

Proposed Procurement Changes for Political Subdivisions Update

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Purpose Today

- To update the State Procurement Laws Committee on the progress of the revisions to the political subdivision procurement changes since the September 14th meeting
- To seek input and direction from the Committee
- To assist the Committee with questions or research you may need

Additional Input

- In addition to contacting several Cities, Counties, and Taxing Districts for input
 - Boise, Meridian, Lewiston, Idaho Falls, Coeur d' Alene, Bonner County, College of Western Idaho, Ada County Highway District, Capitol City Development Corporation, and the Boise Centre
- We also contacted representatives of the following organizations :
 - Associated General Contractors, American Council of Engineering Companies, Idaho Association of Counties, Association of Idaho Cities, Idaho Public Purchasing Association, Division of Building Safety and State of Idaho Division of Purchasing
- We continue to receive input

Notable Revisions

- IC 31-604 Enumeration of Powers
 - Deleted adding Franchising
- IC 67-2801 Legislative Intent
 - No Changes, will remain the same.
- IC 67-2802 Applicability
 - No Changes, will remain the same.
- IC 67-2803 Exclusions
 - Increased exemption to \$50,000
 - Reworked a few exemptions
 - Deleted Franchising
- IC 67-2804 Waiver
 - No Changes, will remain the same.
- IC 67-2805 Procurement of Public Works Construction
 - Raises threshold range for informal bids \$50,000 - \$200,000
 - Raises the formal bid threshold to \$200,000 and above
 - Left alone the appeals process for pre-qualification in 67-2805(3)(b)(iv)

Notable Revisions Continued

- IC 67-2806 Procuring Services or Personal Property
 - Raises threshold range for informal bids \$50,000 - \$100,000
 - Raises the formal bid threshold to \$100,000 and above
 - Proposed addition of 67-2806A RFP - no edits to the addition
 - Deleted the addition of 67-2806B Reverse Auction
- Proposed IC 67-2810 Procurement Training
 - Deleted the addition of this section
- IC 54-1903 Exemptions
 - Increases PW exemption to \$50,000 and \$200,000 where not interest was received.
- IC 54-1218 Public Works
 - Increases engineer review of PW projects to \$50,000 and above
- IC 54-1926 Performance and Payment Bonds for PW Projects
 - Adds threshold level for when bonds are needed at \$50,000

Areas of Focus

1. County Specific Modifications
 - Delegation of Authority
 2. Modifications to current political subdivision procurement statutes
 - Process Improvement, Efficiencies, Accountability, Edits for readability
 3. Modifications to current public works statutes
 - PW start at \$50,000
 - Small Fixes for Process Improvement and Accountability
- A word about dollar thresholds. Most of the thresholds being proposed are still under consideration and still receiving input.

Delegation of Authority for Counties

31-602 Exercise of Power Modification

- 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.

67-2803 Exclusions Modifications

- 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 fifty thousand dollars (\$50,000), 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. Excluded from this section are the professional service contracts included in chapter 23, title 67, Idaho Code;;

67-2803 Exclusions Modifications, Continued

- (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 fFederal 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) Procurement of repair for heavy equipment;
- (15) Procurement of software maintenance, support and licenses of an existing system/platform which was bid in compliance with state law;
- (16) Procurement of Public Utilities; or
- (17) Procurement of food for use in Jails, and Detention facilities.

67-2805 Public Works Construction

- 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.

67-2805 Public Works Modifications

- 67-2805(2) When a political subdivision contemplates an expenditure to procure public works construction valued in excess of ~~twenty-five~~ fifty thousand dollars (\$~~25~~50,000) but not to exceed ~~one~~ two hundred thousand dollars (\$~~1~~200,000) , the procurement procedures of this subsection (2) shall apply:
- 67-2805(2)(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.

67-2805 Public Works

Modifications

- 67-2805(3) When a political subdivision contemplates an expenditure to purchase public works construction valued in excess of ~~one~~ two hundred thousand dollars (\$~~1~~200,000), 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~~ licensed 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 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.
- 67-2805(3)(a)(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.
- 67-2805(3)(a)(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.

67-2805 Public Works Modifications

- 67-2805(3)(a)
- (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 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.
- ~~(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 may 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 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 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 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 process, the political subdivision may proceed as it deems to be in the public interest.

67-2805 Public Works Modifications

- 67-2805(3)(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.

67-2805 Pubic Works Modifications

- ~~• (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.~~
- 67-2805(3)(b)(xiii) The political subdivision may 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 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 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 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 process, the political subdivision may proceed as it deems to be in the public interest.

67-2806 Procuring Services or Personal Property

- 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~~ fifty thousand dollars (~~\$25~~50,000) but not to exceed ~~fifty~~ one hundred thousand dollars (~~\$50~~100,000), the procurement procedures of this subsection (1) shall apply.

67-2806 Procuring Services or Personal Property Modifications

- 67-2806(1)(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.

67-2806 Procuring Services or Personal Property Modifications

- 67-2806(2)(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.

67-2806 Procuring Services or Personal Property Modifications

- 67-2806(2)(j) The political subdivision may 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 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 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 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 process, the political subdivision may proceed as it deems to be in the public interest.

67-2806A Procuring Services or Personal Property Modifications

- 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.

67-2807 Joint Purchasing Agreements Modifications

- 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.

54-1903 Public Works Exemptions

- 54-1903(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~~ fifty thousand dollars (~~\$10,000~~50,000), or a project estimated to cost less than ~~fifty~~ tw hundred thousand dollars (~~\$5~~200,000) 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.

54-1218 Public Works

- 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.
- (2) Section 1 ~~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 (~~\$1025,000~~) in total cost, and not performed by employees of the public agency. If the public work is performed by employees of a public agency, such work shall be ~~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.~~

54-1926 Performance and Payment Bond Modifications

- 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 fifty thousand (\$50,000) 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.

67-2320 Professional Service Contracts with Design Professionals Modifications

- 67-2320(2)(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.

Questions?