

§ 67-9213. Contracts in Violation of Provisions of the Act

(1) ~~If, p~~Prior to award of a contract, if it is determined on administrative or judicial review that a solicitation or proposed award of a contract is in violation of this chapter, the solicitation or proposed award shall be cancelled or revised to comply with this chapter.

(2) ~~If, a~~After award of a contract, if it is determined on administrative or judicial review that a solicitation or award of a contract is in violation of this chapter, the following shall apply:

(a) If the bidder awarded the contract did not act fraudulently or in bad faith:

(i) The contract may be ratified and affirmed by the director upon a declaration of the administrator that immediate delivery of the property is required by public exigencies and that the acquisition of the property satisfies the standards established by the rules of the division of purchasing for an emergency purchase. The ratification shall limit the term of the ratified contract to no more than six (6) months, and any ratification shall be submitted to the Board of Examiners for approval; ~~or,~~

(ii) The contract may be terminated by the director and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract before termination, plus a reasonable profit. Unless determined by a court, the reasonable profit due the contractor shall be submitted to the Board of Examiners for approval; or,

(iii) The winning bidder may request return of any propertygoods delivered under the contract that have not been used or distributed to non-state parties, provided that in the event of a return of propertygoods already paid for, the Director may recover the fair market value of the returned propertygoods. The director or her designee is authorized to negotiate the return of propertygoods and recovery of payments in the best interests of the State.

(b) If the bidder awarded the contract acted fraudulently or in bad faith:

(i) The contract may be declared ~~null and~~ void by the director; or

(ii) The contract may be ratified and affirmed by the director upon a declaration of the administrator that immediate delivery of the property is required by public exigencies and that the acquisition of the property satisfies the standards established by the rules of the division of purchasing for an emergency purchase. The ratification shall limit the term of the ratified contract to no more than six (6) months, and any ratification shall be subject to approval by the Board of Examiners. Ratification shall be without prejudice to the state's rights to any appropriate damages; or,

(iii) The winning bidder may request return of any property goods delivered under the contract that have not been used or distributed to non-state parties, provided that in the event of a return of property goods already paid for, the Director may recover the fair market value of the returned property goods. The director or her designee is authorized to negotiate the return of property goods and recovery of payments in the best interests of the State.

(c) Under no circumstances shall a person, including a person challenging a solicitation or award of a contract or a bidder awarded a contract found in violation of this chapter, be entitled to consequential damages in relation to a solicitation or award of a contract under this chapter, including consequential damages for lost profits, loss of business opportunities or damage to reputation.

(d) In all cases where a contract is declared ~~null and~~ void under subsection 2(b) of this section, the state shall endeavor to return those goods delivered under the contract that have not been used or distributed to non-state parties. No further payments shall be made under the contract and the state is entitled to recover the greater of:

(i) The difference between payments made under the contract and the actual expenses reasonably incurred under the contract before the contract was voided; ~~or~~

(ii) The difference between payments under the contract and the value to the state of the property delivered before the contract was voided. The value of the property to the state shall be determined by the division manager, of the legislative audits division, in her sole discretion submitted to the Board of Examiners for Approval; or,-

(iii) If the state returned goods delivered under the contract, the difference between payments made under the contract and the costs to the contractor of such goods plus the actual expenses reasonably incurred under the contract before the contract was voided.

(e) In all cases where a contract is declared null and void under subsection 2(b) of this section, the state shall be entitled to any damage it can prove under any theory including, but not limited to, contract and tort regardless of its ratification and affirmation of the contract.

(f) In the event of a refusal or delay when payment under subsection 2(d) or (e) of this section is demanded by the proper officer of the state of Idaho, under whose authority such contract shall have been made or entered into, every person so refusing or delaying, together with that person's surety or sureties, shall be prosecuted at law for the recovery of such monies.

(3) If it is determined on administrative or judicial review that a solicitation or proposed award of a contract is in violation of this chapter and an employee or official of the state

act fraudulently or in bad faith, such official or employee shall be subject to the provisions of section 67-9233, Idaho Code and title 74 chapters 4 and 5, Idaho Code.

(4) Nothing provided in this section shall limit the application of the provisions of title 18, Idaho Code, or the prosecution of any person under such provisions.