challenge, and such denial shall be considered the final agency decision, or he shall present the matter to the director of the department of administration for appointment of a determinations officer. If the director of the department of administration appoints a determinations officer, then all vendors, who are invited to bid

on the property sought to be acquired, shall be notified of the appeal and the appointment of determinations officer and may indicate in writing their agreement or disagreement with the challenge within five (5) days. The notice to the vendors may be electronic. Any vendor may note his agreement or disagreement with the challenge. The determinations officer may, on his own motion, refer the challenge portion and any related portions of the challenge to the author of the specification to be rewritten with the advice and comments of the vendors capable of supplying the property; rewrite the specification himself and/or reject all or any part of any challenge. If specifications are to be rewritten, the matter shall be continued until the determinations officer makes a final determination of the acceptability of the revised specifications.

The administrator shall reset the bid opening no later than fifteen (15) days after final determination of challenges or the amendment of the specifications. If the administrator denies the challenge, then the bid opening date shall not be reset.

The final decision of the determinations officer or administrator on the challenge to specifications shall not be considered a contested case within the meaning of the administrative procedure act; provided that a vendor disagreeing with specifications may include such disagreement as a reason for asking for appointment of a determinations officer pursuant to section [67-5733](#)(1)(c), Idaho Code.

(b) There shall be, beginning with the day following receipt of notice of rejection, a period of five (5) working days in which a bidder whose bid was found nonresponsive may appeal such decision to the director of the department of administration. A nonresponsive bid, within the meaning of this chapter, is a bid which does not comply with the bid invitation and specifications and shall not apply to a vendor whose bid is considered but who is determined not to be the lowest responsible bidder as defined in this chapter. The director shall:

- (i) Deny the application; or
- (ii) Appoint a determinations officer to review the record and submit a recommended order to the director to affirm or reverse the administrator's decision of bid nonresponsiveness.

The director shall, upon receipt of a written recommendation from the determinations officer, sustain, modify or reverse the administrator's nonresponsive bid decision. An appeal conducted under the provisions of this subsection shall not be considered a contested case and shall not be subject to judicial review under the provisions of [chapter 52, title 67](#), Idaho Code.

(c) A vendor whose bid is considered may, within five (5) working days following receipt of notice that he is not the lowest responsible bidder, apply to the director of the department of administration for appointment of a determinations officer. The application shall set forth in specific terms the reasons why the administrator's decision is thought to be erroneous. Upon receipt of the application, the director shall within three (3) working days:

(i) Deny the application, and such denial shall be considered the final agency decision; or

(ii) Appoint a determinations officer to review the record to determine whether the administrator's selection of the lowest responsible bidder is correct; or

(iii) Appoint a determinations officer with authority to conduct a contested case hearing in accordance with the provisions of [chapter 52, title 67](#), Idaho Code.

A determinations officer appointed pursuant to section [67-5733](#)(1)(c)(ii), Idaho Code, shall inform the director by written recommendation whether, in his opinion, the administrator's selection of the lowest responsible bidder is correct. The determinations officer in making this recommendation may rely on the documents of record, statements of employees of the state of Idaho participating in any phase of the selection process, and statements of any vendor submitting a bid. A contested case hearing shall not be allowed and the determinations officer shall not be required to solicit statements from any person. Upon receipt of the recommendation from the determinations officer, the director shall sustain, modify or reverse the decision of the administrator on the selection of the lowest responsible bidder or the director may appoint a determinations officer pursuant to section [67-5733](#)(1)(c)(iii), Idaho Code.

A determinations officer appointed pursuant to section [67-5733](#)(1)(c)(iii), Idaho Code, shall conduct a contested case hearing and upon conclusion of the hearing shall prepare findings of fact, conclusions of law and a recommended order for the director of the department of administration. Upon receipt of the findings of fact, conclusions of law and recommended order, the director shall enter a final order sustaining, modifying or reversing the decision of the administrator on the selection of the lowest responsible bidder.

(d) In the case of a sole source procurement, there shall be a period of not more than five (5) working days from the last date of public notice in which any vendor, able to sell or supply the item(s) to be acquired, may notify the administrator of the division of purchasing, in writing, of his intention to

challenge the sole source procurement and briefly explain the nature of the challenge.

Upon receipt of the challenge, the director shall either:

- (i) Deny the application; or
- (ii) Appoint a determinations officer to review the record and submit a recommended order to the director to affirm or reverse the administrator's sole source determination.

The director shall, upon receipt of a written recommendation from the determinations officer, sustain, modify or reverse the administrator's sole source determination. An appeal conducted under the provisions of this subsection shall not be considered a contested case and shall not be subject to judicial review under the provisions of [chapter 52, title 67](#), Idaho Code.

(e) The administrator of the division of purchasing may, on his own initiative, file a complaint with the director for a hearing before a determinations officer. The director shall appoint a determinations officer who shall make written recommendations to the director and the director shall render whatever decision is necessary to resolve the complaint.

(2) The director of the department of administration is hereby authorized and directed to appoint a determinations officer whenever one is required by this chapter. The officer shall meet and render whatever determination is called for. When a complaint is filed pursuant to section [67-5733\(1\)\(b\)](#), Idaho Code, no bid may be awarded until the final decision is rendered by the director of the department of administration; provided that in all other cases where a determinations officer is appointed by the director, the director shall have the power to allow the acquisition contract to be awarded to the successful bidder prior to or after the decision of the determinations officer if he determines such award to be in the best interest of the state. Any determinations officer appointed pursuant to this section shall exist only for the duration of unresolved complaints on an acquisition and shall be dismissed upon resolution of all such complaints. The determinations officer shall be guided in his determination by the best economic interests of the state for both the near future and more extended periods of time. In addition to the powers conferred on the determinations officer, the director of the department of administration may: impose the penalty prescribed by section [67-5734\(3\)](#), Idaho Code; enjoin any activity which violates this chapter; direct that bids be rejected, or sustained; direct that specifications be rejected, sustained or modified; and direct further legal action.

(3) Challenges or appeals conducted pursuant to section [67-5733](#)(1)(a), (1)(b), (1)(c)(i) or (1)(c)(ii), Idaho Code, shall not be considered to be a contested case as that term is defined in the administrative procedure act. An appeal conducted pursuant to section [67-5733](#)(1)(c)(iii), Idaho Code, shall be conducted as a contested case according to the provisions of [chapter 52, title 67](#), Idaho Code.

Section 67-9230

Equivalent Section: 67-5737

Draft

67-9230. SEVERABILITY. Insofar as a provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

Current

67-5737. PROVISIONS OF THIS CHAPTER CONTROLLING -- SEVERABILITY. Except as provided in section [67-5718](#), Idaho Code,¹¹⁰ insofar as the provisions of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

¹¹⁰ This clause is removed in the draft since Section 67-5718 will no longer exist.