

TITLE 67  
STATE GOVERNMENT AND STATE AFFAIRS

CHAPTER 92  
STATE PROCUREMENT ACT

67-9201. SHORT TITLE. This chapter shall be known and may be cited as the "State Procurement Act."

[67-9201, added 2016, ch. 289, sec. 4, p. 793.]

67-9202. DECLARATION OF POLICY. The Idaho legislature, recognizing that an offered low price is not always indicative of the greatest value, declares it to be the policy of the state:

- (1) To engage in open, competitive acquisitions of property; and
- (2) To maximize the value received by the state with attendant benefits to the citizens.

[67-9202, added 2016, ch. 289, sec. 4, p. 793.]

67-9203. DEFINITIONS. As used in this chapter:

- (1) "Acquisition" means the process of procuring property.
- (2) "Administrator" means the administrator of the division of purchasing as created by section [67-9204](#), Idaho Code.
- (3) "Agency" means all officers, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding:
  - (a) The legislative and judicial branches of government;
  - (b) The governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general and superintendent of public instruction; and
  - (c) A state institution of higher education that complies with the provisions of section [67-9225](#), Idaho Code.
- (4) "Bid" means a written offer to perform a contract to sell or otherwise supply property in response to a solicitation.
- (5) "Bidder" means a vendor who has submitted a bid on property to be acquired by the state.
- (6) "Contract" means an agreement for the acquisition of property, including a purchase order.
- (7) "Contractor" means a vendor who has been awarded a contract.
- (8) "Director" means the director of the department of administration as created by section [67-5701](#), Idaho Code.
- (9) "Lowest responsible bidder" means the responsible bidder whose bid reflects the lowest acquisition price to be paid by the state, except that when specifications are valued or comparative performance evaluations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price.
- (10) "Open contract" means a contract awarded by the state through the division of purchasing as a result of a competitive solicitation to one (1) or more vendors who have agreed to allow all agencies to procure specified property under the terms and conditions set forth in the contract.
- (11) "Procure" means to obtain property for state use in a manner other than by gift including, but not limited to, purchase, lease or rent.

(12) "Property" means goods, services, parts, supplies and equipment, both tangible and intangible, including, but not limited to, designs, plans, programs, systems, techniques and any rights or interests in such property.

(13) "Sole source" means the only vendor from whom specific property is available to procure.

(14) "Solicitation" means an invitation to bid, a request for proposal or a request for quote issued pursuant to this chapter for the purpose of procuring property.

(15) "Specifications" means the standards or requirements for property to be procured as explicitly stated in a solicitation or contract.

(16) "State institution of higher education" means Boise state university, Idaho state university or Lewis-Clark state college.

(17) "Vendor" means a person or entity capable of supplying property to the state.

[67-9203, added 2016, ch. 289, sec. 4, p. 793; am. 2018, ch. 17, sec. 7, p. 29.]

67-9204. DIVISION OF PURCHASING -- ADMINISTRATOR. (1) There is hereby created within the department of administration the division of purchasing. The director shall appoint an administrator for the division, subject to the approval of the governor.

(2) The administrator shall be exempt from the provisions of the state merit system.

(3) The administrator may employ additional personnel as may be necessary.

(4) The administrator may enter into contracts for professional services or assistance when necessary or desirable.

[67-9204, added 2016, ch. 289, sec. 4, p. 794.]

67-9205. POWERS AND DUTIES OF THE ADMINISTRATOR. The administrator of the division of purchasing:

(1) Shall acquire all property for state agencies according to the provisions of this chapter;

(2) Shall acquire all property by competitive solicitation, except as otherwise provided;

(3) Shall determine, based on the specifications and matters relating to responsibility, the lowest responsible bidder in all competitive solicitations;

(4) Shall enter into contracts and any modifications thereto for the acquisition of property on behalf of and in the name of state agencies;

(5) Shall, when economically feasible and practical, consolidate solicitations and acquire property in amounts as large as can be efficiently managed and controlled;

(6) May, in the evaluation of paper product bids, give those items that meet the recycled content standards as specified by the administrator a five percent (5%) purchasing preference. As such, those qualifying paper products may be considered to cost five percent (5%) less when choosing the lowest responsible bidder;

(7) May appoint a deputy who shall have the power to act for the administrator and in the administrator's place while absent, which deputy shall be bonded to the state of Idaho as prescribed by [chapter 8, title 59](#), Idaho Code;

(8) May require from any contractor the submission of a performance bond for such sum as will, in the opinion of the administrator, guarantee the faithful performance of such contract, and the amount and requirement therefor shall be set out in the specifications;

(9) May enter into open contracts based on actual or estimated requirements;

(10) May enter into contracts, including leases and rentals, for periods of time exceeding one (1) year, provided that such contracts contain no penalty to or restriction upon the state in the event cancellation is necessitated by a lack of funding for any such contract;

(11) Is authorized and empowered to formulate rules, subject to the approval of the director, to effect the provisions of this chapter;

(12) May enter into negotiations for acquisitions in accordance with established rules of the division;

(13) May inspect property supplied by a contractor to determine whether it meets specifications;

(14) May classify, after review with the various agencies, the requirements of the state for all property that may be acquired, and may adopt standards of quality for property, and may establish specifications for acquisition. Each specification shall, until revised or rescinded, apply alike in terms and effect to each future acquisition of the classified property;

(15) May delegate authority pursuant to section [67-9206](#), Idaho Code; and

(16) May carry out such acts as are necessary to enforce the provisions of this chapter.

[67-9205, added 2016, ch. 289, sec. 4, p. 794.]

67-9206. DELEGATION OF AUTHORITY. (1) The administrator may delegate such authority as the administrator deems appropriate to an employee of the division, an agency employee or an agency, provided that any such employee or the procurement staff of any such agency demonstrates sufficient competence in procurement as to satisfy the administrator.

(2) A delegation made pursuant to subsection (1) of this section shall be made in writing and shall state with specificity:

(a) The nature of the authority being delegated;

(b) The terms, conditions and limitations of the delegation; and

(c) The duration of the delegation.

(3) The administrator shall, subject to approval of the director, formulate rules specifying:

(a) The process by which delegation of authority may be granted, continued or revoked; and

(b) The factors influencing the decision to delegate such authority in addition to the demonstrated competence required by subsection (1) of this section.

[67-9206, added 2016, ch. 289, sec. 4, p. 795.]

67-9207. PROCUREMENT TRAINING. (1) A person who may procure property for the state or whose employment with the state includes duties relating to procurement, such as contract administration, management or monitoring, shall undergo procurement training, including a person whose office or employer is excluded from the definition of "agency" under section [67-9203](#), Idaho Code. The training shall address the person's specific procurement

duties and shall include continuing education requirements when appropriate.

(2) The administrator shall establish training for those persons described in subsection (1) of this section.

[67-9207, added 2016, ch. 289, sec. 4, p. 795.]

67-9208. SOLICITATIONS. (1) The administrator shall not make or cause to be made any acquisition until a requisition for the property to be acquired has been submitted to the administrator's office by the requisitioning agency. The requisition shall certify to the administrator's satisfaction that there are sufficient funds or balance in appropriations out of which the amount of the requisition may be lawfully paid, except as provided in section [67-9221](#)(3), Idaho Code.

(2) Upon determining that an agency's requisition complies with the provisions of subsection (1) of this section, the administrator shall issue a solicitation. Notice of the solicitation shall be posted in a conspicuous manner as prescribed by rule. The notice shall describe the property to be acquired in sufficient detail to apprise a vendor of the exact nature of the property being sought and shall set forth the bid closing date, time and location.

(3) The administrator may establish by rule exceptions to the notice provisions in subsection (2) of this section; provided however, that the procurements excepted from the notice provisions must be minor in nature.

[67-9208, added 2016, ch. 289, sec. 4, p. 796.]

67-9209. BIDS. (1) In response to a solicitation issued pursuant to section [67-9208](#), Idaho Code, a vendor seeking to supply the property solicited shall submit a bid in a manner prescribed by rule.

(2) To enhance small business bidding opportunities, the administrator shall seek a minimum of three (3) bids from vendors having a significant Idaho economic presence as defined in section [67-2349](#), Idaho Code.

(3) All bids received shall be opened at the time and place specified in the solicitation. The bids shall be opened in public view, and a record of each bid shall then and there be made. The administrator shall have the right to reject any and all bids pursuant to rules established for the division.

[67-9209, added 2016, ch. 289, sec. 4, p. 796.]

67-9210. AWARD OF CONTRACT. (1) The administrator shall award contracts to, and place orders for property with, the lowest responsible bidder. Qualifications for responsibility shall be prescribed by rule.

(2) Where both the bids and quality of property offered are the same, preference shall be given to property of local and domestic production and manufacture or from bidders having a significant Idaho economic presence as defined in section [67-2349](#), Idaho Code. In connection with the award of any contract for the placement of any order for state printing, binding, engraving or stationery work, the provisions of sections [60-101](#) and [60-103](#), Idaho Code, shall apply to the extent that the same may be inconsistent with any requirements contained in this section.

(3) In awarding contracts, the administrator 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.

[67-9210, added 2016, ch. 289, sec. 4, p. 796; am. 2020, ch. 331, sec. 4, p. 966.]

67-9211. MULTIPLE AWARDS. (1) Notwithstanding any provision of this chapter to the contrary, the administrator may make an award of a contract to two (2) or more bidders to furnish the same or similar property when more than one (1) contractor is necessary:

(a) To furnish the types of property and quantities required by state agencies;

(b) To provide expeditious and cost-efficient acquisition of property for state agencies; or

(c) To enable state agencies to acquire property that is compatible with property previously acquired.

(2) No award of a contract to multiple bidders shall be made under this section unless the administrator makes a written determination showing that multiple awards satisfy one (1) or more of the criteria set forth in this section.

(3) When a contract for property has been awarded to two (2) or more bidders in accordance with this section, a state agency shall make purchases from the contractor whose terms and conditions regarding price, availability, support services and delivery are most advantageous to the agency.

(4) A multiple award of a contract for property under this section shall not be made when a single bidder can reasonably serve the acquisition needs of state agencies. A multiple award of a contract shall only be made to the number of bidders necessary to serve the acquisition needs of state agencies.

[67-9211, added 2016, ch. 289, sec. 4, p. 796.]

67-9212. CONTRACTS SHALL BE IN WRITING. Every contract made by the administrator on behalf of the state shall be in writing and shall be signed manually or electronically by the contracting parties. Every contract shall be filed in the office of the administrator, together with all bids, specifications and other documents and records associated with the acquisition or intended acquisition.

[67-9212, added 2016, ch. 289, sec. 4, p. 797.]

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

(2) After award of a contract, if it is determined in an administrative or judicial review authorized by this chapter that the award of a contract is in violation of this chapter, the following shall apply:

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

(i) The contract may be ratified and affirmed by the director upon a declaration of the administrator that immediate delivery of the property is required by public exigencies and that the acquisition

of the property satisfies the standards established by the rules of the division of purchasing for an emergency procurement. The ratification shall limit the term of the ratified contract to no more than six (6) months, and any ratification shall be submitted to the board of examiners for approval;

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

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

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

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

(ii) The contract may be ratified and affirmed by the director upon a declaration of the administrator that immediate delivery of the property is required by public exigencies and that the acquisition of the property satisfies the standards established by the rules of the division of purchasing for an emergency procurement. The ratification shall limit the term of the ratified contract to no more than six (6) months, and any ratification shall be submitted to the board of examiners for approval. Ratification shall be without prejudice to the state's right to any damages or remedy it can prove under any theory including, but not limited to, contract or tort; or

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

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

(d) Except where a contract is ratified, in all cases in which a contract is declared void under paragraph (b) of this subsection, the state shall endeavor to return those goods delivered under the contract that have not been used or distributed to nonstate parties. No further payments shall be made under the contract, and the state is entitled to recover the greater of:

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

(ii) The difference between payments under the contract and the value to the state of the property delivered before the contract was voided. The value of the property to the state shall be submitted to the board of examiners for approval; or

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

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

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

(3) If it is determined in administrative or judicial review authorized by this chapter that an award or proposed award of a contract is in violation of this chapter, and an employee or officer of the state acted fraudulently or in bad faith, such employee or officer shall be subject to the provisions of section [67-9233](#), Idaho Code, and chapters 4 and 5, [title 74](#), Idaho Code, as applicable.

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

[67-9213, added 2017, ch. 262, sec. 2, p. 653.]

67-9214. ACCEPTANCE OF PROPERTY. No property to be acquired by an agency shall be accepted by the agency unless the property meets the specifications set forth in the solicitation or contract.

[67-9214, added 2016, ch. 289, sec. 4, p. 797.]

67-9215. PRESERVATION AND DISCLOSURE OF RECORDS -- EXCEPTION. (1) The administrator shall preserve all records relating to solicitations in the administrator's office, and information with respect thereto, in such form as the administrator shall prescribe by rule, for a period of three (3) years after the date of final action, or for a period of time as may be prescribed by a record retention guideline schedule approved by the director. Records preserved under the provisions of this section shall be subject to disclosure according to [chapter 1, title 74](#), Idaho Code.

(2) If a solicitation is canceled prior to award of a contract, the administrator shall immediately return all bids to the submitting vendors or delete bids that were received electronically. Bids returned or deleted pursuant to this subsection shall not be subject to disclosure under [chapter 1, title 74](#), Idaho Code.

[67-9215, added 2016, ch. 289, sec. 4, p. 797.]

67-9216. OPEN CONTRACTS. (1) If property is available on an open contract, then all agencies seeking to procure such property must do so from the open contract. Provided however, that the administrator may grant an exemption to a requesting agency if the administrator determines that an exemption would be in the best interest of the state.

(2) A request for an exemption shall be made in writing and explain why the exemption would be in the best interest of the state.

(3) The administrator's determination to grant an exemption shall be made in writing and explain the justification for the exemption.

(4) The administrator shall make an annual report to the legislature on the first day of the regular session, which report shall detail:

- (a) The exemptions requested during the previous year;
- (b) Whether the exemptions were granted or denied; and
- (c) The reason each exemption was granted or denied.

[67-9216, added 2016, ch. 289, sec. 4, p. 797.]

67-9217. DISQUALIFICATION OF VENDORS. (1) A disqualified vendor may not submit a bid.

(2) A vendor may be disqualified by the administrator for any of the following reasons:

- (a) Failure to perform according to the terms of any contract;
- (b) Attempts by whatever means to cause specifications to be drawn so as to favor a specific vendor;
- (c) Use of the provisions of this chapter to obstruct or unreasonably delay acquisitions by the state;
- (d) Perjury in a vendor disqualification hearing;
- (e) Knowingly violate the provisions of this chapter; or
- (f) Debarment, suspension or ineligibility from federal contracting of the vendor, its principals or its affiliates.

(3) A vendor shall be notified by registered mail within ten (10) days of the vendor's disqualification by the administrator. The vendor may, within thirty (30) days of the receipt of such notice, request a hearing, which shall be held in accordance with [chapter 52, title 67](#), Idaho Code.

(4) In lieu of disqualification, the determinations officer at a hearing conducted pursuant to subsection (3) of this section may recommend to the director specific conditions to the vendor's continued participation in acquisitions by the state.

(5) Disqualification or conditions may be imposed for a period of not less than six (6) months or not more than five (5) years.

(6) For purposes of this section, "obstruction" means a lack of success in more than fifty percent (50%) of the specification challenges made in each of three (3) different acquisitions during any twenty-four (24) month period.

[67-9217, added 2016, ch. 289, sec. 4, p. 798.]

67-9218. PAYMENT OF CONTRACTORS. (1) Within ten (10) days after the property acquired is delivered as called for by the specifications, the acquiring agency shall complete all processing required of that agency to permit the contractor to be paid according to the terms of the contract.



(2) Within ten (10) days of receipt of the documents necessary to permit payment of the contractor according to the terms of the contract, the state controller shall cause a warrant to be issued in favor of the contractor and delivered.

(3) Contracts let or entered into by or through the division of purchasing are exempt from the provisions of section [67-2302](#), Idaho Code; provided however, that late contract payments may be assessed interest by the contractor at the rate set forth in section [63-3045](#), Idaho Code, unless another rate is established by the contract.

[67-9218, added 2016, ch. 289, sec. 4, p. 798.]

67-9219. CONTRACT OVERSIGHT. (1) Subject to approval of the director, the administrator shall formulate rules that establish policies and procedures relating to the administration, management, monitoring and oversight of contracts entered by an agency.

(2) Any officer, institution or entity that is excluded from the definition of "agency" under section [67-9203](#), Idaho Code, but that may enter contracts obligating the state, shall establish policies and procedures relating to the administration, management, monitoring and other oversight of such contracts.

(3) Policies and procedures established pursuant to subsection (1) or (2) of this section shall define the roles and responsibilities of those persons assigned to administer, manage, monitor or otherwise oversee state contracts.

(4) Each officer, agency, institution or entity that may enter contracts obligating the state, regardless of whether such officer, agency, institution or entity is included in the definition of "agency" under section [67-9203](#), Idaho Code, shall make an annual report to the legislature on all qualifying contracts entered into by the officer, agency, institution or entity during the previous year. The report shall be made on the first day of the regular legislative session and shall include the following information for each contract:

- (a) The amount;
- (b) The duration;
- (c) The parties; and
- (d) The subject.

(5) For purposes of this section, a qualifying contract is one entered into with a state institution of higher education pursuant to section [67-2332A](#), Idaho Code, or one valued at more than one million five hundred thousand dollars (\$1,500,000) over the duration of the contract and that is:

- (a) Awarded as a result of a sole source or other noncompetitive procurement pursuant to section [67-9221](#), Idaho Code;
- (b) A multiyear contract; or
- (c) Part of a multiple award.

[67-9219, added 2016, ch. 289, sec. 4, p. 798; am. 2021, ch. 71, sec. 2, p. 253.]

67-9220. INVENTORIES. Every agency shall submit to the administrator, at such times as the administrator may require, a written statement containing full information as to all property then in the agency's possession and the estimated requirements of the agency for such period as the administrator may designate. Further, the administrator may, at any time, inspect or

cause to be inspected and inventoried all such property in any agency, and it shall be the duty of each officer and employee thereof to assist and furnish to the administrator full information for purposes of such examination or investigation.

[67-9220, added 2016, ch. 289, sec. 4, p. 799.]

67-9221. NONCOMPETITIVE AND EMERGENCY PROCUREMENTS. (1) The administrator may allow noncompetitive procurements when:

- (a) A particular savings to the state may be obtained through the use of educational discounts, reverse public auctions or acquisition of federal surplus or excess property;
- (b) The property is available only from a sole source;
- (c) Immediate delivery of the property is required by public exigencies and the administrator has declared that an emergency exists; or
- (d) Other circumstances justify a noncompetitive procurement in the opinion of the director and the administrator.

(2) Prior to procuring property from a sole source, the administrator shall post notice of a sole source procurement, unless the property is required for a life-threatening situation or a situation that is immediately detrimental to the public welfare or property. The notice shall be posted in a conspicuous manner as prescribed by rule.

(3) When the administrator has declared an emergency, payment vouchers may be issued on behalf of an agency without sufficient funds to make an emergency procurement. A payment voucher shall include a statement of justification for the emergency procurement.

(4) There will not be noncompetitive procurement from a state institution of higher education, as defined in section [67-2332A](#), Idaho Code, unless:

- (a) The contract meets the following criteria:
  - (i) It is for less than ten thousand dollars (\$10,000); and
  - (ii) It is either not a contract for services or it is a contract for services related to lodging or events;
- (b) The contract is between state institutions of higher education; or
- (c) The administrator makes a written determination that the circumstances of the acquisition are consistent with the provisions of subsection (1) of this section.

[67-9221, added 2016, ch. 289, sec. 4, p. 799; am. 2021, ch. 71, sec. 3, p. 253.]

67-9222. NONOWNED PROPERTY. (1) Bids submitted for the acquisition of any property, the terms of payment for which are other than those of a procurement with attendant passage of title, shall be prepared on a basis that will allow the state full unlimited use, except for those periods required by the owner of such property for normal maintenance, without incurring additional costs to the state beyond those included in the bid price submitted.

(2) Any exercise by the state of an option to acquire previously nonowned property, or any other procedure that shall serve to pass title to the state where no passage of title existed before, shall be deemed to be a new acquisition and, prior to execution, all applicable provisions and procedures of this chapter shall be exercised.

[67-9222, added 2016, ch. 289, sec. 4, p. 799.]

67-9223. EXCHANGE OF STATE PROPERTY. (1) Whenever an agency owns property no longer economical to use, the administrator may dispose of such property by exchanging the same in part payment for new property, as provided for in this section. The administrator shall include in the solicitation a full description of the property to be exchanged as part payment and shall permit vendors to examine the same. The contract shall be awarded on the basis of net cost to the state after allowance for the property to be exchanged in part payment. In addition, the administrator may permit an exchange of property in part payment for new property acquisitions from contracts for the same or similar property.

(2) Exchange of property pursuant to this section will be permitted only when it is determined by the administrator that all other methods of disposal of the property sought to be exchanged will yield less value to the state.

[67-9223, added 2016, ch. 289, sec. 4, p. 800.]

67-9224. COOPERATIVE AND GROUP DISCOUNT PURCHASING. (1) The administrator may authorize an agency to:

(a) Become a participating member of a group discount purchasing organization;

(b) Participate in, sponsor, conduct or administer a cooperative purchasing agreement for property with one (1) or more public agencies, independent of the requirements of section [67-2329](#), Idaho Code; or

(c) Utilize contracts of other public agencies within this state upon determining that the contract was let in a manner that constitutes competitive bidding consistent with the requirements of this chapter and is otherwise in the best interest of the state.

(2) The state's participation in a cooperative purchase or group discount purchasing organization must be formalized by a written agreement.

(3) The state's entrance fee or participation fee in a group discount purchasing organization must be based on criteria applied to all other members of the organization.

(4) Any agreement entered into pursuant to subsection (2) of this section shall be maintained on file with the division as well as with the agency entering into the agreement.

[67-9224, added 2016, ch. 289, sec. 4, p. 800; am. 2017, ch. 188, sec. 1, p. 426.]

67-9225. PROCUREMENT BY STATE INSTITUTIONS OF HIGHER EDUCATION. (1) A state institution of higher education may establish policies and procedures for procuring property that shall be substantially consistent with the requirements for procuring property as set forth in this chapter and that shall be approved by the state board of education. When the state board of education has approved such policies and procedures for a state institution of higher education, the institution shall not be subject to the provisions of this chapter, except as provided in subsection (2) of this section.

(2) When the state enters into an open contract, a state institution of higher education must use the open contract, or the institution may procure property from a vendor that is not party to the open contract if the cost to the institution would be equal to or less than the price of the property under the open contract.

[67-9225, added 2016, ch. 289, sec. 4, p. 800; am. 2017, ch. 187, sec. 1, p. 425.]

67-9226. DISCOUNTS. (1) Whenever an employee of an agency is charged with the responsibility of procuring property for and on behalf of the state, the employee shall, if possible, negotiate discounts normally given in the ordinary course of business including, but not limited to, discounts for prompt payment and discounts for bulk acquisitions.

(2) It shall be the duty of the administrator to prescribe by rule the manner by which to obtain discounts.

[67-9226, added 2016, ch. 289, sec. 4, p. 800.]

67-9227. CONTRACTS WITH FEDERAL GOVERNMENT EXEMPT FROM CERTAIN PROVISIONS. The administrator, on behalf of any agency, and the comparable purchasing officers of the several political subdivisions, municipal corporations and public agencies of the state on behalf of such political subdivisions, municipal corporations and public agencies, within the limits of available appropriations and requisitions made for acquisition thereof, may enter into any contract with the United States of America, or with any agency thereof, or with any agency established for disposition or distribution of surplus federal properties within this state, for the acquisition of any property, real or personal, without regard to provisions of law that require:

- (1) The posting of notices;
- (2) Public advertising;
- (3) Inviting or receiving competitive bids; or
- (4) Delivery of property acquired before payment in any case in which delivery may be constructively accomplished without manual possession.

[67-9227, added 2016, ch. 289, sec. 4, p. 801.]

67-9228. ACQUISITION OF PROPERTY -- GENERAL SERVICES ADMINISTRATION FEDERAL SUPPLY SCHEDULE CONTRACTS. Notwithstanding any provision in this chapter to the contrary, the administrator may, instead of soliciting bids, contract for property at a price equal to or less than the contractor's current federal supply contract price for sales to the general services administration of the United States without the use of competitive bids, so long as the contractor has indicated a willingness in writing to extend such contractor pricing, terms and conditions to the administrator, and the administrator considers the price to be advantageous to the state.

[67-9228, added 2016, ch. 289, sec. 4, p. 801.]

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

(2) A determinations officer appointed by the director pursuant to the provisions of this chapter may subpoena witnesses and evidence and administer oaths.

(3) In the event that a determinations officer is appointed pursuant to the provisions of section [67-9232](#), Idaho Code, any vendor who has submitted a bid in the process under review shall, notwithstanding any other disability, have standing to intervene in the proceeding as a party, and such intervenor may participate in the purchase appeal or appeal from any final order entered in a contested case conducted under section [67-9232](#) (3) (a) (iii), Idaho Code.

[67-9229, added 2016, ch. 289, sec. 4, p. 801.]

67-9230. PROHIBITIONS. (1) No contract or any interest therein shall be transferred by the contractor to whom such contract is given to any other party without approval in writing by the administrator and by the board of examiners pursuant to section [67-1027](#), Idaho Code. Transfer of a contract without approval shall cause the annulment of the contract so transferred, at the option of the state. All rights of action, however, for any breach of such contract by the contracting parties are reserved to the state.

(2) No member of the legislature or any officer or employee of any branch of the state government shall directly, himself, or by any other person in trust for him or for his use or benefit or on his account, undertake, execute, hold or enjoy, in whole or in part, any contract made or entered into by or on behalf of the state of Idaho, if made by, through, or on behalf of the department in which he is an officer or employee; or if made by, through or on behalf of any other department unless the same is made after competitive bids.

(3) Except as provided in this chapter, no officer or employee shall influence or attempt to influence the award of a contract to a particular vendor, or to deprive or attempt to deprive any vendor of a contract.

(4) No officer or employee shall conspire with a vendor or its agent, and no vendor or its agent shall conspire with an officer or employee, to influence or attempt to influence the award of a contract, or to deprive or attempt to deprive a vendor of a contract.

(5) No officer or employee shall fail to use an open contract except as provided in this chapter.

(6) No officer or employee shall accept property knowing that the property does not meet specifications or other acceptance criteria set forth in the contract.

(7) Deprivation, influence or attempts thereat shall not include written reports, based upon substantial evidence, sent to the administrator concerning matters relating to the responsibility of vendors.

(8) No vendor or related party, or subsidiary, or affiliate of a vendor, may submit a bid to obtain a contract to provide property to the state, if the vendor or related party, or affiliate or subsidiary was paid for services used in preparing the specifications or if the services influenced the procurement process.

[67-9230, added 2016, ch. 289, sec. 4, p. 801.]

67-9231. PENALTIES. (1) Any person convicted of a violation of subsection (1), (2), (3) or (8) of section [67-9230](#), Idaho Code, shall be guilty of a misdemeanor.

(2) Any person convicted of a violation of subsection (4) of section [67-9230](#), Idaho Code, shall be guilty of a felony.

(3) Any officer or employee found to have violated the provisions of subsection (5) or (6) of section [67-9230](#), Idaho Code, may, by order of a determinations officer appointed by the director, be suspended without pay for not more than ninety (90) working days, have a reprimand entered in his personnel file, or both.

[67-9231, added 2016, ch. 289, sec. 4, p. 802.]

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

(a) There shall be, beginning with the date of receipt of notice, a period of not more than ten (10) working days in which any vendor, qualified and able to sell or supply the items to be acquired, may notify the administrator in writing of his intention to challenge the specifications and shall specifically state the exact nature of his challenge. The specific challenge shall describe the location of the challenged portion or clause in the specification document, unless the challenge concerns an omission, explain why any provision should be struck, added or altered, and contain suggested corrections.

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

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

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

(2) Nonresponsive bids.

(a) There shall be, beginning with the day following receipt of notice of rejection, a period of five (5) working days in which a bidder whose bid was found nonresponsive may appeal such decision to the director of the department of administration. A nonresponsive bid, within the meaning of this chapter, is a bid that does not comply with the bid invitation and specifications and shall not apply to a vendor whose bid

is considered but who is determined not to be the lowest responsible bidder as defined in this chapter. The director shall:

- (i) Deny the application; or
- (ii) Appoint a determinations officer to review the record and submit a recommended order to the director to affirm or reverse the administrator's decision of bid nonresponsiveness.

(b) The director shall, upon receipt of a written recommendation from the determinations officer, sustain, modify or reverse the administrator's nonresponsive bid decision. An appeal conducted under the provisions of this subsection shall not be considered a contested case and shall not be subject to judicial review under the provisions of [chapter 52, title 67](#), Idaho Code.

(3) Lowest responsible bidder.

(a) A vendor whose bid is considered may, within five (5) working days following receipt of notice that he is not the lowest responsible bidder, apply to the director for appointment of a determinations officer. The application shall set forth in specific terms the reasons why the administrator's decision is thought to be erroneous. Upon receipt of the application, the director shall within five (5) working days:

- (i) Deny the application, and such denial shall be considered the final agency decision;
- (ii) Appoint a determinations officer to review the record to determine whether the administrator's selection of the lowest responsible bidder is correct; or
- (iii) Appoint a determinations officer with authority to conduct a contested case hearing in accordance with the provisions of [chapter 52, title 67](#), Idaho Code.

(b) A determinations officer appointed pursuant to paragraph (a) (ii) of this subsection shall inform the director by written recommendation whether, in his opinion, the administrator's selection of the lowest responsible bidder is correct. The determinations officer in making this recommendation may rely on the documents of record, statements of employees of the state of Idaho participating in any phase of the selection process, and statements of any vendor submitting a bid. A contested case hearing shall not be allowed and the determinations officer shall not be required to solicit statements from any person. Upon receipt of the recommendation from the determinations officer, the director shall sustain, modify or reverse the decision of the administrator on the selection of the lowest responsible bidder, or the director may appoint a determinations officer pursuant to paragraph (a) (iii) of this subsection.

(c) A determinations officer appointed pursuant to paragraph (a) (iii) of this subsection shall conduct a contested case hearing and upon conclusion of the hearing shall prepare findings of fact, conclusions of law and a recommended order for the director of the department of administration. Upon receipt of the findings of fact, conclusions of law and recommended order, the director shall enter a final order sustaining, modifying or reversing the decision of the administrator on the selection of the lowest responsible bidder.

(4) Sole source procurement.

(a) In the case of a sole source procurement, there shall be a period of not more than five (5) working days from the last date of public notice in which any vendor, able to sell or supply the property to be acquired,

may notify the administrator, in writing, of his intention to challenge the sole source procurement and briefly explain the nature of the challenge.

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

(i) Deny the application; or

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

(c) The director shall, upon receipt of a written recommendation from the determinations officer, sustain, modify or reverse the administrator's sole source determination. An appeal conducted under the provisions of this subsection shall not be considered a contested case and shall not be subject to judicial review under the provisions of [chapter 52, title 67](#), Idaho Code.

(5) The administrator may, on his own initiative, file a complaint with the director for a hearing before a determinations officer. The director shall appoint a determinations officer who shall make written recommendations to the director and the director shall render whatever decision is necessary to resolve the complaint.

(6) The director is hereby authorized and directed to appoint a determinations officer whenever one is required by this chapter. The officer shall meet and render whatever determination is called for. When a complaint is filed pursuant to subsection (2) of this section, no bid may be awarded until the final decision is rendered by the director; provided that in all other cases where a determinations officer is appointed by the director, the director shall have the power to allow the acquisition contract to be awarded to the successful bidder prior to or after the decision of the determinations officer if he determines such award to be in the best interests of the state. Any determinations officer appointed pursuant to this section shall exist only for the duration of unresolved complaints on an acquisition and shall be dismissed upon resolution of all such complaints. The determinations officer shall be guided in his determination by the best economic interests of the state for both the near future and more extended periods of time. In addition to the powers conferred on the determinations officer, the director may:

(a) Impose the penalty prescribed by section [67-9231](#) (3), Idaho Code;

(b) Enjoin any activity that violates this chapter;

(c) Direct that bids be rejected or sustained;

(d) Direct that specifications be rejected, sustained or modified; and

(e) Direct further legal action.

(7) Challenges or appeals conducted pursuant to subsection (1), (2), (3) (a) (i) or 3(a) (ii) of this section shall not be considered to be a contested case as that term is defined in the administrative procedure act. An appeal conducted pursuant to subsection (3) (a) (iii) of this section shall be conducted as a contested case according to the provisions of [chapter 52, title 67](#), Idaho Code.

[67-9232, added 2016, ch. 289, sec. 4, p. 802.]

67-9233. ETHICS IN PROCUREMENT. (1) It is the intent of the legislature that all persons involved in the process of procuring property for the state conduct themselves in a manner that protects the public interest and fosters confidence in the integrity of the process. To that end, this section shall apply to all such persons, including:



(a) State officers, even if the officer or officer's employer is excluded from the definition of "agency" under section [67-9203](#), Idaho Code;

(b) State employees, even if the employee works for an officer, institution or entity that is excluded from the definition of "agency" under section [67-9203](#), Idaho Code; and

(c) Vendors or any person acting on behalf of a vendor.

(2) In any matter relating to state procurement, it is an unethical breach of the public trust to:

(a) Knowingly attempt to realize personal gain through state office or employment by any conduct inconsistent with this chapter or any other applicable law or rule;

(b) Attempt to influence a state officer or employee to violate the policy or provisions of this chapter or any other applicable law or rule; or

(c) Knowingly violate an applicable law or rule.

(3) Subject to due process requirements, and in addition to any other administrative, civil or criminal sanctions provided by law or rule, a state employee's supervisor may impose the following sanctions on the employee for an unethical breach of the public trust:

(a) A reprimand or warning, either oral or written;

(b) Suspension with or without pay for a specified period of time; or

(c) Termination of employment.

(4) In addition to any other administrative, civil or criminal sanction provided by law or rule, a vendor who commits an unethical breach of the public trust, or whose advocate or representative commits an unethical breach of the public trust, may be disqualified pursuant to section [67-9217](#), Idaho Code.

[67-9233, added 2016, ch. 289, sec. 4, p. 805.]

67-9234. SEVERABILITY. Insofar as a provision of this chapter 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 chapter.

[67-9234, added 2016, ch. 289, sec. 4, p. 805.]