

Proposed Procurement Changes for Political Subdivision

Forward:

Political subdivisions in Idaho have experienced some challenges with the current procurement statutes. The statutes in most cases just need minor fixes to help the political subdivision procure more economically and efficiently. The changes maintain accountability and increases transparency. Based on the comments we have received from counties, cities and other taxing districts, we have drafted these changes as a starting point for discussion.

Focusing on Three Procurement Areas:

1. Delegation of Authority for Counties
 - a. Cities and Taxing Districts appear to have authority to delegate
2. Modifications to current political subdivision procurement statutes
3. Modifications to current public works statutes
 - a. Bright Line for all public works related thresholds to start at \$25,000

SUMMARY OF CHANGES

Changes to Title 31 Counties and County Law, Chapter 6 Counties as Bodies Corporate:

Edit to I.C. 31-602 Exercise of Powers. Currently the law does not allow County Commissioners to delegate its procurement authority—even though many counties do. This change would allow County Commissioners to delegate purchasing authority through an adopted resolution.

Edit to I.C. 31-604 Enumeration of Powers. Inclusion of language to clarify that counties can franchise as authorized by law. Also, a proposed exclusion in 67-2803(14) would explicitly state that franchise authority will be limited to the delivery of services that are deemed to further public safety and/or welfare, at no cost to political subdivision.

Changes to Chapter Title 67 State Government and State Affairs, Chapter 28 Purchasing by Political Subdivision:

Edit to I.C. 67-2801. Legislative Intent. Political Subdivision should procure from vendors with a “significant Idaho economic presence.”

Edit to I.C. 67-2802 Applicability. Not all of the procurement related statutes are found in this chapter so other statutes referenced.

Edit to I.C. 67-2803 Exclusions. Substantive changes to this chapter include:

(1) Procurement of Personal Property from the bids competitively bid by the state of Idaho, one of its political subdivisions or other states and their political subdivisions, or an agency of the federal government.

- There are contracts in different states that have gone through the competitive bidding process and often have local vendors in Idaho contracted. It would be helpful be able to utilize the vendors and to get the economies of scale of those larger entities when competitively bid.

(2) Purchases for goods, services, and public works less than \$25,000.

- Public works added - \$25,000 threshold for public works being made consistent through statutes.

(4) Clarification of the personal and professional services exemption. This section defines what is meant by “personal” or “professional” services. Current statute is vague in what constitutes either.

(8) Procurement of used personal property.

(11) Procurement of Goods for Direct Resale. This is for when a political subdivision sales directly to the public. For example; golf balls and golf clubs sold at a city golf course.

(12) Procurement of Travel and Training. The procurement of travel and training is impractical to a bid process as there are specific requirements, arrangements, logistics and expertise required.

(13) Procurement of goods and services from Idaho Correctional Industries. The state of Idaho can procure directly from Correctional Industries without going through a competitive process.

(14) Granting of Franchises. Allows political subdivisions to participate in franchises where no money is expended on behalf of the government entity.

(15) Procurement of specialized repair of equipment in excess of \$25,000

(16) Procurement of software maintenance, support and licenses of an existing system/platform

(17) Procurement of Public Utilities

(18) Procurement of food for Jails and Detention facilities

Edit to I.C. 67-2804 Waiver. The interplay between the protection of trade secrets and bidding has become a problem. The new Section 4 requires bidders to mark proprietary information so political Subdivisions are not required to determine trade secrets when a public records request are submitted.

Edit to I.C. 67-2805 Procurement of Public Works Construction. Since public works sections are spread throughout the statutes, an opening statement was added cross referencing other sections of code related to the public works construction that need to be reviewed in conjunction with, and supplement to, I.C. 67-2805.

Added a section to issue a notice of intent to award. This will start the appeals process for all bidders that participated and give them 5 days to respond. After 5 days the Governing Board may award the bid. If a bidder objects to an award, they will respond in writing. This will halt the bid process until the governing board reviews the appeal. After review of the objection the political subdivision may proceed as it deems to be in the public interest.

Edit to I.C. 67-2806 Procuring Services or Personal Property. Added a section to issue a notice of intent to award. This will start the appeals process for all bidders that participated and give them 5 days to respond. After 5 days the Governing Board may award the bid. If a bidder objects to an award, they will respond in writing. This will halt the bid process until the governing board reviews the appeal. After review of the objection the political subdivision may proceed as it deems to be in the public interest.

Addition of 67-2806A. The state currently has an RFP process so this addition would establish the RFP process for political subdivisions.

Addition of 67-2806B. Allows for, and establishes the use of the Reverse Auction method for political subdivisions

Edit to I.C. 67-2807 Cooperative Purchasing Agreements –This section seeks to broaden what cooperatives a political subdivision can join, adds public works into category of procurement, and clarifies audit procedure.

Addition of I.C. 67-2810 Procurement Training – New section that calls for training of individuals making purchases on behalf of the political subdivision. Training may be provided in house, or may be obtained elsewhere.

In addition to the changes in 67-2805 Public Works, the following are proposed changes in other statutes relating to public works

Edit to I.C. 54-1218 Public Works – raised dollar threshold to \$25,000 and removes the requirement for an engineer to review work under \$25,000. It also adds review of architect if necessary

Edit to I.C. 54-1903 Exemptions. Public Works Exemptions – raised threshold to \$25,000 for public works projects (currently \$10,000) and \$100,000 (currently \$50,000) when no interest was received in solicitation.

Edit to I.C. 54-1926 Performance and Payment Bonds – requires performance and payment bonds of at least 85% of the project cost at the time of contract execution for contracts in excess of \$25,000. Currently the bonds are required at the time of contract “award” which does not allow much time for the contractor to obtain bonding. Bonds should be delivered concurrently with the contractor’s signed contract.

Typical bonding process for Formal Bid:

1. Bids are submitted from contractors for Public Works Project
2. Apparent low bid identified (1 day after submittal of bids)
3. Intent to Award sent out identifying low bidder (2 days after submittal of bids)
4. Award Recommendation made to governing board (7 days after submittal of bids)
 - Current statute requires bonding prior to this award
 - Board acceptance or denial of recommendation to award
5. If accepted the contract is drafted and sent to the contractor (8-9 days after submittal)
 - At this point the contractor will have final review of the contract, and have an award in hand to take to bonding company to get bonded. Contractor will send in signed contract and P&P Bonds for board consideration.
6. Board approves contract and the project can begin with a notice to proceed. (14 days after submittal of bids)

Edit to I.C. 67-2320 RFQ process for Design Professionals – minimum of 3 firms selected and preapproved in section (2)(h)

TEXT EDITS

AN ACT

RELATING TO THE EXERCISE OF COUNTY POWERS; AMENDING SECTION 31-602, IDAHO CODE TO _____

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

SECTION 1. That Section 31-602, Idaho Code, be, and the same is hereby amended to read as follows:

31-602. EXERCISE OF POWERS. Its powers can only be exercised by the board of county commissioners, or by agents and officers acting under their authority, or authority of law. The purchasing power of the county, and the authority to contract for said purchases, may be delegated by the board of county commissioners by a duly adopted annual resolution. Said resolution must specify the county officers or county employees who have the authority to purchase and contract, and specify the dollar limits of such purchases and contracts.

SECTION 2. That Section 31-604, Idaho Code, be, and the same is hereby amended to read as follows:

31-604. ENUMERATION OF POWERS. It has power:

1. To sue and be sued.
2. To purchase and hold lands.
3. To make such contracts, grant franchises as authorized by law, and purchase and hold such personal property, as may be necessary to the exercise of its powers.
4. To make such orders for the disposition or use of its property as the interests of its inhabitants require.
5. To levy and collect such taxes for purposes under its exclusive jurisdiction as are authorized by law.
6. Such other and further authority as may be necessary to effectively carry out the duties imposed on it by the provisions of the Idaho Code and constitution.

SECTION 3. That Section 67-2801, Idaho Code, be, and the same is hereby amended to read as follows:

67-2801. LEGISLATIVE INTENT. Efficient and cost-effective procurement of goods, services and public works construction is an important aspect of local government operations. ~~Local public agencies~~ To the extent permitted by federal laws and regulations, political subdivisions should endeavor to ~~buy~~ procure goods, services and public works construction from vendors with a significant Idaho economic presence by way of a publicly accountable process. ~~that respects the shared goals of economy and quality. Political subdivisions of the state shall endeavor to purchase goods and services from vendors with a significant Idaho economic presence.~~

SECTION 4. That Section 67-2802, Idaho Code, be, and the same is hereby amended to read as follows:

67-2802. APPLICABILITY. The provisions of this chapter establish procurement requirements for all political subdivisions of the state of Idaho. The public works construction procurement process set forth in this chapter shall function in a complementary manner with the public works contractors license board and the procedures which that board administers. ~~Any general~~ The procurement procedures set forth in this chapter shall be supplemented by the provisions of ~~any other~~ specific statutes pertaining to the procurement of goods, services, or public works construction including, but not limited to, 67-2349. awarding of any contract for the purchase or acquisition of any service, commodity or thing made expressly applicable to any particular political subdivision, or by means of any additional administrative process that otherwise establishes additional express requirements. No provisions of this chapter shall be deemed to preclude the use of procurement procedures otherwise authorized by law.

SECTION 5. That Section 67-2803, Idaho Code, be, and the same is hereby amended to read as follows:

67-2803. EXCLUSIONS. The procurement requirements established in this chapter shall not be applicable to the following procurements, provided that such procurements shall be guided by the best interests of the political subdivision procuring the goods, as determined by the governing board:

(1) ~~The acquisition~~ Procurement of personal property or services when the procurement duplicates the price and substance of a contract from current contracts for like goods or services that have been competitively bid by (a) the state of Idaho, (b) one (1) of its political subdivisions, (c) other states or their political subdivisions, or (d) an agency of the federal government or; when the procurement duplicates the price and substance of a contract from current contracts for goods or services that have been competitively bid by the state of Idaho, or one (1) of its political subdivisions;

(2) Contracts or purchases for goods, services, or public works wherein expenditures are less than twenty-five thousand dollars (\$25,000), ~~provided such contracts or purchases shall be guided by the best interests of the political subdivision procuring the goods and services as determined by the governing board;~~

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

(4) Procurement of personal or professional services to be performed by an independent contractor for the political subdivision. For purposes of this chapter, "personal or professional service" means the performance for remuneration by an individual or business entity, on a specified contractual basis, of specialized professional or consultive expertise germane to the administration, maintenance or conduct of governmental activities, which are dependent upon specific licensure, facilities, or specialized talents or skills. Such services include, but are not limited to, legal, medical, accounting, creative, artistic, real property appraisal, computer engineering, and complex information technology services;

(5) Procurement of an interest in real property;

(6) Procurement of insurance;

(7) Procurements, dues, and costs of participation in a joint powers agreements with other units of government or other membership organizations;

(8) ~~Procurement of used personal property by irrigation districts, drainage districts and their boards of control; or~~

(9) Procurement from federal government general services administration (GSA) schedules or federal multiple award schedules (MAS); or

(10) ~~The acquisition~~ Procurement of personal property or services through contracts entered into by the State of Idaho Department of Administration Division of Purchasing;

(11) Procurement of goods for direct resale;

(12) Procurement of travel and training;

(13) Procurement of good and services from Idaho Correctional Industries;

(14) Granting of exclusive franchises for the delivery of services on behalf of political subdivision, when such franchise is deemed necessary to further public safety or the welfare of its citizenry and such franchise is of no cost to the political subdivision;

(15) Procurement of specialized repair of equipment in excess of \$25,000;

(16) Procurement of software maintenance, support and licenses of an existing system/platform;

(17) Procurement of Public Utilities; or

(18) Procurement of food for use in Jails, and Detention facilities.

SECTION 6. That Section 67-2804, Idaho Code, be, and the same is hereby amended to read as follows:

67-2804. WAIVER. (1) Whenever the provisions of this chapter require a public works contractor's license to bid upon a public construction project, such requirement shall be deemed waived whenever federal law prohibits requiring licensure as a precondition for submitting a bid.

(2) Nothing in this section shall be deemed to prohibit a political subdivision from performing construction or repair work on the political subdivision's own facilities.

(3) Whenever this chapter provides time limits for objection or appeal, any objection or appeal not perfected within such time limitations shall be deemed to constitute a waiver of any rights to raise such objection or appeal thereafter.

(4) By responding to a request for bid or proposal, the bidder or proposer warrants that it has marked all qualifying material within the bid or proposal as trade secret or proprietary information, as defined in title 74, chapter 1, Idaho Code and waives the right to object to the release of any material not marked as such, after the bid or proposal has been opened, and the political subdivision has responded to a public records request for the contents of the bid or proposal.

SECTION 7. That Section 67-2805, Idaho Code, be, and the same is hereby amended to read as follows:

67-2805. PROCUREMENT OF PUBLIC WORKS CONSTRUCTION. (1) In addition to the requirements of this section, political subdivisions shall also comply with 67-2348, 67-2309, 67-2310, 67-2320, and the applicable provisions of Title 54 Chapter 19. For any contemplated public works construction project with an estimated total cost of less than fifty thousand dollars (\$50,000), where the political subdivision determines that there may be a lack of available licensed contractors, a political subdivision may publish a notice of intent to procure in its official newspaper, concurrently sending such notice to the public works contractors license board, in order to solicit statements of interest from licensed public works contractors to determine whether one (1) or more licensed contractors is interested in submitting bids. Such notice of intent to procure shall be provided by the same means required for published solicitation of competitive bids and shall contain essentially the same information as such published notice. If no licensed public works contractor submits a statement of interest, the political subdivision may purchase public works construction from other than a licensed public works contractor by using the same procurement procedures otherwise specified herein.

(2) When a political subdivision contemplates an expenditure to procure public works construction valued in excess of twenty-five thousand dollars (\$25,000) but not to exceed one hundred thousand dollars (\$100,000), the procurement procedures of this subsection (2) shall apply:

(a) The solicitation for bids for the public works construction to be performed shall be supplied to no fewer than three (3) owner-designated licensed public works contractors

by written means, either by electronic or physical delivery. The solicitation shall describe the construction work to be completed in sufficient detail to allow an experienced public works contractor to understand the construction project the political subdivision seeks to build.

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

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

(d) When written bids have been received, by either physical or electronic delivery, they shall be submitted to the ~~governing board or~~ governing board-authorized official who shall present the lowest responsive bid to the governing board for approval, or if authorized, approve the bid. The governing board or designee ~~which~~ shall approve the responsive bid proposing the lowest procurement price or reject all bids and publish notice for bids, as before.

(e) If the political subdivision finds that it is impractical or impossible to obtain three (3) bids for the proposed public works procurement, the political subdivision may acquire the work in any manner the political subdivision deems best from a qualified public works contractor quoting the lowest price. When fewer than three (3) bids are considered, a description of the efforts undertaken to procure at least three (3) bids shall be documented by the political subdivision and such documentation shall be maintained for at least six (6) months after the procurement decision is made. If two (2) or more price quotations offered by different licensed public works contractors are the same and the lowest responsive bids, the governing board or governing-board authorized official may accept the one (1) it chooses.

(3) When a political subdivision contemplates an expenditure to purchase public works construction valued in excess of one hundred thousand dollars (\$100,000), the procurement procedures of this subsection (3) shall apply. The purchase of construction services shall be made pursuant to a competitive sealed bid ~~process with the purchase to be made from the qualified public works contractor submitting the lowest bid price complying with bidding procedures and meeting the prequalifications, if any are provided, established by the bid documents. Competitive bidding for public works that~~ may proceed through either of two (2) alternative procedures as set forth below:

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

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

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

(iii) All bids shall be presented or otherwise delivered under sealed cover to the clerk of the political subdivision or other authorized agent of the political subdivision designated by the information provided to bidders by the political subdivision with a concise statement marked on the outside generally identifying the expenditure project to which the bid pertains.

(iv) If the political subdivision deems it is in the political subdivision's best interest, it may require the bidder to provide bid security in an amount equal to at least five percent (5%) of the amount bid. If required, a bid shall not be considered unless one (1) of the forms of bidder's security is enclosed with it, and unless the bid is submitted in a form which substantially complies with the form provided by the political subdivision. The political subdivision may require that the bid security be in one (1) of the following forms:

(A) Cash;

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

(C) A certified check made payable to the political subdivision; or

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

(v) Any bid received by the political subdivision may not be withdrawn after the date and time set in the notice for opening of bids. When sealed bids have been received, they shall be opened in public by the governing board or designee at a designated place and time; The governing board's designee shall thereafter to be compiled the information, check for responsiveness, and submitted to the governing board for award, or if authorized, approve award.

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

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

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

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

(ix) The political subdivision shall issue a notice of intent to award a competitively bid contract to all participating bidders by written or electronic notification. If any participating bidder objects to ~~such~~ the award for any reason, such participating bidder shall respond appeal in writing, as described in the notice, ~~to the notice from the political subdivision~~ within ~~seven~~ five (75) calendar days of the date of transmittal of the notice, setting forth in such ~~response~~ appeal the express reason or reasons that the intended award decision of the governing board is in error. Thereafter, the governing board shall stay performance of any procurement until after addressing the contentions raised by the objecting appealing bidder in writing; ~~the governing board shall review its decision and determine whether to affirm its prior award, modify the award, or choose to re-bid, setting forth its reason or reasons therefor.~~ After completion of the review appeal process, the political subdivision may proceed as it deems to be in the public interest.

(b) Category B. Competitive bidding procedures shall be open to licensed public works contractors only after meeting preliminary supplemental qualifications established by the political subdivision. The solicitation for bids in a category B procurement shall consist of two (2) stages, an initial stage determining supplemental prequalifications for licensed contractors, either prime or specialty contractors, followed by a stage during which bid prices will be accepted only from prequalified contractors.

(i) Notice of the prequalification stage of the category B competitive bidding process shall be given in the same manner that notice of competitive bidding is provided for a category A competitive bid request, providing a specific date and time by which

qualifications statements must be received. Political subdivisions may establish prequalification standards including, but not limited to; premised upon demonstrated technical competence, experience constructing similar facilities, prior experience with the political subdivision, available financial and nonfinancial resources, equipment and personnel as they relate to the subject project, and ~~overall~~ performance history ~~based upon a contractor's entire body of work~~. Such request must include the standards for evaluating the qualifications of prospective bidders.

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

(iii) Written objections to prequalification procedures must be received by the clerk, secretary or other authorized official of the political subdivision at least three (3) business days before the date and time upon which prequalification statements are due. The administrative officer or governing board supervising the bidding process shall respond to any such objection in writing and communicate such response to the objector and all other contractors seeking to prequalify, adjusting bidding timeframes if necessary. After a review of qualification submittals, the political subdivision may select licensed contractors that meet the prequalification standards. If any licensed contractor submits a statement of qualifications but is not selected as a qualified bidder, the political subdivision shall supply a written statement of the reason or reasons why the contractor failed to meet prequalification standards.

(iv) Any licensed contractor that fails the prequalification stage can appeal any such determination to the governing board within seven (7) days after the date of transmittal of the prequalification results ~~to contest the determination~~. If the governing board sustains the decision that a contractor fails to meet prequalification standards, it shall state its reason or reasons for the record. A governing board decision concerning prequalification may be appealed to the public works contractors license board no more than ~~fourteen~~seven(~~14~~7) days following the date of the ~~any~~ decision ~~on appeal~~ made by the governing board. The public works contractors license board shall decide any such appeal within ~~thirty-five~~ fourteen (~~35~~14) days of the filing of a timely appeal. The public works contractors license board shall allow participation, written or oral, by the appealing contractor and the political subdivision, either by employing a hearing officer or otherwise. The public works contractors license board shall not substitute its judgment for that of the political subdivision, limiting its review to determining whether the decision of the governing board is consistent with the announced prequalification standards, whether the prequalification standards comport with the law and whether the governing board's decision is supported by the entirety of the record. The decision of the public works contractors license board shall be written and shall state the reason or reasons for the decision. Category B prequalification procedures that are appealed shall be stayed during the pendency of the prequalification appeal until the public works contractors license board completes its review. ~~but in no instance more than forty-nine~~ (~~49~~) days after the appellate decision of the governing board regarding prequalification. Any licensed public works contractor affected by a decision on appeal by the public

works contractors license board may, within twenty-eight (28) days of the final decision, seek judicial review as provided by [chapter 52, title 67](#), Idaho Code.

(v) Following the conclusion of the prequalification administrative procedures, the bidding stage shall proceed by the setting of a time, date and place for the public opening of bids. In circumstances involving prequalified prime contractors, a notice soliciting bids shall be transmitted to prequalified bidders at least fourteen (14) days before the date of opening the bids. In circumstances involving prequalified specialty or subordinate contractors, the notice soliciting bids shall be published in the same manner applicable to category A bids. The notice shall succinctly describe the project to be constructed. Copies of specifications, bid forms, bidder's instructions, contract documents, and general and special instructions shall be made available upon request and payment of a reasonable plan copy fee by any eligible bidder.

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

(vii) All category B bids shall be presented or otherwise delivered under sealed cover to the clerk or other authorized agent of the political subdivision designated by the instructions to bidders with a concise statement marked on the outside generally identifying the expenditure to which the bid pertains.

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

(A) Cash;

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

(C) A certified check made payable to the political subdivision; or

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

(ix) Any category B bid received by a political subdivision may not be withdrawn after the date and time set in the notice for opening of bids. When sealed bids have been received, they shall be opened in public at a designated place and time, thereafter to be compiled and submitted to the governing board for award. If identical bids are received, the governing board may choose the bidder it prefers. If the successful bidder fails to execute the contract, the amount of his bidder's security may be forfeited to the political subdivision, in the sole discretion of the political subdivision, and the proceeds shall be deposited in a designated fund out of which the expenses for procuring substitute performance are paid.

(x) The political subdivision may, on the refusal or failure of the successful bidder to execute the contract, award the contract to the qualified bidder submitting the next lowest responsive bid. If the governing board awards the contract to the next lowest qualified

bidder, the amount of the lowest qualified bidder's security, if forfeited, shall be applied by the political subdivision to the difference between the lowest responsive bid and the next lowest responsive bid, and the surplus, if any, shall be returned to the lowest bidder if cash or check is used, or to the surety on the bidder's bond if a bond is used, less reasonable administrative costs not to exceed twenty-five percent (25%) of the amount of the bidder's security.

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

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

(xiii) The political subdivision shall issue a notice of intent to award a competitively bid contract to all participating bidders by written or electronic notification.. If any participating bidder objects to such the award for any reason, such participating bidder shall respond appeal in writing to the notice from the political subdivision within seven five (75) calendar days of the date of transmittal of the notice, setting forth in such response appeal the express reason or reasons that the intended award decision of the governing board is in error. Thereafter, the governing board shall staying performance of any procurement until after addressing the contentions raised by the objecting appealing bidder in writing; ~~the governing board shall review its decision and determine whether to affirm its prior award, modify the award, or choose to re-bid, setting forth its reason or reasons therefor.~~ After completion of the review appeal process, the political subdivision may proceed as it deems to be in the public interest.

SECTION 8. That Section 67-2806, Idaho Code, be, and the same is hereby amended to read as follows:

67-2806. PROCURING SERVICES OR PERSONAL PROPERTY. (1) When a political subdivision contemplates an expenditure to purchase or lease personal property or to procure services, other than those services excluded pursuant to section [67-2803](#), Idaho Code, valued in excess of twenty-five thousand dollars (\$25,000) but not to exceed fifty thousand dollars (\$50,000), the procurement procedures of this subsection (1) shall apply.

(a) The solicitation for bids shall be supplied to no fewer than three (3) vendors by written means, either by electronic or physical delivery. The solicitation shall describe the personal property or services to be purchased or leased in sufficient detail to allow a

vendor dealing in such goods or services to understand what the political subdivision seeks to procure.

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

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

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

(e) If the political subdivision finds that it is impractical or impossible to obtain three (3) bids for the proposed procurement, the political subdivision may acquire the property in any manner the political subdivision deems best from a qualified vendor quoting the lowest price. When fewer than three (3) bids are considered, a description of the efforts undertaken to procure at least three (3) bids shall be documented by the political subdivision and such documentation shall be maintained for at least six (6) months after any such procurement is made. If two (2) or more ~~price quotations~~ bids are the same and the lowest responsive bids, the authorized decision maker may accept the one (1) it chooses. In its discretion, the governing board of a political subdivision may preauthorize the purchase of equipment at a public auction.

(2) When a political subdivision contemplates an expenditure to purchase or lease personal property or to procure services, other than those services excluded pursuant to section [67-2803](#), Idaho Code, valued in excess of fifty thousand dollars (\$50,000), the procurement procedures of this subsection (2) shall apply.

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

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

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

(d) If the political subdivision deems it is in the political subdivision's best interest, it may require the bidder to provide bid security in an amount equal to at least five percent (5%) of the amount bid. If required, a bid shall not be considered unless one (1) of the forms of bidder's security is enclosed with it, and unless the bid is submitted in a form which substantially complies with the form provided by the political subdivision. The political subdivision may require that the bid security be in one (1) of the following forms:

(i) Cash;

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

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

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

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

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

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

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

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

(j) The political subdivision shall issue a notice of intent to award a competitively bid contract to all participating bidders by written or electronic notification. If any participating bidder objects to such the award for any reason, such participating bidder shall respond appeal in writing to the notice from the political subdivision within seven five (75) calendar days of the date of transmittal of the notice, setting forth in such response appeal the express reason or reasons that the intended award decision of the governing board is in error. Thereafter, the governing board shall staying performance of any procurement until after addressing the contentions raised by the objecting appealing bidder, in writing. the governing board shall review it's the intended decision, the appeal, and determine whether to affirm its intended prior award, modify the award, or choose to re-bid, setting forth its reason or reasons therefor. After completion of the review appeal process, the political subdivision may proceed as it deems to be in the public interest.

SECTION 9. That Chapter 28, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-2806A, Idaho Code, and to read as follows:

67-2806A. REQUEST FOR PROPOSAL. (1) When a political subdivision contemplates a procurement of goods and/or services for which the political subdivision does not have the technical expertise to determine the specifications, has a specific problem that is amenable to several solutions, and/or price is not a determining factor for selection, the political subdivision may utilize a Request for Proposal process.

(2) Factors to be considered in using the Request for Proposal process include, but are not limited to: a previously unidentified solution that is offered; multiple product features, price(s); vendor experience in the market; vendor financial stability; ability to perform contract requirements; ability to meet product specifications; product quality; product performance records; past performance by the vendor; future product maintenance or service requirements; and product warranties.

(3) At a minimum, the Request for Proposal shall state the instructions of the process, the scope of work for the goods and/or services contemplated, the selection criteria, the scoring methodology, and a process for appeal pursuant to 67-2806.

(4) Notification and solicitation of the RFP shall be in accordance with 67-2806.

SECTION 10. That Chapter 28, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-2806B, Idaho Code, and to read as follows:

67-2806B. REVERSE AUCTION. (1) When a political subdivision contemplates an expenditure as described in 67-2806, it may use a reverse public auction method to solicit for the goods or services.

SECTION 11. That Section 67-2807, Idaho Code, be, and the same is hereby amended to read as follows:

~~67-2807. JOINT COOPERATIVE PURCHASING AGREEMENTS -- NOT-FOR-PROFIT ASSOCIATIONS. (1) Political subdivisions may enter into, participate in, sponsor or conduct cooperative joint purchasing agreements with the state of Idaho, its or other political subdivisions, or other government entities outside of Idaho, and may participate in joint cooperative purchasing agreements through a joint purchase programs established by any not for profit association of political subdivisions governmental entities. Personal property Goods, services or public works procured pursuant to such joint cooperative purchasing agreements shall be deemed to have been acquired in accordance with the provisions of this chapter, provided such authority does not preclude or limit political subdivisions from entering into purchase agreements as otherwise provided by statute.~~

(2) Political subdivisions may participate in a procurement program established by any ~~not for profit~~ association of which they ~~become a member~~ join to assist ~~such~~ political subdivisions in accessing bidding and negotiating joint cooperative purchase contracts and discount purchase agreements. Participation in any such program does not obligate a political subdivision to ~~purchase~~ procure goods or services through the ~~program~~ association, the programs or through an agreement negotiated by the program administrator or its board. Political subdivisions shall only be obligated to pay for goods or services where ~~the~~ its governing board has approved the ~~purchase~~ procurement. Any ~~not for profit~~ association operating such a procurement program shall ~~cause an independent, certified audit of the program to be performed annually~~ have available for audit by the political subdivision, financial and performance records of the association and program. The audit, if performed, shall be made available ~~to the legislature upon request and a copy shall be made available~~ for public inspection.

SECTION 12. That Chapter 28, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-2810, Idaho Code, and to read as follows:

67-2810. PROCUREMENT TRAINING. (1) An officer or employee whose employment with the political subdivision includes duties relating to the procurement of goods, services or public works, shall undergo training prior to undertaking such duties. The training shall address the person's specific procurement duties and shall include continuing education requirements, when appropriate.

(2) The political subdivision shall establish or obtain training for those persons described in subsection (1) of this section.

SECTION 13. That Section 54-1218, Idaho Code, be, and the same is hereby amended to read as follows:

54-1218. PUBLIC WORKS. (1) It shall be unlawful for this state, or for any county, city, school district, irrigation district, drainage district, highway district, or other subdivision of the state having power to levy taxes or assessments against property situated therein, to engage in the construction of any public works when the public health or safety is involved unless the plans and specifications and estimates have been prepared by, and the construction reviewed by, a professional engineer, or if the professional engineer deems necessary, by a licensed architect.

(2) The provisions of this section shall not apply to public construction, reconstruction, maintenance and repair work that is governed by [chapter 12, title 42](#), Idaho Code; or public work that is insignificant, that is projects of less than ~~ten~~ twenty-five thousand dollars (~~\$10~~25,000). ~~in total cost, performed by employees of the public agency. and performed in accordance with standards for such work that have been certified by a professional engineer and duly adopted by the public agency's governing body including, but not limited to, the Idaho standards for public works construction and any supplements thereto, and only if a professional engineer determines that such public construction, reconstruction, maintenance and repair work does not represent a material risk to public health or safety.~~

SECTION 14. That Section 54-1903, Idaho Code, be, and the same is hereby amended to read as follows:

54-1903. EXEMPTIONS. This chapter shall not apply to:

(a) An authorized representative of the United States government, the state of Idaho, or any incorporated town, city, county, irrigation district, reclamation district or other municipal or political corporation or subdivision of this state.

(b) Officers of a court when they are acting within the scope of their office.

(c) Public utilities operating under the jurisdiction of the public utilities commission of the state of Idaho on construction, maintenance and development work incidental to their own business.

(d) The sale or installation of any finished products, materials or articles of merchandise, which are not actually fabricated into and do not become a permanent fixed part of the structure.

(e) Any construction, alteration, improvement or repair of personal property.

(f) Any construction, alteration, improvement or repair carried on within the limits and boundaries of any site or reservation, the title of which rests in the federal government.

(g) Any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts, drainage districts or reclamation districts, except when performed by a person required to be licensed under this chapter.

(h) Duly licensed architects, licensed engineers, and land surveyors when acting solely in their professional capacity.

(i) Any construction, alteration, improvement or repair involving any single project involving any number of trades or crafts with an estimated cost of less than ~~ten thousand dollars~~ twenty-five thousand dollars (\$25,000), or a project estimated to cost less than ~~fifty one hundred thousand dollars (\$5100,000)~~ for which no responsive statement of interest was received from a licensed public works contractor when statements of interest were solicited as provided in section [67-2805](#), Idaho Code.

(j) Any construction, operation, alteration or maintenance of a solid waste disposal site including those operated by, for, or at the direction of a city or a county.

(k) Any construction, operation or repair carried on in response to an emergency that has been officially declared by the governor pursuant to the provisions of [chapter 10, title 46](#), Idaho Code, or an emergency that has been declared by a governing body (city or county) in anticipation of a governor's declaration, for a period of time not to exceed seven (7) calendar days.

SECTION 15. That Section 54-1926, Idaho Code, be, and the same is hereby amended to read as follows:

54-1926. PERFORMANCE AND PAYMENT BONDS REQUIRED OF CONTRACTORS FOR PUBLIC BUILDINGS AND PUBLIC WORKS OF THE STATE, POLITICAL SUBDIVISIONS AND OTHER PUBLIC INSTRUMENTALITIES -- REQUIREMENTS FOR BONDS -- GOVERNMENTAL OBLIGATIONS. Before any contract in excess of \$25,000 for the construction, alteration, or repair of any public building or public work or improvement of the state of Idaho, or of any county, city, town, municipal corporation, township, school district, public educational institution, or other political subdivision, public authority, or public instrumentality, or of any officer, board, commission, institution, or agency of the foregoing, is ~~awarded~~ executed to any person, he shall furnish to the state of Idaho, or to such county, city, town, municipal corporation, township, school district, public educational institution, or other political subdivision, public authority, or public instrumentality, or to such officer, board, commission, institution, or agency thereof, bonds which shall become binding upon the ~~award~~ execution of the contract to such person, who is hereinafter designated as "contractor":

(1) A performance bond in any amount to be fixed by the contracting body, but in no event less than eighty-five percent (85%) of the contract amount conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions thereof. Said bond shall be solely for the protection of the public body awarding executing the contract.

(2) A payment bond in an amount to be fixed by the contracting body but in no event less than eighty-five percent (85%) of the contract amount, solely for the protection of persons supplying labor or materials, or renting, leasing, or otherwise supplying

equipment to the contractor or his subcontractors in the prosecution of the work provided for in such contract.

(3) Public bodies requiring a performance bond or payment bond in excess of fifty percent (50%) of the total contract amount shall not be authorized to withhold from the contractor or subcontractor any amount exceeding five percent (5%) of the total amount payable as retainage. Further, the public body shall release to the contractor any retainage for those portions of the project accepted by the contracting public body and the contractors as complete within thirty (30) days after such acceptance. Contractors, contracting with subcontractors pursuant to contract work with a public body, shall not be authorized to withhold from the subcontractor any amount exceeding five percent (5%) of the total amount payable to the subcontractor as retainage. The contractor shall remit the retainage to the subcontractor within thirty (30) days after completion of the subcontract.

Each bond shall be executed by a surety company or companies duly authorized to do business in this state, or the contractor may deposit any of the type of government obligations listed in subsection (2)(h) of section [54-1901](#), Idaho Code, in lieu of furnishing a surety company performance or payment bond or bonds. In the case of contracts of the state or a department, board, commission, institution, or agency thereof the aforesaid bonds shall be payable to the state, or particular state agency where authorized. In case of all other contracts subject to this chapter, the bonds shall be payable to the public body concerned.

Said bonds shall be filed in the office of the department, board, commission, institution, agency or other contracting body awarding the contract.

Nothing in this section shall be construed to limit the authority of the state of Idaho or other public body hereinabove mentioned to require a performance bond or other security in addition to these, or in cases other than the cases specified in this chapter.

It shall be illegal for the invitation for bids, or any person acting or purporting to act, on behalf of the contracting body to require that such bonds be furnished by a particular surety company, or through a particular agent or broker.

SECTION 16. That Section 67-2320, Idaho Code, be, and the same is hereby amended to read as follows:

67-2320. PROFESSIONAL SERVICE CONTRACTS WITH DESIGN PROFESSIONALS, CONSTRUCTION MANAGERS AND PROFESSIONAL LAND SURVEYORS. (1) Notwithstanding any other provision of law to the contrary, it shall be the policy of this state that all public agencies and political subdivisions of the state of Idaho and their agents shall make selections for professional engineering, architectural, landscape architecture, construction management and professional land surveying services, including services by persons licensed pursuant to chapters 3, 12, 30 and 45, [title 54](#), Idaho Code, on the basis of qualifications and demonstrated competence and

shall negotiate contracts or agreements for such services on the basis of demonstrated competence and qualifications for the type of services required at fair and reasonable prices.

(2) In carrying out this policy, public agencies and political subdivisions of the state shall use the following minimum guidelines in securing contracts for engineering, architectural, landscape architecture, construction management and land surveying services on projects for which the professional service fee is anticipated to exceed the total sum of twenty-five thousand dollars (\$25,000), excluding professional services contracts previously awarded for an associated or phased project, and the expenditure is otherwise exempt from the bidding process provided by law:

(a) Encourage persons or firms engaged in the services being solicited to submit statements of qualifications and performance data;

(b) Establish and make available to the public the criteria and procedures used for the selection of qualified persons or firms to perform such services;

(c) Select the persons or firms whom the public agency or political subdivision determines to be best qualified to provide the required services, ranked in order of preference, pursuant to the public agency or political subdivision's established criteria and procedures;

(d) Negotiate with the highest ranked person or firm for a contract or agreement to perform such services at a price determined by the public agency or political subdivision to be reasonable and fair to the public after considering the estimated value, the scope, the complexity and the nature of the services;

(e) When unable to negotiate a satisfactory contract or agreement, formally terminate negotiations and undertake negotiations with the next highest ranked person or firm, following the procedure prescribed in subsection (2)(d) of this section;

(f) When unable to negotiate a satisfactory contract or agreement with any of the selected persons or firms, continue with the selection and negotiation process provided in this section until a contract or agreement is reached;

(g) When public agencies or political subdivisions solicit proposals for engineering, architectural, landscape architecture, construction management or land surveying services for which the professional service fee is anticipated to exceed the total sum of twenty-five thousand dollars (\$25,000), they shall publish public notice in the same manner as required for bidding of public works construction projects.

(h) In fulfilling the requirements of subsections (2)(a) through (2)(g) of this section, a public agency or political subdivision may limit its selection from a list of a minimum of three (3) persons or firms selected and preapproved for consideration by the public agency or political subdivision. In establishing a preapproved list a public agency or political subdivision shall publish notice as set forth in subsection (2)(g) of this section. When selecting from such list, no notice shall be required.

(i) In fulfilling the requirements of subsections (2)(a) through (2)(g) of this section, a public agency or political subdivision may request information concerning a person's or firm's rates, overhead and multipliers, if any, however such information shall not be used

by the public agency or political subdivision for the purpose of ranking in order of preference as required in subsection (2)(c) of this section.

(3) In securing contracts for engineering, architectural, landscape architecture, construction management or land surveying services on projects for which the professional service fee is anticipated to be less than the total sum of twenty-five thousand dollars (\$25,000), the public agency or political subdivision may use the guidelines set forth in paragraphs (a) through (g) of subsection (2) of this section or establish its own guidelines for selection based on demonstrated competence and qualifications to perform the type of services required, followed by negotiation of the fee at a price determined by the public agency or political subdivision to be fair and reasonable after considering the estimated value, the scope, the complexity and the nature of services.

(4) When a public agency or political subdivision of the state has previously awarded a professional services contract to a person or firm for an associated or phased project the public agency or political subdivision may, at its discretion, negotiate an extended or new professional services contract with that person or firm.

(5) (a) For the purposes of this section, "public agency" shall mean the state of Idaho and any departments, commissions, boards, authorities, bureaus, universities, colleges, educational institutions or other state agencies which have been created by or pursuant to statute other than courts and their agencies and divisions, and the judicial council and the district magistrate's commission;

(b) For the purposes of this section, "political subdivision" shall mean a county, city, airport, airport district, school district, health district, road district, cemetery district, community college district, hospital district, irrigation district, sewer district, fire protection district, or any other district or municipality of any nature whatsoever having the power to levy taxes or assessment, organized under any general or special law of this state. The enumeration of certain districts herein shall not be construed to exclude other districts or municipalities from this definition.