

## **NOTES ON THE STATE PROCUREMENT ACT**

As Proposed by the Purchasing Laws Interim Committee (2015)

Sixty-Third Idaho Legislature  
Second Regular Session  
February 24, 2016  
Revised February 29, 2016

## I. Introduction

Included in the Final Report of the Purchasing Laws Interim Committee is proposed legislation that would recodify the state purchasing laws into a new State Procurement Act. While most of the act would consist of existing law, some substantive changes are being proposed by the committee, as explained in Part IV of this document.

## II. Overview of the Proposed Legislation

The proposed legislation consists of twenty sections. The first three sections repeal the current state purchasing laws. The fourth section enacts the State Procurement Act, which reorganizes and recodifies the purchasing laws into a new chapter of the Idaho Code. The remaining sections update code references and revise terminology relating to state procurement.

## III. The State Procurement Act

The State Procurement Act would replace the current state purchasing laws. The act consists of thirty-four new sections of code, most of which are based on current law. The following chart lists each section of the act, its equivalent section in the current Idaho Code, the purpose of each section, and the changes made to the language of the law. Most changes are minor revisions to clarify or simplify language or to use modern terminology. The changes that are substantive in nature or that involve language new to the code will be discussed in Part IV below. The substantive changes and new language are being proposed based on the findings of the Purchasing Laws Interim Committee.

Act Section	Equivalent Section	Purpose	Changes
67-9201	None	Provides a short title	<b>New language</b> – see below
67-9202	67-5715	Policy declaration	Minor revisions
67-9203	67-5716	Provides definitions	<b>Substantive</b> – see below
67-9204	67-5714	Creates Division of Purchasing (DOP)	Minor revisions
67-9205	67-5717	Provides powers and duties of the administrator of DOP	<b>Substantive</b> – see below
67-9206	None	Allows the administrator to delegate authority	<b>New language</b> – see below
67-9207	None	Requires procurement training for all state personnel with procurement duties	<b>New language</b> – see below

Act Section	Equivalent Section	Purpose	Changes
67-9208	67-5718(1), (2)	Provides requirements for state property solicitations	Minor revisions, plus a new subsection (3) to provide certain exceptions for minor solicitations, in keeping with the current practice of DOP
67-9209	67-5718(3), (4)	Provides requirements for submission and consideration of bids	Minor revisions
67-9210	67-5718(4), (5)	Provides requirements for contract awards	Minor revisions
67-9211	67-5718A	Allows multiple awards under a single solicitation to be made under certain circumstances	Minor revisions
67-9212	67-5725	Requires contracts to be in writing	Minor revisions
67-9213	67-5725	Provides that contracts made in violation of the law are void	Minor revisions
67-9214	67-5736	Provides requirements for acceptance of property from a vendor	Minor revisions
67-9215	67-5725	Requires records relating to solicitations to be preserved; subjects them to open records law	Minor revisions
67-9216	67-5717(9)	Requires state agencies to purchase from open contracts unless they qualify for an exemption	<b>Substantive</b> – see below
67-9217	67-5730	Provides that vendors may be disqualified under certain circumstances	Minor revisions
67-9218	67-5735	Provides for payment of contractors	Minor revisions
67-9219	<b>None</b>	Provides requirements for contract oversight	<b>New language</b> – see below

Act Section	Equivalent Section	Purpose	Changes
67-9220	67-5719	Provides that agencies shall submit an inventory to the administrator at the administrator's request; allows administrator to inspect agency property	Minor revisions
67-9221	67-5720	Allows noncompetitive and emergency procurements in some situations	Minor revisions
67-9222	67-5721	Provides requirements for procuring "non-owned" property – property that the state uses but doesn't own	Minor revisions
67-9223	67-5722	Allows the administrator to exchange property that's no longer "economical to use"	Minor revisions
67-9224	67-5727A	Allows agencies to be part of group discount purchasing agreements	Minor revisions
67-9225	67-5728	Provides requirements for procurement by state colleges and universities	<b>Substantive</b> – see below
67-9226	67-5723	Requires state procurement employees to seek discounts when available	Minor revisions
67-9227	67-5724	Exempts contracts with the federal government from certain requirements	Minor revisions
67-9228	67-5724A	Allows procurement according to federal supply schedule contracts	Minor revisions

Act Section	Equivalent Section	Purpose	Changes
67-9229	67-5729	Clarifies application of the state's Administrative Procedure Act to DOP procedures	Minor revisions
67-9230	67-5726	Prohibits certain conduct in procurement matters	Minor revisions; adds a reference to section 67-1027, relating to transfer of contracts
67-9231	67-5734	Provides penalties for violations of the law	Minor revisions
67-9232	67-5733	Provides procedures for procurement challenges and appeals	Minor revisions
67-9233	<b>None</b>	Provides ethical standards for persons involved in state procurement; provides penalties for ethical violations	<b>New language</b> – see below
67-9234	67-5737	Provides severability	Minor revisions

#### **IV. New Language and Substantive Changes to Existing Law**

##### **A. 67-9201 – Short Title (New Language)**

This language allows for easy reference to the State Procurement Act.

##### **B. 67-9203 – Definitions (67-5716)**

Ten unnecessary definitions that appear in current code have been removed. Seven new definitions – for “administrator,” “contract,” “director,” “procure,” “sole source,” “solicitation,” and “specifications” – are inserted, as these terms are used in code but not currently defined.

The term “procure” is used throughout the new act as a substitute for “purchase,” because “procure” is a broader term that covers all state contracts, including leases.

##### **C. 67-9205 – Powers and Duties of the Administrator (67-5717)**

Subsections (15) and (16) have been added. Subsection (15) makes explicit the administrator’s power to delegate authority, a power currently provided only in rule. Subsection (16) grants the administrator general power to carry out the provisions of the act.

**D. 67-9206 – Delegation of Authority (New Language)**

This language clarifies how and to whom the administrator may delegate authority. The committee added this language based on the request of several state agencies. The agencies want the process for delegation of authority to be clarified in statute. They also asked that DOP be given the option to delegate authority to an agency, rather than to one employee at the agency. Under current practice, an agency loses its delegated authority if an employee with delegated authority leaves.

**E. 67-9207 – Procurement Training (New Language)**

This language requires training for all state officers and employees with procurement duties. It also requires the DOP administrator to establish training.

The committee believes this language should be enacted based on the recommendation of the Office of Performance Evaluations (OPE). In a 2013<sup>1</sup> report on state contracting, OPE raised concerns about lack of training for state personnel with procurement duties and the consequences such lack of training can have for the state. OPE recommended that procurement training be required for state workers with procurement duties.<sup>2</sup>

**F. 67-9216 – Open Contracts (67-5717(9))**

Current law does not afford the DOP administrator much flexibility in granting agencies exemptions from open contracts. It is the belief of the committee that more flexibility is necessary to ensure that state agencies are able to acquire property that will best serve their needs when property available under an open contract is for some reason insufficient.

This amended language would provide greater flexibility but would also require annual reports to the Legislature so that the Legislature may monitor how the flexibility is being used.

**G. 67-9219 – Contract Oversight (New Language)**

Current law is silent on issues relating to the administration, management, monitoring, and other oversight of state contracts. OPE identified this as a weakness in Idaho law.<sup>3</sup> Contract oversight would allow problems with a contract to be identified early in the life of the contract and would provide more opportunity for problems to be quickly resolved.

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<sup>1</sup> See *Strengthening Contract Management in Idaho*, pp. 21-25, <http://legislature.idaho.gov/ope/publications/reports/r1302.pdf>

<sup>2</sup> A prior version of these Notes stated that OPE recommended enacting a statute to require training. OPE recommended that training be required but did not specifically recommend enacting a statute on training.

<sup>3</sup> See *Strengthening Contract Management in Idaho*, pp. 27-33, <http://legislature.idaho.gov/ope/publications/reports/r1302.pdf>

This new language requires DOP, state officers, and other state entities to establish policies and procedures relating to contract oversight. It further requires annual reports to the Legislature on certain high-risk contracts so that the Legislature itself may play an oversight role.

#### **H. 67-9225 – Procurement by State Institutions of Higher Education (67-5728)**

One area of focus for the committee was procurement by state institutions of higher education. The committee concluded that the institutions should be afforded more flexibility based on their educational role and their reliance on the support of their communities.

While current law provides some flexibility, it nevertheless requires the institutions to make use of open contracts. The amended language proposed by the committee would allow institutions greater discretion in choosing vendors from whom the institutions would procure certain property.

#### **I. 67-9233 – Ethics in Procurement (New Language)**

While several provisions of current law prohibit unethical conduct in matters relating to procurement, the Idaho Code lacks a clear statement of the ethical standards expected from all parties involved in state procurement, including state officers, state employees, and private vendors or their representatives. It is the belief of the committee that these ethical standards should be explicitly stated in law.

This new language provides that “all persons involved in the process of procuring property for the state conduct themselves in a manner that protects the public interest and fosters confidence in the integrity of the process.” It defines conduct that constitutes an unethical breach of the public trust and prescribes penalties for those who violate ethical standards.