

TITLE 67
STATE GOVERNMENT AND STATE AFFAIRS

CHAPTER 28
PURCHASING BY POLITICAL SUBDIVISIONS

67-2801. LEGISLATIVE INTENT. Efficient and cost-effective procurement of goods, services and public works construction is an important aspect of local government operations. Local public agencies should endeavor to buy goods, services and public works construction by way of a publicly accountable process that respects the shared goals of economy and quality. Political subdivisions of the state shall endeavor to purchase goods and services from vendors with a significant Idaho economic presence.

[67-2801, added 2005, ch. 213, sec. 37, p. 668.]

67-2802. APPLICABILITY. The provisions of this chapter establish procurement requirements for all political subdivisions of the state of Idaho. The public works construction procurement process set forth in this chapter shall function in a complementary manner with the public works contractors license board and the procedures which that board administers. Any general procurement procedures set forth in this chapter shall be supplemented by the provisions of any specific statute pertaining to the awarding of any contract for the purchase or acquisition of any service, commodity or thing made expressly applicable to any particular political subdivision or by means of any additional administrative process that otherwise establishes additional express requirements. No provisions of this chapter shall be deemed to preclude the use of procurement procedures otherwise authorized by law.

[67-2802, added 2005, ch. 213, sec. 37, p. 668.]

67-2802A. DISCRIMINATION IN PROCUREMENT PROHIBITED. Political subdivisions of the state of Idaho in their procurements governed by this chapter shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin unless permitted by an exception described in section [67-5909A](#), Idaho Code.

[67-2802A, added 2020, ch. 331, sec. 2, p. 964.]

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

(1) The acquisition of personal property when the procurement duplicates the price and substance of a contract for like goods or services that has been competitively bid by the state of Idaho, one (1) of its political subdivisions, or an agency of the federal government;

(2) Contracts or purchases 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;
- (5) Procurement of an interest in real property;
- (6) Procurement of insurance;
- (7) Costs of participation in a joint powers agreement with other units of government;
- (8) Procurement of used personal property;
- (9) Procurement from federal government general services administration (GSA) schedules or federal multiple award schedules (MAS);
- (10) Procurement of personal property or services through contracts entered into by the division of purchasing of the department of administration of the state of Idaho;
- (11) Procurement of goods for direct resale;
- (12) Procurement of travel and training;
- (13) Procurement of goods 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 or platform that was bid in compliance with state law;
- (16) Procurement of public utilities;
- (17) Procurement of food for use in jails or detention facilities; or
- (18) Procurement of used equipment at an auction if authorized by the governing board.

[67-2803, added 2005, ch. 213, sec. 37, p. 669; am. 2009, ch. 174, sec. 1, p. 554; am. 2010, ch. 123, sec. 1, p. 269; am. 2011, ch. 320, sec. 1, p. 937; am. 2016, ch. 290, sec. 1, p. 820; am. 2017, ch. 197, sec. 4, p. 484.]

67-2804. WAIVER. (1) Whenever the provisions of this chapter require a public works contractor's license to bid upon a public construction project, such requirement shall be deemed waived whenever federal law prohibits requiring licensure as a precondition for submitting a bid.

(2) Nothing in this section shall be deemed to prohibit a political subdivision from performing construction or repair work on the political subdivision's own facilities.

(3) Whenever this chapter provides time limits for objection or appeal, any objection or appeal not perfected within such time limitations shall be deemed to constitute a waiver of any rights to raise such objection or appeal thereafter.

[67-2804, added 2005, ch. 213, sec. 37, p. 669.]

67-2805. PROCUREMENT OF PUBLIC WORKS CONSTRUCTION. (1) When a political subdivision contemplates an expenditure to procure public works construction valued at or in excess of fifty thousand dollars (\$50,000) but not to exceed two hundred thousand dollars (\$200,000), the procurement procedures of this subsection shall apply:

- (a) The solicitation for bids for the public works construction to be performed shall be supplied to no fewer than three (3) owner-designated licensed public works contractors by written means, either by electronic or physical delivery. The solicitation shall describe the construction work to be completed in sufficient detail to allow an

experienced public works contractor to understand the construction project the political subdivision seeks to build.

(b) The solicitation for bids shall describe the electronic or physical delivery method or methods authorized to submit a bid, the date and time by which a bid proposal must be received by the clerk, secretary or other authorized official of the political subdivision, and shall provide a reasonable time to respond to the solicitation, provided that except in the event of an emergency, such time shall not be less than three (3) business days.

(c) Written objections to specifications or bid procedures must be received by the clerk, secretary or other authorized official of the political subdivision at least one (1) business day before the date and time upon which bids are scheduled to be received.

(d) When written bids have been received, by either physical or electronic delivery, they shall be submitted to the governing board or a designee of the governing board who shall present the lowest responsive bid to the governing board for approval or, if authorized, approve the bid. The governing board or the board's designee shall approve the responsive bid proposing the lowest procurement price or reject all bids and publish notice for bids, as before.

(e) If the political subdivision finds that it is impractical or impossible to obtain three (3) bids for the proposed public works procurement, the political subdivision may acquire the work in any manner the political subdivision deems best from a qualified public works contractor 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 the procurement decision is made. If two (2) or more price quotations offered by different licensed public works contractors are the same and the lowest responsive bids, the governing board or governing-board authorized official may accept the one (1) it chooses.

(2) When a political subdivision contemplates an expenditure to purchase public works construction valued in excess of two hundred thousand dollars (\$200,000), the procurement procedures of this subsection 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 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.

(i) The request for bids for a category A procurement shall set a date and place for the public opening of bids. Two (2) notices soliciting bids shall be published in the official newspaper of the political subdivision. The first notice shall be published at least two (2) weeks before the date for opening bids, with the

second notice to be published in the succeeding week at least seven (7) days before the date that bids are scheduled to be opened. The notice shall succinctly describe the project to be constructed. Copies of specifications, bid forms, bidder's instructions, contract documents, and general and special instructions shall be made available upon request and payment of a reasonable plan copy fee by any interested bidder.

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

(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 project to which the bid pertains.

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

(A) Cash;

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

(C) A certified check made payable to the political subdivision; or

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

(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 at a designated place and time, thereafter to be compiled and submitted to the governing board for award or, if a designee is authorized, for approval of the award.

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

(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 bidder, the amount of the lowest qualified bid-

der'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.

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

(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.

(x) If any participating bidder objects to such award, such bidder shall respond in writing to the notice from the political subdivision within seven (7) calendar days of the date of transmittal of the notice, setting forth in such response the express reason or reasons that the award decision of the governing board is in error. Thereafter, staying performance of any procurement until after addressing the contentions raised by the objecting bidder, 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.

(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 premised upon demonstrated technical competence, experience constructing similar facilities, prior experience with the political subdivision, available 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.

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

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

(iv) Any licensed contractor that fails the prequalification stage can appeal any such determination to the governing board within seven (7) days after transmittal of the prequalification results to contest the determination. If the governing board sustains the decision that a contractor fails to meet prequalification standards, it shall state its reason or reasons for the record. A governing board decision concerning prequalification may be appealed to the public works contractors license board no more than fourteen (14) days following any decision on appeal made by the governing board. The public works contractors license board shall decide any such appeal within thirty-five (35) days of the filing of a timely appeal. The public works contractors license board shall allow participation, written or oral, by the appealing contractor and the political subdivision, either by employing a hearing officer or otherwise. The public works contractors license board shall not substitute its judgment for that of the political subdivision, limiting its review to determining whether the decision of the governing board is consistent with the announced prequalification standards, whether the prequalification standards comport with the law and whether the governing board's decision is supported by the entirety of the record. The decision of the public works contractors license board shall be written and shall state the reason or reasons for the decision. Category B prequalification procedures that are appealed shall be stayed during the pendency of the prequalification appeal until the public works contractors license board completes its review, but in no instance more than forty-nine (49) days after the appellate decision of the governing board regarding prequalification. Any licensed public works contractor affected by a decision on appeal by the public works contractors license board may, within twenty-eight (28) days of the final decision, seek judicial review as provided by [chapter 52, title 67](#), Idaho Code.

(v) Following the conclusion of the prequalification administrative procedures, the bidding stage shall proceed by the setting of a time, date and place for the public opening of bids. In circumstances involving prequalified prime contractors, a notice soliciting bids shall be transmitted to prequalified bidders at least fourteen (14) days before the date of opening the bids. In circumstances involving prequalified specialty or subordinate contractors, the notice soliciting bids shall be published in the same manner applicable to category A bids. The notice shall succinctly describe the project to be constructed. Copies of specifications, bid forms, bidder's instructions, contract documents, and general and special instructions shall be made available upon request and payment of a reasonable plan copy fee by any eligible bidder.

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

(vii) All category B bids shall be presented or otherwise delivered under sealed cover to the clerk or other authorized agent of the political subdivision designated by the instructions to bidders with a concise statement marked on the outside generally identifying the project to which the bid pertains.

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

(A) Cash;

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

(C) A certified check made payable to the political subdivision; or

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

(ix) Any category B bid received by a 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 the board's designee at a designated place and time. The governing board's designee shall thereafter compile and submit to the governing board for award or, if authorized, approve the award. If identical bids are received, the governing board may choose the bidder it prefers. If the successful bidder fails to execute the contract, the amount of his bidder's security may be forfeited to the political subdivision, in the sole discretion of the political subdivision, and the proceeds shall be deposited in a designated fund out of which the expenses for procuring substitute performance are paid.

(x) 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 bidder, the amount of the lowest qualified bidder's security, if forfeited, shall 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.

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

(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.

(xiii) If any participating bidder objects to such award, such bidder shall respond in writing to the notice from the political subdivision within seven (7) calendar days of the date of transmittal of the notice, setting forth in such response the express reason or reasons that the award decision of the governing board is in error. Thereafter, staying performance of any procurement until after addressing the contentions raised by the objecting bidder, 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, added 2005, ch. 213, sec. 37, p. 669; am. 2005, ch. 295, sec. 2, p. 935; am. 2017, ch. 197, sec. 5, p. 485.]

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 personal property or services excluded pursuant to section [67-2803](#), Idaho Code, valued at or in excess of fifty thousand dollars (\$50,000) but not to exceed one hundred thousand dollars (\$100,000), the procurement procedures of this subsection shall apply.

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

(b) The solicitation for bids shall describe the electronic or physical delivery method or methods authorized to submit a bid, the date and time by which a bid proposal must be received by the clerk, secretary or other authorized official of the political subdivision, and shall provide a reasonable time to respond to the solicitation, provided that except in the event of an emergency, such time shall not be less than three (3) business days.

(c) Written objections to specifications or bid procedures must be received by the clerk, secretary or other authorized official of the political subdivision at least one (1) business day before the date and time upon which bids are scheduled to be received.

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

(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 bids are the same and the lowest responsive bids, the authorized decision maker may accept the one (1) it chooses.

(2) When a political subdivision contemplates an expenditure to purchase or lease personal property or to procure services, other than personal property or services excluded pursuant to section [67-2803](#), Idaho Code, valued in excess of one hundred thousand dollars (\$100,000), the procurement procedures of this subsection shall apply.

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

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

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

(d) If the political subdivision deems it is in the political subdivision's best interest, it may require the bidder to provide bid security in an amount equal to at least five percent (5%) of the amount bid.

If required, a bid shall not be considered unless one (1) of the forms of bidder's security is enclosed with it, and unless the bid is submitted in a form which substantially complies with the form provided by the political subdivision. The political subdivision may require that the bid security be in one (1) of the following forms:

- (i) Cash;
 - (ii) A cashier's check made payable to the political subdivision;
 - (iii) A certified check made payable to the political subdivision;
- or
- (iv) A bidder's bond executed by a qualified surety company, made payable to the political subdivision.

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

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

(g) The political subdivision may, on the refusal or failure of the successful bidder to execute the contract, award the contract to the next lowest qualified bidder. If the governing board awards the contract to the next lowest qualified bidder, the amount of the lowest qualified 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.

(h) In its discretion, the governing board or its designee may reject all bids presented and re-bid or, 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 its 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.

(i) If the governing board of any political subdivision chooses to award a competitively bid contract involving the procurement of personal property or services 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 who have submitted a competing bid.

(j) If any participating bidder objects to such award, such bidder shall respond in writing to the notice from the political subdivision within seven (7) calendar days of the date of transmittal of the notice, setting forth in such response the express reason or reasons that the award decision of the governing board is in error. Thereafter, staying performance of any procurement until after addressing the contentions raised by the objecting bidder, 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, added 2005, ch. 213, sec. 37, p. 675; am. 2017, ch. 197, sec. 6, p. 490.]

67-2806A. REQUEST FOR PROPOSAL. (1) A political subdivision may utilize a request for proposal process as set forth in this section as an alternative to the competitive bidding process required by section [67-2806](#), Idaho Code, when the political subdivision contemplates a procurement for goods or services for which:

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

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

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

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

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

[67-2806A, added 2017, ch. 197, sec. 7, p. 493.]

67-2807. COOPERATIVE PURCHASING. With the approval of its governing board, a political subdivision may participate in cooperative purchasing agreements with the state of Idaho, other Idaho political subdivisions, other government entities, or associations thereof. Political subdivisions may also participate in cooperative purchasing programs established by any association that offers its goods or services as a result of competitive solicitation processes. Goods or services procured by participation in such cooperative agreements or programs shall be deemed to have been acquired in accordance with the requirements of this chapter.

[67-2807, added 2019, ch. 67, sec. 2, p. 161.]

67-2808. EMERGENCY EXPENDITURES AND SOLE SOURCE EXPENDITURES. (1) Emergency expenditures.

(a) The governing board of a political subdivision may declare that an emergency exists and that the public interest and necessity demand the immediate expenditure of public money if:

(i) There is a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster;

(ii) It is necessary to do emergency work to prepare for the national or local defense; or

(iii) It is necessary to do emergency work to safeguard life, health, or property.

(b) Upon making the declaration of emergency, any sum required in the emergency may be expended without compliance with formal bidding procedures.

(2) Sole source expenditures.

(a) The governing board of a political subdivision may declare that there is only one (1) vendor if there is only one (1) vendor for the public works construction, services, or personal property to be acquired. For purposes of this subsection, only one (1) vendor shall refer to situations where there is only one (1) source reasonably available and shall include, but not be limited to, the following situations:

(i) Where public works construction, services, or personal property is required to respond to a life-threatening situation or a situation that is immediately detrimental to the public welfare or property;

(ii) Where the compatibility of equipment, components, accessories, computer software, replacement parts, or service is the paramount consideration;

(iii) Where a sole supplier's item is needed for trial use or testing;

(iv) The purchase of mass-produced movies, videos, books, or other copyrighted materials;

(v) The purchase of public works construction, services, or personal property for which it is determined there is no functional equivalent;

(vi) The purchase of public utility services;

(vii) The purchase of products, merchandise, or trademarked goods for resale at a political subdivision facility; or

(viii) Where competitive solicitation is impractical, disadvantageous, or unreasonable under the circumstances.

(b) Upon making the declaration that there is only one (1) vendor for public works construction, services, or personal property, unless the public works construction, services, or personal property is required for a life-threatening situation or a situation that is immediately detrimental to the public welfare or property, notice of a sole source procurement shall be published in the official newspaper of the political subdivision at least fourteen (14) calendar days prior to the award of the contract.

(c) A sole source declaration made pursuant to the provisions of this subsection may be made without an emergency declaration under subsection (1) of this section.

[67-2808, added 2005, ch. 213, sec. 37, p. 678; am. 2013, ch. 344, sec. 2, p. 928; am. 2019, ch. 115, sec. 1, p. 440.]

67-2809. LEGISLATIVE INTENT -- PUBLIC WORKS -- AGREEMENTS -- SAVINGS -- SEVERABILITY. (1) It is the intent of the legislature to provide for the efficient and cost-effective procurement of goods and services by political subdivisions as market participants.

(2) Notwithstanding any other provision found in [chapter 10, title 44](#), Idaho Code, [chapter 28, title 67](#), Idaho Code, and [chapter 57, title 67](#), Idaho Code, the following shall apply:

(a) This act shall be known as the "Open Access to Work Act."

(b) For purposes of this section, the following terms have the following meanings:

(i) "Political subdivision" means the state of Idaho, or any county, city, school district, sewer district, fire district or any other taxing subdivision or district of any public or quasi-public corporation of the state, or any agency thereof, or with any other public board, body, commission, department or agency, or officer or representative thereof;

(ii) "Public works" shall have the same meaning as that provided for "public works construction" in section [54-1901](#), Idaho Code.

(c) (i) Except as provided in subsection (2) (c) (ii) of this section or as required by federal or state law, the state or any political subdivision that contracts for the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works shall not require that a contractor, subcontractor, material supplier or carrier engaged in the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works pay its employees:

1. A predetermined amount of wages or wage rate; or
2. A type, amount or rate of employee benefits.

(ii) Subsection (2) (c) (i) of this section shall not apply when federal law requires the payment of prevailing or minimum wages to persons working on projects funded in whole or in part by federal funds.

(d) The state or any political subdivision that contracts for the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works or obligates funds pursuant to such a contract shall ensure that neither the awarding governmental entity nor any construction manager acting on the governmental entity's behalf shall:

(i) In its bid documents, specifications, project agreements or other controlling documents for a public works construction contract, require or prohibit bidders, offerors, contractors, subcontractors or material suppliers to enter into or adhere to pre-hire agreements, project labor agreements, collective bargaining agreements or any other agreement with one (1) or more labor organizations on the same or other related construction projects;

(ii) Discriminate against, or treat differently, bidders, offerors, contractors, subcontractors or material suppliers for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one (1) or more labor organizations on the same or other related construction projects; or

(iii) Discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin unless permitted by an exception described in section [67-5909A](#), Idaho Code.

Nothing in subsection (2) (d) of this section shall prohibit bidders, offerors, contractors, subcontractors or material suppliers from voluntarily entering into agreements described in subparagraph (i) of this paragraph.

(e) Any interested party, which shall include a bidder, offeror, contractor, subcontractor or taxpayer, shall have standing to challenge any bid award, specification, project agreement, controlling document, grant or cooperative agreement that violates the provisions of this section, and such interested party shall be awarded costs and attorney's fees in the event that such challenge prevails.

(f) The provisions of this section apply to any contract executed after the effective date of this act.

(3) This act does not prohibit or interfere with the rights of employers or other parties to enter into agreements or engage in any other activity protected by the national labor relations act, 29 U.S.C. section 151, et seq.

(4) The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

[67-2809, added 2012, ch. 312, sec. 3, p. 861; am. 2020, ch. 331, sec. 3, p. 964.]