

IN THE SENATE

SENATE BILL NO. 1074

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO PROCUREMENT BY POLITICAL SUBDIVISIONS; AMENDING SECTION 31-602,
2 IDAHO CODE, TO PROVIDE THAT CERTAIN POWER AND AUTHORITY OF A COUNTY MAY
3 BE DELEGATED BY THE BOARD OF COUNTY COMMISSIONERS; AMENDING SECTION
4 54-1903, IDAHO CODE, TO REVISE AN EXEMPTION AND TO MAKE TECHNICAL COR-
5 RECTIONS; AMENDING SECTION 54-1926, IDAHO CODE, TO REVISE PROVISIONS
6 REGARDING CERTAIN CONTRACTS; AMENDING SECTION 67-2803, IDAHO CODE,
7 TO REVISE PROVISIONS REGARDING EXCLUSIONS; AMENDING SECTION 67-2805,
8 IDAHO CODE, TO REVISE PROVISIONS REGARDING PROCUREMENT OF PUBLIC WORKS
9 CONSTRUCTION; AMENDING SECTION 67-2806, IDAHO CODE, TO REVISE PRO-
10 VISIONS REGARDING PROCUREMENT OF SERVICES OR PERSONAL PROPERTY; AND
11 AMENDING CHAPTER 28, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SEC-
12 TION 67-2806A, IDAHO CODE, TO PROVIDE THAT A POLITICAL SUBDIVISION MAY
13 UTILIZE A REQUEST FOR PROPOSAL PROCESS UNDER CERTAIN CIRCUMSTANCES,
14 TO PROVIDE FACTORS THAT MAY BE CONSIDERED IN A REQUEST FOR PROPOSAL
15 PROCESS, TO PROVIDE MINIMUM REQUIREMENTS FOR A REQUEST FOR PROPOSAL AND
16 TO PROVIDE REQUIREMENTS FOR NOTIFICATION, SOLICITATION AND CONSIDERA-
17 TION OF CONTESTS IN A REQUEST FOR PROPOSAL PROCESS.
18

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

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

22 31-602. EXERCISE OF POWERS. Its powers can only be exercised by the
23 board of county commissioners, or by agents and officers acting under their
24 authority, or authority of law. The purchasing power of the county, and the
25 authority to contract for purchases, may be delegated to another elected
26 official or an employee of the county by the board of county commissioners.

27 SECTION 2. That Section 54-1903, Idaho Code, be, and the same is hereby
28 amended to read as follows:

29 54-1903. EXEMPTIONS. This chapter shall not apply to:
30 (a~~1~~) An authorized representative of the United States government, the
31 state of Idaho, or any incorporated town, city, county, irrigation district,
32 reclamation district or other municipal or political corporation or subdi-
33 vision of this state.
34 (b~~2~~) Officers of a court when they are acting within the scope of their
35 office.
36 (e~~3~~) Public utilities operating under the jurisdiction of the public
37 utilities commission of the state of Idaho on construction, maintenance and
38 development work incidental to their own business.

1 (~~d~~4) The sale or installation of any finished products, materials or
2 articles of merchandise, which are not actually fabricated into and do not
3 become a permanent fixed part of the structure.

4 (~~e~~5) Any construction, alteration, improvement or repair of personal
5 property.

6 (~~f~~6) Any construction, alteration, improvement or repair carried on
7 within the limits and boundaries of any site or reservation, the title of
8 which rests in the federal government.

9 (~~g~~7) Any construction or operation incidental to the construction and
10 repair of irrigation and drainage ditches of regularly constituted irriga-
11 tion districts, drainage districts or reclamation districts, except when
12 performed by a person required to be licensed under this chapter.

13 (~~h~~8) Duly licensed architects, licensed engineers, and land surveyors
14 when acting solely in their professional capacity.

15 (~~i~~9) Any construction, alteration, improvement or repair involving any
16 single project involving any number of trades or crafts with an estimated
17 cost of less than ~~ten~~ fifty thousand dollars (~~\$150,000~~), ~~or a project esti-~~
18 ~~ated to cost less than fifty thousand dollars (\$50,000) for which no respon-~~
19 ~~sive statement of interest was received from a licensed public works con-~~
20 ~~tractor when statements of interest were solicited as provided in section~~
21 ~~67-2805, Idaho Code.~~

22 (~~j~~10) Any construction, operation, alteration or maintenance of a solid
23 waste disposal site including those operated by, for, or at the direction of
24 a city or a county.

25 (~~k~~11) Any construction, operation or repair carried on in response to an
26 emergency that has been officially declared by the governor pursuant to the
27 provisions of chapter 10, title 46, Idaho Code, or an emergency that has been
28 declared by a governing body (city or county) in anticipation of a governor's
29 declaration, for a period of time not to exceed seven (7) calendar days.

30 SECTION 3. That Section 54-1926, Idaho Code, be, and the same is hereby
31 amended to read as follows:

32 54-1926. PERFORMANCE AND PAYMENT BONDS REQUIRED OF CONTRACTORS FOR
33 PUBLIC BUILDINGS AND PUBLIC WORKS OF THE STATE, POLITICAL SUBDIVISIONS AND
34 OTHER PUBLIC INSTRUMENTALITIES -- REQUIREMENTS FOR BONDS -- GOVERNMENTAL
35 OBLIGATIONS. Before any contract equal to or greater than fifty thousand
36 dollars (\$50,000) for the construction, alteration, or repair of any pub-
37 lic building or public work or improvement of the state of Idaho, or of
38 any county, city, town, municipal corporation, township, school district,
39 public educational institution, or other political subdivision, public au-
40 thority, or public instrumentality, or of any officer, board, commission,
41 institution, or agency of the foregoing, is awarded to any executed, the per-
42 son, ~~he~~ to whom such contract was awarded shall furnish to the state of Idaho,
43 or to such county, city, town, municipal corporation, township, school
44 district, public educational institution, or other political subdivision,
45 public authority, or public instrumentality, or to such officer, board,
46 commission, institution, or agency thereof, bonds ~~which~~ that shall become
47 binding upon the ~~award~~ execution of the contract, ~~to such and the person, who~~
48 to whom the contract was awarded is hereinafter designated as "contractor":

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

7 (2) A payment bond in an amount to be fixed by the contracting body
8 but in no event less than eighty-five percent (85%) of the contract amount,
9 solely for the protection of persons supplying labor or materials, or rent-
10 ing, leasing, or otherwise supplying equipment to the contractor or his
11 subcontractors in the prosecution of the work provided for in such contract.

12 (3) Public bodies requiring a performance bond or payment bond in ex-
13 cess of fifty percent (50%) of the total contract amount shall not be autho-
14 rized to withhold from the contractor or subcontractor any amount exceed-
15 ing five percent (5%) of the total amount payable as retainage. Further, the
16 public body shall release to the contractor any retainage for those portions
17 of the project accepted by the contracting public body and the contractors as
18 complete within thirty (30) days after such acceptance. Contractors, con-
19 tracting with subcontractors pursuant to contract work with a public body,
20 shall not be authorized to withhold from the subcontractor any amount ex-
21 ceeding five percent (5%) of the total amount payable to the subcontractor
22 as retainage. The contractor shall remit the retainage to the subcontractor
23 within thirty (30) days after completion of the subcontract.

24 Each bond shall be executed by a surety company or companies duly au-
25 thorized to do business in this state, or the contractor may deposit any of
26 the type of government obligations listed in subsection (2) (h) of section
27 54-1901, Idaho Code, in lieu of furnishing a surety company performance or
28 payment bond or bonds. In the case of contracts of the state or a depart-
29 ment, board, commission, institution, or agency thereof the aforesaid bonds
30 shall be payable to the state, or particular state agency where authorized.
31 In case of all other contracts subject to this chapter, the bonds shall be
32 payable to the public body concerned.

33 Said bonds shall be filed in the office of the department, board,
34 commission, institution, agency or other contracting body awarding the con-
35 tract.

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

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

44 SECTION 4. That Section 67-2803, Idaho Code, be, and the same is hereby
45 amended to read as follows:

46 67-2803. EXCLUSIONS. The procurement requirements established in
47 this chapter shall not be applicable to:

48 (1) The acquisition of personal property when the procurement dupli-
49 cates the price and substance of a contract for like goods or services that

1 has been competitively bid by the state of Idaho, one (1) of its political
2 subdivisions, or an agency of the federal government;

3 (2) Contracts or purchases wherein expenditures are less than
4 ~~twenty-five~~ fifty thousand dollars (\$250,000), provided such contracts or
5 purchases shall be guided by the best interests of the political subdivision
6 procuring the goods and services as determined by the governing board;

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

10 (4) Procurement of personal or professional services to be performed by
11 an independent contractor for the political subdivision;

12 (5) Procurement of an interest in real property;

13 (6) Procurement of insurance;

14 (7) Costs of participation in a joint powers agreement with other units
15 of government;

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

18 (9) Procurement from fFederal government general services administra-
19 tion (GSA) schedules or federal multiple award schedules (MAS); ~~or~~

20 (10) ~~The acquisition~~ Procurement of personal property or services
21 through contracts entered into by the division of purchasing of the depart-
22 ment of administration of the state of Idaho;

23 (11) Procurement of goods for direct resale;

24 (12) Procurement of travel and training;

25 (13) Procurement of goods and services from Idaho correctional indus-
26 tries;

27 (14) Procurement of repair for heavy equipment;

28 (15) Procurement of software maintenance, support and licenses of an
29 existing system or platform that was bid in compliance with state law;

30 (16) Procurement of public utilities;

31 (17) Procurement of food for use in jails or detention facilities; or

32 (18) Procurement of used equipment at an auction if authorized by the
33 governing board.

34 SECTION 5. That Section 67-2805, Idaho Code, be, and the same is hereby
35 amended to read as follows:

36 67-2805. PROCUREMENT OF PUBLIC WORKS CONSTRUCTION. (1) ~~For any con-~~
37 ~~templated public works construction project with an estimated total cost of~~
38 ~~less than fifty thousand dollars (\$50,000), where the political subdivision~~
39 ~~determines that there may be a lack of available licensed contractors, a po-~~
40 ~~litical subdivision may publish a notice of intent to procure in its official~~
41 ~~newspaper, concurrently sending such notice to the public works contractors~~
42 ~~license board, in order to solicit statements of interest from licensed~~
43 ~~public works contractors to determine whether one (1) or more licensed con-~~
44 ~~tractors is interested in submitting bids. Such notice of intent to procure~~
45 ~~shall be provided by the same means required for published solicitation~~
46 ~~of competitive bids and shall contain essentially the same information as~~
47 ~~such published notice. If no licensed public works contractor submits a~~
48 ~~statement of interest, the political subdivision may purchase public works~~

1 ~~construction from other than a licensed public works contractor by using the~~
 2 ~~same procurement procedures otherwise specified herein.~~

3 ~~(2)~~ When a political subdivision contemplates an expenditure to pro-
 4 cure public works construction valued at or in excess of twenty-five fifty
 5 thousand dollars (\$250,000) but not to exceed one two hundred thousand dol-
 6 lars (\$1200,000), the procurement procedures of this subsection ~~(2)~~ shall
 7 apply:

8 (a) The solicitation for bids for the public works construction to be
 9 performed shall be supplied to no fewer than three (3) owner-desig-
 10 nated licensed public works contractors by written means, either by
 11 electronic or physical delivery. The solicitation shall describe the
 12 construction work to be completed in sufficient detail to allow an expe-
 13 rienced public works contractor to understand the construction project
 14 the political subdivision seeks to build.

15 (b) The solicitation for bids shall describe the electronic or physi-
 16 cal delivery method or methods authorized to submit a bid, the date and
 17 time by which a bid proposal must be received by the clerk, secretary or
 18 other authorized official of the political subdivision, and shall pro-
 19 vide a reasonable time to respond to the solicitation, provided that ex-
 20 cept in the event of an emergency, such time shall not be less than three
 21 (3) business days.

22 (c) Written objections to specifications or bid procedures must be re-
 23 ceived by the clerk, secretary or other authorized official of the po-
 24 litical subdivision at least one (1) business day before the date and
 25 time upon which bids are scheduled to be received.

26 (d) When written bids have been received, by either physical or elec-
 27 tronic delivery, they shall be submitted to the governing board or
 28 ~~governing board authorized official which~~ a designee of the governing
 29 board who shall present the lowest responsive bid to the governing board
 30 for approval or, if authorized, approve the bid. The governing board
 31 or the board's designee shall approve the responsive bid proposing the
 32 lowest procurement price or reject all bids and publish notice for bids,
 33 as before.

34 (e) If the political subdivision finds that it is impractical or impos-
 35 sible to obtain three (3) bids for the proposed public works procure-
 36 ment, the political subdivision may acquire the work in any manner the
 37 political subdivision deems best from a qualified public works contrac-
 38 tor quoting the lowest price. When fewer than three (3) bids are consid-
 39 ered, a description of the efforts undertaken to procure at least three
 40 (3) bids shall be documented by the political subdivision and such docu-
 41 mentation shall be maintained for at least six (6) months after the pro-
 42 curement decision is made. If two (2) or more price quotations offered
 43 by different licensed public works contractors are the same and the low-
 44 est responsive bids, the governing board or governing-board authorized
 45 official may accept the one (1) it chooses.

46 ~~(3)~~ When a political subdivision contemplates an expenditure to pur-
 47 chase public works construction valued in excess of ~~one two~~ hundred thou-
 48 sand dollars (\$1200,000), the procurement procedures of this subsection ~~(3)~~
 49 shall apply. The purchase of construction services shall be made pursuant to
 50 a competitive sealed bid process with the purchase to be made from the quali-

1 fied public works contractor submitting the lowest bid price complying with
2 bidding procedures and meeting the prequalifications, if any are provided,
3 established by the bid documents. Competitive bidding for public works may
4 proceed through either of two (2) alternative procedures as set forth below:

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

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

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

32 (iii) All bids shall be presented or otherwise delivered under
33 sealed cover to the clerk of the political subdivision or other au-
34 thorized agent of the political subdivision designated by the in-
35 formation provided to bidders by the political subdivision with a
36 concise statement marked on the outside generally identifying the
37 expenditure project to which the bid pertains.

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

47 (A) Cash;

48 (B) A cashier's check made payable to the political subdivi-
49 sion;

1 (C) A certified check made payable to the political subdivi-
2 sion; or

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

5 (v) Any bid received by the political subdivision may not be
6 withdrawn after the date and time set in the notice for opening of
7 bids. When sealed bids have been received, they shall be opened in
8 public at a designated place and time, thereafter to be compiled
9 and submitted to the governing board for award or, if a designee is
10 authorized, for approval of the award.

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

16 (vii) The political subdivision may, on the refusal or failure of
17 the successful bidder to execute the contract, award the contract
18 to the qualified bidder submitting the next lowest responsive bid.
19 If the governing board awards the contract to the next lowest qual-
20 ified bidder, the amount of the lowest qualified bidder's secu-
21 rity may be applied by the political subdivision to the difference
22 between the lowest responsive bid and the next lowest responsive
23 bid, and the surplus, if any, shall be returned to the lowest bid-
24 der if cash or check is used, or to the surety on the bidder's bond
25 if a bond is used, less reasonable administrative costs not to ex-
26 ceed twenty-five percent (25%) of the amount of the bidder's secu-
27 rity to the owner.

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

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

43 (x) If any participating bidder objects to such award, such bid-
44 der shall respond in writing to the notice from the political sub-
45 division within seven (7) calendar days of the date of transmittal
46 of the notice, setting forth in such response the express reason
47 or reasons that the award decision of the governing board is in er-
48 ror. Thereafter, staying performance of any procurement until af-
49 ter addressing the contentions raised by the objecting bidder, the
50 governing board shall review its decision and determine whether to

1 affirm its prior award, modify the award, or choose to re-bid, set-
2 ting forth its reason or reasons therefor. After completion of the
3 review process, the political subdivision may proceed as it deems
4 to be in the public interest.

5 (b) Category B. Competitive bidding procedures shall be open to li-
6 censed public works contractors only after meeting preliminary suppl-
7 mental qualifications established by the political subdivision. The
8 solicitation for bids in a category B procurement shall consist of two
9 (2) stages, an initial stage determining supplemental prequalifica-
10 tions for licensed contractors, either prime or specialty contractors,
11 followed by a stage during which bid prices will be accepted only from
12 prequalified contractors.

13 (i) Notice of the prequalification stage of the category B com-
14 petitive bidding process shall be given in the same manner that
15 notice of competitive bidding is provided for a category A com-
16 petitive bid request, providing a specific date and time by which
17 qualifications statements must be received. Political subdivi-
18 sions may establish prequalification standards premised upon
19 demonstrated technical competence, experience constructing simi-
20 lar facilities, prior experience with the political subdivision,
21 available nonfinancial resources, equipment and personnel as
22 they relate to the subject project, and overall performance his-
23 tory based upon a contractor's entire body of work. Such request
24 must include the standards for evaluating the qualifications of
25 prospective bidders.

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

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

45 (iv) Any licensed contractor that fails the prequalification
46 stage can appeal any such determination to the governing board
47 within seven (7) days after transmittal of the prequalification
48 results to contest the determination. If the governing board
49 sustains the decision that a contractor fails to meet prequali-
50 fication standards, it shall state its reason or reasons for the

1 record. A governing board decision concerning prequalification
2 may be appealed to the public works contractors license board
3 no more than fourteen (14) days following any decision on appeal
4 made by the governing board. The public works contractors license
5 board shall decide any such appeal within thirty-five (35) days
6 of the filing of a timely appeal. The public works contractors
7 license board shall allow participation, written or oral, by the
8 appealing contractor and the political subdivision, either by
9 employing a hearing officer or otherwise. The public works con-
10 tractors license board shall not substitute its judgment for that
11 of the political subdivision, limiting its review to determining
12 whether the decision of the governing board is consistent with the
13 announced prequalification standards, whether the prequalifi-
14 cation standards comport with the law and whether the governing
15 board's decision is supported by the entirety of the record. The
16 decision of the public works contractors license board shall be
17 written and shall state the reason or reasons for the decision.
18 Category B prequalification procedures that are appealed shall be
19 stayed during the pendency of the prequalification appeal until
20 the public works contractors license board completes its review,
21 but in no instance more than forty-nine (49) days after the appel-
22 late decision of the governing board regarding prequalification.
23 Any licensed public works contractor affected by a decision on
24 appeal by the public works contractors license board may, within
25 twenty-eight (28) days of the final decision, seek judicial review
26 as provided by chapter 52, title 67, Idaho Code.

27 (v) Following the conclusion of the prequalification adminis-
28 trative procedures, the bidding stage shall proceed by the setting
29 of a time, date and place for the public opening of bids. In cir-
30 cumstances involving prequalified prime contractors, a notice
31 soliciting bids shall be transmitted to prequalified bidders at
32 least fourteen (14) days before the date of opening the bids. In
33 circumstances involving prequalified specialty or subordinate
34 contractors, the notice soliciting bids shall be published in the
35 same manner applicable to category A bids. The notice shall suc-
36 cinctly describe the project to be constructed. Copies of speci-
37 fications, bid forms, bidder's instructions, contract documents,
38 and general and special instructions shall be made available upon
39 request and payment of a reasonable plan copy fee by any eligible
40 bidder.

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

46 (vii) All category B bids shall be presented or otherwise deliv-
47 ered under sealed cover to the clerk or other authorized agent
48 of the political subdivision designated by the instructions to
49 bidders with a concise statement marked on the outside generally
50 identifying the ~~expenditure~~ project to which the bid pertains.

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

10 (A) Cash;

11 (B) A cashier's check made payable to the political subdivi-
12 sion;

13 (C) A certified check made payable to the political subdivi-
14 sion; or

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

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

29 (x) The political subdivision may, on the refusal or failure of
30 the successful bidder to execute the contract, award the contract
31 to the qualified bidder submitting the next lowest responsive bid.
32 If the governing board awards the contract to the next lowest qual-
33 ified bidder, the amount of the lowest qualified bidder's secu-
34 rity, if forfeited, shall be applied by the political subdivision
35 to the difference between the lowest responsive bid and the next
36 lowest responsive bid, and the surplus, if any, shall be returned
37 to the lowest bidder if cash or check is used, or to the surety on
38 the bidder's bond if a bond is used, less reasonable administra-
39 tive costs not to exceed twenty-five percent (25%) of the amount of
40 the bidder's security.

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

48 (xii) If the governing board of any political subdivision chooses
49 to award a competitively bid contract involving the procurement of
50 public works construction to a bidder other than the apparent low

1 bidder, the political subdivision shall declare its reason or rea-
2 sons on the record and shall communicate such reason or reasons in
3 writing to all persons who have submitted a competing bid.

4 (xiii) If any participating bidder objects to such award, such
5 bidder shall respond in writing to the notice from the political
6 subdivision within seven (7) calendar days of the date of trans-
7 mittal of the notice, setting forth in such response the express
8 reason or reasons that the award decision of the governing board
9 is in error. Thereafter, staying performance of any procurement
10 until after addressing the contentions raised by the objecting
11 bidder, the governing board shall review its decision and deter-
12 mine whether to affirm its prior award, modify the award, or choose
13 to re-bid, setting forth its reason or reasons therefor. After
14 completion of the review process, the political subdivision may
15 proceed as it deems to be in the public interest.

16 SECTION 6. That Section 67-2806, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 67-2806. PROCURING SERVICES OR PERSONAL PROPERTY. (1) When a polit-
19 ical subdivision contemplates an expenditure to purchase or lease personal
20 property or to procure services, other than ~~those personal property or~~
21 services excluded pursuant to section 67-2803, Idaho Code, valued at or in
22 excess of ~~twenty-five~~ fifty thousand dollars (\$~~250,000~~) but not to exceed
23 ~~fifty one hundred~~ thousand dollars (\$5100,000), the procurement procedures
24 of this subsection ~~(1)~~ shall apply.

25 (a) The solicitation for bids shall be supplied to no fewer than three
26 (3) vendors by written means, either by electronic or physical deliv-
27 ery. The solicitation shall describe the personal property or services
28 to be purchased or leased in sufficient detail to allow a vendor dealing
29 in such goods or services to understand what the political subdivision
30 seeks to procure.

31 (b) The solicitation for bids shall describe the electronic or physi-
32 cal delivery method or methods authorized to submit a bid, the date and
33 time by which a bid proposal must be received by the clerk, secretary or
34 other authorized official of the political subdivision, and shall pro-
35 vide a reasonable time to respond to the solicitation, provided that ex-
36 cept in the event of an emergency, such time shall not be less than three
37 (3) business days.

38 (c) Written objections to specifications or bid procedures must be re-
39 ceived by the clerk, secretary or other authorized official of the po-
40 litical subdivision at least one (1) business day before the date and
41 time upon which bids are scheduled to be received.

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

47 (e) If the political subdivision finds that it is impractical or im-
48 possible to obtain three (3) bids for the proposed procurement, the
49 political subdivision may acquire the property in any manner the polit-

1 ical subdivision deems best from a qualified vendor quoting the lowest
2 price. When fewer than three (3) bids are considered, a description
3 of the efforts undertaken to procure at least three (3) bids shall be
4 documented by the political subdivision and such documentation shall
5 be maintained for at least six (6) months after any such procurement is
6 made. If two (2) or more ~~price quotations~~ bids are the same and the low-
7 est responsive bids, the authorized decision maker may accept the one
8 (1) it chooses.

9 (2) When a political subdivision contemplates an expenditure to pur-
10 chase or lease personal property or to procure services, other than ~~these~~
11 personal property or services excluded pursuant to section 67-2803, Idaho
12 Code, valued in excess of ~~fifty~~ one hundred thousand dollars (\$~~51~~100,000),
13 the procurement procedures of this subsection ~~(2)~~ shall apply.

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

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

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

33 (d) If the political subdivision deems it is in the political subdivi-
34 sion's best interest, it may require the bidder to provide bid secu-
35 rity in an amount equal to at least five percent (5%) of the amount bid.
36 If required, a bid shall not be considered unless one (1) of the forms
37 of bidder's security is enclosed with it, and unless the bid is submit-
38 ted in a form which substantially complies with the form provided by the
39 political subdivision. The political subdivision may require that the
40 bid security be in one (1) of the following forms:

41 (i) Cash;

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

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

44 or

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

47 (e) Any bid received by the political subdivision may not be withdrawn
48 after the time set in the notice for opening of bids. When sealed bids
49 have been received, they shall be opened in public at a designated place

1 and time, thereafter to be compiled and submitted to the governing board
2 for award or, if a designee is authorized, for approval of the award.

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

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

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

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

32 (j) If any participating bidder objects to such award, such bidder
33 shall respond in writing to the notice from the political subdivision
34 within seven (7) calendar days of the date of transmittal of the notice,
35 setting forth in such response the express reason or reasons that the
36 award decision of the governing board is in error. Thereafter, staying
37 performance of any procurement until after addressing the contentions
38 raised by the objecting bidder, the governing board shall review its
39 decision and determine whether to affirm its prior award, modify the
40 award, or choose to re-bid, setting forth its reason or reasons there-
41 for. After completion of the review process, the political subdivision
42 may proceed as it deems to be in the public interest.

43 SECTION 7. That Chapter 28, Title 67, Idaho Code, be, and the same is
44 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
45 ignated as Section 67-2806A, Idaho Code, and to read as follows:

46 67-2806A. REQUEST FOR PROPOSAL. (1) A political subdivision may uti-
47 lize a request for proposal process as set forth in this section as an alter-
48 native to the competitive bidding process required by section 67-2806, Idaho

1 Code, when the political subdivision contemplates a procurement for goods or
2 services for which:

- 3 (a) Fixed specifications might preclude the discovery of a cost-effective
4 solution;
- 5 (b) A specific problem is amenable to several solutions; or
- 6 (c) Price is not the sole determining factor for selection.

7 (2) Factors that may be considered in the evaluation of vendors in a re-
8 quest for proposal process include, but are not limited to:

- 9 (a) An innovative solution that is offered;
- 10 (b) Unique product features;
- 11 (c) Price;
- 12 (d) Vendor experience in the market;
- 13 (e) Financial stability of a vendor;
- 14 (f) Differences among vendors in their ability to perform contract re-
15 quirements in a timely or efficient manner;
- 16 (g) Ability to meet product specifications;
- 17 (h) Product quality;
- 18 (i) Product performance records;
- 19 (j) Past performance by a vendor;
- 20 (k) Future product maintenance or service requirements; and
- 21 (l) Product warranties.

22 (3) At a minimum, a request for proposal shall state the instructions
23 of the process, the scope of work for the goods or services contemplated,
24 the selection criteria, contract terms and the scoring methodology applying
25 relative weights to factors considered.

26 (4) Notification, solicitation and consideration of contests concern-
27 ing the award of procurement pursuant to a request for proposal shall be in
28 accordance with the minimum requirements established in section 67-2806,
29 Idaho Code, subject to the selection criteria established at the outset of
30 each such procurement. Records compiled in the scoring process shall be made
31 available for public inspection when a procurement recommendation is made to
32 the governing board.