

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 656

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO THE STATE PROCUREMENT ACT; AMENDING SECTION 67-9229, IDAHO CODE,
2 TO REVISE A PROVISION REGARDING APPLICATION OF THE ADMINISTRATIVE PRO-
3 CEDURE ACT; AMENDING SECTION 67-9232, IDAHO CODE, TO ESTABLISH PROVI-
4 SIONS REGARDING A LOWEST RESPONSIBLE BIDDER AND TO MAKE TECHNICAL COR-
5 RECTIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
6

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

8 SECTION 1. That Section 67-9229, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 67-9229. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (1) All rules
11 of the division of purchasing shall be adopted in accordance with the pro-
12 visions of chapter 52, title 67, Idaho Code. Only appeals conducted as
13 contested cases pursuant to section 67-9232(3)(a)(iii), Idaho Code, shall
14 be subject to the judicial review provisions of chapter 52, title 67, Idaho
15 Code. This section shall not impair any contract right or contract remedy
16 that may exist between the state and a properly licensed contractor or ven-
17 dor.

18 (2) A determinations officer appointed by the director pursuant to the
19 provisions of this chapter may subpoena witnesses and evidence and adminis-
20 ter oaths.

21 (3) In the event that a determinations officer is appointed pursuant
22 to the provisions of section 67-9232, Idaho Code, any vendor who has sub-
23 mitted a bid in the process under review shall, notwithstanding any other
24 disability, have standing to intervene in the proceeding as a party, and such
25 intervenor may participate in the purchase appeal any challenge or appeal
26 ~~from any final order entered in a contested case conducted under section~~
27 ~~67-9232(3)(a)(iii), Idaho Code~~ provided for in this chapter.

28 SECTION 2. That Section 67-9232, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 67-9232. CHALLENGES AND APPEALS. (1) Bid specifications.

31 (a) There shall be, beginning with the date of receipt of notice, a
32 period of ~~not~~ no more than ten (10) working days in which any vendor,
33 qualified and able to sell or supply the items to be acquired, may notify
34 the administrator in writing of his intention to challenge the specifi-
35 cations and shall specifically state the exact nature of his challenge.
36 The specific challenge shall describe the location of the challenged
37 portion or clause in the specification document, unless the challenge
38 concerns an omission, explain why any provision should be struck, added
39 or altered, and contain suggested corrections.

1 (b) Upon receipt of the challenge, the administrator shall either deny
2 the challenge, and such denial shall be considered the final agency de-
3 cision, or he shall present the matter to the director for appointment
4 of a determinations officer. If the director appoints a determinations
5 officer, then all vendors, who are invited to bid on the property sought
6 to be acquired, shall be notified of the appeal and the appointment of
7 a determinations officer and may indicate in writing their agreement or
8 disagreement with the challenge within five (5) days. The notice to the
9 vendors may be electronic. Any vendor may note his agreement or dis-
10 agreement with the challenge. The determinations officer may, on his
11 own motion, refer the challenge portion and any related portions of the
12 challenge to the author of the specification to be rewritten with the
13 advice and comments of the vendors capable of supplying the property,
14 rewrite the specification himself and/or reject all or any part of any
15 challenge. If specifications are to be rewritten, the matter shall be
16 continued until the determinations officer makes a final determination
17 of the acceptability of the revised specifications.

18 (c) The administrator shall reset the bid opening no later than fif-
19 teen (15) days after final determination of challenges or the amendment
20 of the specifications. If the administrator denies the challenge, then
21 the bid opening date shall not be reset.

22 (d) The final decision of the determinations officer or administrator
23 on the challenge to specifications shall not be considered a contested
24 case within the meaning of the administrative procedure act; provided
25 that a vendor disagreeing with specifications may include such dis-
26 agreement as a reason for asking for appointment of a determinations
27 officer pursuant to subsection (3) of this section.

28 (2) Nonresponsive bids.

29 (a) There shall be, beginning with the day following receipt of notice
30 of rejection, a period of five (5) working days in which a bidder whose
31 bid was found nonresponsive may appeal such decision to the director
32 of the department of administration. A nonresponsive bid, within the
33 meaning of this chapter, is a bid that does not comply with the bid invi-
34 tation and specifications and shall not apply to a vendor whose bid is
35 considered but who is determined not to be the lowest responsible bidder
36 as defined in this chapter. The director shall:

37 (i) Deny the application; or

38 (ii) Appoint a determinations officer to review the record and
39 submit a recommended order to the director to affirm or reverse the
40 administrator's decision of bid nonresponsiveness.

41 (b) The director shall, upon receipt of a written recommendation from
42 the determinations officer, sustain, modify or reverse the administra-
43 tor's nonresponsive bid decision. An appeal conducted under the pro-
44 visions of this subsection shall not be considered a contested case and
45 shall not be subject to judicial review under the provisions of chapter
46 52, title 67, Idaho Code.

47 (3) Lowest responsible bidder.

48 (a) A vendor whose bid is considered may, within five (5) working days
49 following receipt of notice that he is not the lowest responsible bid-
50 der, apply to the director for appointment of a determinations officer.

1 The application shall set forth in specific terms the reasons why the
 2 administrator's decision is thought to be erroneous. Upon receipt of
 3 the application, the director shall within five (5) working days:

4 (i) Deny the application, and such denial shall be considered the
 5 final agency decision;

6 (ii) Appoint a determinations officer to review the record to de-
 7 termine whether the administrator's selection of the lowest re-
 8 sponsible bidder is correct; or

9 (iii) Appoint a determinations officer with authority to conduct a
 10 contested case hearing in accordance with the provisions of chap-
 11 ter 52, title 67, Idaho Code.

12 (b) The period for filing an application pursuant to paragraph (a) of
 13 this subsection shall be suspended upon a request by a bidder for pub-
 14 lic records related to the solicitation pursuant to chapter 1, title 74,
 15 Idaho Code. The period for filing an application shall resume upon the
 16 public agency's written confirmation it has produced the public records
 17 requested or written denial of the request pursuant to section 74-103,
 18 Idaho Code.

19 ~~(b)~~ (c) A determinations officer appointed pursuant to paragraph
 20 (a) (ii) of this subsection shall inform the director by written recom-
 21 mendation whether, in his opinion, the administrator's selection of the
 22 lowest responsible bidder is correct. The determinations officer in
 23 making this recommendation may rely on the documents of record, state-
 24 ments of employees of the state of Idaho participating in any phase of
 25 the selection process, and statements of any vendor submitting a bid.
 26 A contested case hearing shall not be allowed and the determinations
 27 officer shall not be required to solicit statements from any person.
 28 Upon receipt of the recommendation from the determinations officer,
 29 the director shall sustain, modify or reverse the decision of the ad-
 30 ministrator on the selection of the lowest responsible bidder, or the
 31 director may appoint a determinations officer pursuant to paragraph
 32 (a) (iii) of this subsection.

33 (d) (i) Any final decision rendered by the director that denied
 34 an application pursuant to paragraph (a) (i) of this subsection or
 35 that sustained the decision of the administrator under paragraph
 36 (c) of this subsection shall be subject to judicial review. A pe-
 37 tition for judicial review pursuant to this subsection shall be
 38 filed within twenty-eight (28) days of any final decision rendered
 39 by the director. The director shall as soon as possible transmit
 40 to the reviewing court the original record or a certified copy of
 41 the record that shall consist of all information received or re-
 42 lied on by the administrator in making the lowest responsible bid-
 43 der determination, all information submitted to the director or
 44 the determinations officer, and any other information allowed by
 45 the court. The court shall affirm the decision rendered by the di-
 46 rector unless the court finds that the administrator's determina-
 47 tion of the lowest responsible bidder or the director's findings,
 48 inferences, conclusions, or decisions rendered are:

- 49 1. In violation of constitutional or statutory provisions;
- 50 2. In excess of the statutory authority of the agency;

1 3. Made on unlawful procedure;

2 4. Not supported by substantial evidence on the record as a
 3 whole; or

4 5. Arbitrary, capricious, or an abuse of discretion.

5 (ii) In judicial review proceedings pursuant to the provisions
 6 of this paragraph, the time for filing of briefs and for hearings
 7 shall be set by the court at the earliest possible time, or in no
 8 event beyond twenty-eight (28) calendar days from the date of fil-
 9 ing of the petition.

10 (iii) If the court does not affirm the decision rendered by the di-
 11 rector, the proposed award of the contract or the award of the con-
 12 tract shall be deemed in violation of this chapter.

13 ~~(e)~~ (e) A determinations officer appointed pursuant to paragraph
 14 (a) (iii) of this subsection shall conduct a contested case hearing and
 15 upon conclusion of the hearing shall prepare findings of fact, conclu-
 16 sions of law and a recommended order for the director of the department
 17 of administration. Upon receipt of the findings of fact, conclusions
 18 of law and recommended order, the director shall enter a final order
 19 sustaining, modifying or reversing the decision of the administrator on
 20 the selection of the lowest responsible bidder.

21 (4) Sole source procurement.

22 (a) In the case of a sole source procurement, there shall be a period of
 23 not more than five (5) working days from the last date of public notice
 24 in which any vendor, able to sell or supply the property to be acquired,
 25 may notify the administrator, in writing, of his intention to challenge
 26 the sole source procurement and briefly explain the nature of the chal-
 27 lenge.

28 (b) Upon receipt of the challenge, the director shall either:

29 (i) Deny the application; or

30 (ii) Appoint a determinations officer to review the record and
 31 submit a recommended order to the director to affirm or reverse the
 32 administrator's sole source determination.

33 (c) The director shall, upon receipt of a written recommendation from
 34 the determinations officer, sustain, modify or reverse the administra-
 35 tor's sole source determination. An appeal conducted under the provi-
 36 sions of this subsection shall not be considered a contested case and
 37 shall not be subject to judicial review under the provisions of chapter
 38 52, title 67, Idaho Code.

39 (5) The administrator may, on his own initiative, file a complaint with
 40 the director for a hearing before a determinations officer. The director
 41 shall appoint a determinations officer who shall make written recommenda-
 42 tions to the director and the director shall render whatever decision is nec-
 43 essary to resolve the complaint.

44 (6) The director is hereby authorized and directed to appoint a deter-
 45 minations officer whenever one is required by this chapter. The officer
 46 shall meet and render whatever determination is called for. When a complaint
 47 is filed pursuant to subsection (2) of this section, no bid may be awarded
 48 until the final decision is rendered by the director; provided that in all
 49 other cases where a determinations officer is appointed by the director, the
 50 director shall have the power to allow the acquisition contract to be awarded

1 to the successful bidder prior to or after the decision of the determinations
2 officer if he determines such award to be in the best interests of the state.
3 Any determinations officer appointed pursuant to this section shall exist
4 only for the duration of unresolved complaints on an acquisition and shall
5 be dismissed upon resolution of all such complaints. The determinations
6 officer shall be guided in his determination by the best economic interests
7 of the state for both the near future and more extended periods of time. In
8 addition to the powers conferred on the determinations officer, the director
9 may:

10 (a) Impose the penalty prescribed by section 67-9231 (3), Idaho Code;
11 (b) Enjoin any activity that violates this chapter;
12 (c) Direct that bids be rejected or sustained;
13 (d) Direct that specifications be rejected, sustained or modified; and
14 (e) Direct further legal action.
15 (7) Challenges or appeals conducted pursuant to subsection (1), (2),
16 (3) (a) (i), or ~~3~~(3) (a) (ii) of this section shall not be considered to be a
17 contested case as that term is defined in the administrative procedure act.
18 An appeal conducted pursuant to subsection (3) (a) (iii) of this section shall
19 be conducted as a contested case according to the provisions of chapter 52,
20 title 67, Idaho Code.

21 SECTION 3. An emergency existing therefor, which emergency is hereby
22 declared to exist, this act shall be in full force and effect on and after
23 July 1, 2024.