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LEGISLATURE OF THE STATE OF IDAHO
Sixty-fourth Legislature First Regular Session - 2017

IN THE _____

BILL NO. _____

BY _____

AN ACT

1 RELATING TO STATE PROCUREMENT; REPEALING SECTION 67-9213, IDAHO CODE, RE-
2 LATING TO VOID CONTRACTS; AND AMENDING CHAPTER 92, TITLE 67, IDAHO CODE,
3 BY THE ADDITION OF A NEW SECTION 67-9213, IDAHO CODE, TO ESTABLISH PRO-
4 VISIONS REGARDING SOLICITATIONS, PROPOSED CONTRACT AWARDS AND CONTRACT
5 AWARDS MADE IN VIOLATION OF THE STATE PROCUREMENT ACT.
6

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

8 SECTION 1. That Section 67-9213, Idaho Code, be, and the same is hereby
9 repealed.

10 SECTION 2. That Chapter 92, Title 67, Idaho Code, be, and the same is
11 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
12 ignated as Section 67-9213, Idaho Code, and to read as follows:

13 67-9213. CONTRACTS IN VIOLATION OF PROVISIONS OF THE ACT. (1) Prior to
14 award of a contract, if it is determined on administrative or judicial review
15 that a solicitation or proposed award of a contract is in violation of this
16 chapter, the solicitation or proposed award shall be canceled or revised to
17 comply with this chapter.

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

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

23 (i) The contract may be ratified and affirmed by the director upon
24 a declaration of the administrator that immediate delivery of the
25 property is required by public exigencies and that the acquisition
26 of the property satisfies the standards established by the rules
27 of the division of purchasing for an emergency procurement. The
28 ratification shall limit the term of the ratified contract to no
29 more than six (6) months, and any ratification shall be submitted
30 to the board of examiners for approval;

31 (ii) The contract may be terminated by the director, and the
32 person awarded the contract shall be compensated for the actual
33 expenses reasonably incurred under the contract before termina-
34 tion, plus a reasonable profit. Unless determined by a court, the
35 reasonable profit due to the contractor shall be submitted to the
36 board of examiners for approval; or

37 (iii) The winning bidder may request return of any goods deliv-
38 ered under the contract that have not been used or distributed to
39 non-state parties, provided that in the event of a return of goods
40 already paid for, the director may recover the fair market value of
41 the returned goods. The director or the director's designee is au-

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1 thorized to negotiate the return of goods and recovery of payments
2 in the best interests of the state.

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

5 (i) The contract may be declared void by the director;

6 (ii) The contract may be ratified and affirmed by the director
7 upon a declaration of the administrator that immediate delivery of
8 the property is required by public exigencies and that the acqui-
9 sition of the property satisfies the standards established by the
10 rules of the division of purchasing for an emergency procurement.
11 The ratification shall limit the term of the ratified contract to
12 no more than six (6) months, and any ratification shall be submit-
13 ted to the board of examiners for approval. Ratification shall be
14 without prejudice to the state's right to any appropriate damages;
15 or

16 (iii) The winning bidder may request return of any goods delivered
17 under the contract that have not been used or distributed to non-
18 state parties, provided that in the event of a return of goods al-
19 ready paid for, the director may recover the fair market value of
20 the returned goods. The director or the director's designee is au-
21 thorized to negotiate the return of goods and recovery of payments
22 in the best interests of the state.

23 (c) Under no circumstances shall a person, including a person challeng-
24 ing a solicitation or an award of a contract or a bidder awarded a con-
25 tract found in violation of this chapter, be entitled to consequential
26 damages in relation to a solicitation or an award of a contract under
27 this chapter, including consequential damages for lost profits, loss of
28 business opportunities or damage to reputation.

29 (d) In all cases in which a contract is declared void under paragraph
30 (b) of this subsection, the state shall endeavor to return those goods
31 delivered under the contract that have not been used or distributed to
32 non-state parties. No further payments shall be made under the con-
33 tract, and the state is entitled to recover the greater of:

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

37 (ii) The difference between payments under the contract and the
38 value to the state of the property delivered before the contract
39 was voided. The value of the property to the state shall be submit-
40 ted to the board of examiners for approval; or

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

46 (e) In all cases in which a contract is declared void under paragraph
47 (b) of this subsection, the state shall be entitled to any damages it can
48 prove under any theory including, but not limited to, contract and tort,
49 regardless of its ratification and affirmation of the contract.

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

7 (3) If it is determined on administrative or judicial review that a
8 solicitation or proposed award of a contract is in violation of this chap-
9 ter, and an employee or officer of the state acted fraudulently or in bad
10 faith, such employee or officer shall be subject to the provisions of section
11 67-9233, Idaho Code, and chapters 4 and 5, title 74, Idaho Code, as applica-
12 ble.

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