

INTRODUCTION TO

# BIDDING & PROCUREMENT 2024



Idaho Association of Counties  
**Local Government Purchasing**  
*A Guide for County Officials*



Idaho Association of Counties  
3100 S Vista Avenue, Suite 200  
Boise, ID 83705  
[www.idcounties.org](http://www.idcounties.org)

## Introduction

Idaho's local government purchasing laws are designed to facilitate the efficient and cost-effective procurement of government goods and services, including public works construction. Idaho's laws also ensure public accountability by establishing an open and transparent process when government buys goods and services or contracts for public works construction. Idaho's local government purchasing law applies to all units of local government, including counties. Counties may supplement state purchasing laws through county policies adopted by the board of county commissioners so long as county policies do not conflict with state law. For the most part, local government purchasing laws are outlined in Chapter 28, Title 67, Idaho Code.

## Exemptions from Local Government Procurement Procedures

Idaho's local government purchasing laws include numerous exclusions. Specifically, the following purchases are exempt from Idaho's local government purchasing laws:

- Acquisition of personal property which has already been competitively bid by another state, local, or federal agency
- Purchases of goods and services for which the total cost is less than \$75,000
- Compensation of employees
- Procurement of interest in real property
- Procurement of insurance
- Costs of participating in a joint powers agreement
- Purchase of used personal property
- Purchases from the Federal Government General Services Administration (GSA) schedules and Federal Multiple Award Schedules (MAS)
- Purchase of personal property and services through contracts entered into by the Idaho Department of Administration Division of Purchasing
- Purchase of goods for direct resale
- Procurement of travel and training
- Purchase of goods and services from Idaho Correctional Industries
- Repair of heavy equipment and machinery
- Purchase of software maintenance, support, and licensing that was previously bid in compliance with state law
- Purchase of public utilities
- Purchase of food for use in county jails or detention facilities
- Purchase of used equipment at auction (with BOCC approval)

## County Procurement Policies

The board of county commissioners has power to “pass all ordinances and rules and make all regulations, not repugnant to law”<sup>1</sup> as well as authority to “supervise the official conduct of all county officers.”<sup>2</sup> This authority extends to the adoption of county procurement policies. The purpose of a county procurement policy is to provide a uniform method for the county to purchase goods and services required by the county. County procurement policies should include direction to county elected officials, department heads, and employees regarding the manner in which purchases are to be made, including requisite pre-approvals, and any limitations to county purchasing, whether such limitations be imposed by state law or county policy. The policy should also include instruction to elected officials and department heads who oversee purchasing within their various offices and departments.

Most county procurement policies include a threshold for receiving preapproval from the board of county commissioners (i.e.: purchases in excess of \$1,000) as well as any exceptions to the policy (utility payments, emergency repairs, fuel, special chemicals, jail food, aggregate purchases, recurring purchases, etc.). Procurement policies may also specify the process county elected officials and department heads are to follow for the procurement of equipment, vehicles, goods, services, professional services, and public works construction and may include required checklists, approvals, and so forth. The board of county commissioners may also choose to delegate purchasing powers to other elected officials and department heads.<sup>3</sup> As a matter of practice, it is helpful to include information related to delegation of purchasing authority within the county procurement policy.

## The County Budget and Procurement

The county budget is an important factor when making purchasing decisions. Idaho Code permits the board of county commissioners to make a general reserve appropriation equal to five percent of the current expense fund and five percent of the justice fund. These reserves may be tapped into by the board of county commissioners to make emergency expenditures. County officials are also restricted in their ability to make purchases by the county budget. If a desired purchase is not in the budget, it cannot be made. Likewise, if a purchase is authorized in the budget, but funds are not available to make the purchase, the purchase cannot be made. For example, the approved county budget may include the purchase of five patrol vehicles for the sheriff’s office, but the vehicle purchases should not be made without prior approval of the board of county commissioners to ensure that there are funds available to make the purchase. County officials are personally liable for any unauthorized purchases.

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<sup>1</sup> Idaho Code §31-714

<sup>2</sup> Idaho Code §31-802

<sup>3</sup> Idaho Code §31-602

## Procurement of Goods and Services

### Personal Property and Services Less than \$75,000

County purchases of personal property (equipment, supplies, vehicles, etc.) or services (janitorial, landscaping, etc.) having a purchase price of \$75,000 or less are exempt from Idaho's local government purchasing laws. As long as the purchase price is less than \$75,000, a county does not need to solicit bids for the purchase of personal property or services. Any purchase in excess of \$75,000 is subject to public bidding.<sup>4</sup>

### Personal Property and Services Less than \$150,000

Purchases for goods and services between \$75,000 and \$150,000 follow an "informal" bid process. Under an informal bid process, a county is authorized to solicit bids from vendors selected by the county who are capable of providing the goods or service. Informal bids may be solicited via email, mail, or hand delivery to no less than three vendors. The solicitation of bids should include:

- The goods and/or services to be purchased (or leased),
- The methods for vendors to submit bids,
- The deadline for submitting bids (date, time, and location), and
- The timeframe for the county to respond to bids (three days unless there is an emergency).

Once received, bids are compiled and submitted to the board of county commissioners for final approval. Pursuant to Idaho Code, the county must either select the lowest responsive bid or reject all bids.<sup>5</sup> In the event that multiple lowest bids are the same, the county may select the lowest bidder of its choice. If all bids are rejected, the county must start the procurement process over again. A vendor may file written objections to the specifications of a bid or the bid procedures to the county clerk or other official designated by the board of county commissioners at least one business day before the deadline for bid submission.

In the event that the board of county commissioners finds that it is "impractical" or "impossible" to obtain the minimum three bids required by law, the county may purchase goods or services from a qualified vendor quoting the lowest price. In the event that a county finds out of necessity that it cannot receive three bids, the county must document the efforts it undertook to follow the law. Any documentation supporting the county's efforts to comply with local government purchasing laws must be retained for at least six months.

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<sup>4</sup> Idaho Code §67-2803 and §67-2806

<sup>5</sup> Idaho Code §67-2806

## Personal Property and Services Greater than \$150,000

County purchases for goods and services in excess of \$150,000 must follow a “formal” bid selection process. Under a formal bid selection process, county purchases must be made in an open and competitively sealed bid process. As part of the sealed bid process, the county must first publish two legal notices in the official county newspaper. The first notice must take place at least two weeks before the bid opening. The second notice must take place at least seven days before the bid opening date. The legal notices must include the following:

- Describe the goods and/or services to be purchased (or leased);
- A statement that bid specifications, forms, instructions, documents, and other forms are available upon request;
- The deadline for submission of bids; and
- The date, time, and location of the meeting in which the bids will be opened.

Bids received by a county may not be withdrawn after the time noticed for the opening of bids. Any written objections to bid specifications or the bid process must be received by the county clerk or other designated county employee no later than three business days before the public meeting at which the bids are scheduled to be opened.

As part of the bid submission process, a county may require a bidder to provide a bid security in an amount up to five percent of the total bid amount. Bid security may be in any of the following forms:

- Cash,
- A cashier’s check,
- A certified check, or
- A bidder’s bond executed by a qualified surety company.

All sealed bids must be opened during the public board of county commissioner meeting in which the bids were noticed to be opened. The board of county commissioners may select the lowest responsive and qualified bid. If the board of county commissioners selects a bidder other than the lowest bidder, the board must declare the reasons for not selecting the lowest bidder and communicate its reasons in writing to all other bidders. Vendors not selected have seven days to respond in writing to the county board of commissioner’s decision and object to the board’s decision not to select the low bid. The final purchase of goods and/or services is stayed while the board reviews its decision to determine whether the original decision is upheld, modified, or re-bid.

In the event that the chosen bidder fails to provide the good or service, the county may retain the bidder’s bid security and award the contract to the next lowest qualified bidder. The chosen bidder’s security may be used to make up the difference in cost between the lowest bid and the second lowest bid. Any surplus of the lowest bidder’s security must be returned to the lowest

bidder (or the lowest bidder's surety company). The county may deduct reasonable administrative costs from the bid security up to 25% of the lowest bidder's security.

## Request for Proposal

Rather than following the traditional bid process to purchase goods and services, a county may alternatively use a request for proposal (RFP) process if:

- The traditional bid process precludes the discovery of other cost-effective solutions,
- Several solutions exist to a specific problem, or
- Price is not the sole factor for selection.

When using the RFP process, a county must articulate the instructions of the RFP process, the scope of work for the goods or services sought, the selection criteria, contract terms, and the scoring methodology to be used in awarding the proposal. The RFP process must also follow the notification process established for the procurement of goods and services.<sup>6</sup>

## Discrimination Prohibited

Idaho law prohibits a county or other local unit of government from discriminating against or granting preferential treatment to a company, group, or individual on the basis of race, sex, color, ethnicity, or national origin unless otherwise allowed by law.<sup>7</sup>

## Public Works Construction

Procurement of public works construction (courthouses, jails, roads, bridges, water and sewer systems, and other county facilities) comprise some of the most significant expenses a county will incur. Similar to the procurement of personal property and services, a county must follow statutory bidding procedures prior to selecting professionals to design and construct county facilities. Three project cost thresholds govern the manner in which a county contracts out for the construction of county facilities and infrastructure.

### Public Works Construction Less than \$50,000

A county does not need to follow a competitive bid selection process for public works construction projects less than \$50,000<sup>8</sup>. Additionally, effective July 1, 2024, a county is no longer required to hire a licensed public works contractor for projects less than \$100,000.<sup>9</sup> A county

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<sup>6</sup> Idaho Code §67-2806A

<sup>7</sup> Idaho Code §67-2802A

<sup>8</sup> Idaho Code §67-2803(2)

<sup>9</sup> Idaho Code §54-1903(9)



may also prequalify public works professionals to ensure that potential contractors have the experience, personnel, and equipment necessary to undertake and complete a project.

### Public Works Construction Less than \$200,000

For public works contracts between \$50,000 and \$200,000, a county must solicit at least three bids from a licensed public works contractor.<sup>10</sup> Bid solicitation may be mailed or emailed to potential contractors. Bid solicitations must include a description of the construction project to be undertaken with enough detail to “allow an experienced public works contractor to understand the construction project” to be built. Additionally, the bid solicitation must describe the bid delivery method, the deadline to submit bids, and provide at least three business days to respond to the bid (except in the case of an emergency). Any objections to the bid or bid process must be submitted to the county clerk or other authorized county staff at least one day before the deadline to submit bids. Once all bids have been received, the board of county commissioners must either select the lowest bid or reject all bids and start the solicitation process over again. In the event that two or more of the bids are tied for the lowest quote, the board of county commissioners may choose from among the tied lowest bids.

If a county does not receive three bids, a county may select from a responsive bidder. In such instances the county must document the efforts it took to obtain the minimum three bids. Documentation of the county’s efforts must be retained for at least six months. A county may also declare that it is impractical to obtain three bids and contract for the public works construction with a qualified public works contractor in the manner the county deems best.<sup>11</sup>

### Public Works Construction Greater Than \$200,000

A county may use one of two methods for procurement of public works construction projects greater than \$200,000. Category A procurements follow a basic competitive sealed bid process while Category B procurements follow a more complicated prequalification sealed bid process.

#### Category A Procurement

Under Category A, a county must follow an open, competitive sealed bid process. When soliciting Category A bids, a county may only consider the bid amount, compliance with the bid process, and whether or not the bidder is licensed to do the bid work. Category A bids must be awarded to the lowest responsive bid from a qualified bidder.<sup>12</sup> Bids must be solicited through an open public notice process through which the county provides two public notices of the solicitation process in the official county newspaper. The first public notice must occur at least two weeks prior to the date for the opening of bids with the second notice occurring one week

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<sup>10</sup> Idaho Code §67-2805(1)

<sup>11</sup> Idaho Code §67-2805(1)(e)

<sup>12</sup> Idaho Code §67-2805(2)(a)



prior to the opening of bids. Public notices for a Category A request for bids must include the date, time, and location for the physical opening of sealed bids as well as a brief description of the project to be constructed.

Anyone objecting to either the bid specifications or the bid procedures must submit their objections no later than three days before the date and time upon which the sealed bids are to be opened. The county clerk or other administrative personnel appointed by the board of county commissioners must respond in writing to objections to the individual objecting to the bid as well as other having submitted bids. If necessary, the county may adjust bidding timeframes in response to submitted objections.<sup>13</sup>

As part of the bid submission process, a county may require a bidder to provide a bid security in an amount up to five percent of the total bid amount. Bid security may be in any of the following forms:

- Cash,
- A cashier's check,
- A certified check, or
- A bidder's bond executed by a qualified surety company.

Bids may not be withdrawn after the date and time noticed for the opening of bids. All received sealed bids must be opened in public at the time and place designated in the public notice. After sealed bids are opened, the bids are submitted to the board of county commissioners for approval. The board of county commissioners may award the contract to the lowest qualified bidder or reject all bids and reinstate the bid process for the project. If two or more bids are the same and represent the lowest bid, the board of county commissioners may choose the bidder of its choice. If no bids are received, the board of county commissioners may purchase or contract for services without additional competitive bidding. The board of county commissioners may also, at its discretion, reject all bids and pass a resolution, stating findings of fact, declaring its intent to purchase goods or services on the open market because a better price can be found on the open market.<sup>14</sup>

If the board of county commissioners selects a bidder other than the lowest bidder, the board must declare the reasons for not selecting the lowest bidder and communicate its reasons in writing to all other bidders. Vendors not selected have seven days to respond in writing to the county board of commissioner's decision and object to the board's decision not to select the lowest bid. The final purchase of goods and/or services is stayed while the board reviews its decision to determine whether the original decision is upheld, modified, or re-bid.<sup>15</sup>

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<sup>13</sup> Idaho Code §67-2805(2)(a)(iii)

<sup>14</sup> Idaho Code §67-2805(2)(a)(viii)

<sup>15</sup> Idaho Code §67-2805(2)(a)(ix)

In the event that the successful bidder fails to execute the contract, the county may retain the bidder's bid security and award the contract to the next lowest qualified bidder. The chosen bidder's security may be used to make up the difference in cost between the lowest bid and the second lowest bid. Any surplus of the lowest bidder's security must be returned to the lowest bidder (or the lowest bidder's surety company). The county may deduct reasonable administrative costs from the bid security up to 25% of the lowest bidder's security.

A participating bidder may object to the awarded bid by filing written notice to the county within seven calendar days of notice of the awarded bid. In the written notice, the objector must state why she believes the county erred in awarding the bid to the winning individual or firm. If a written notice of objection is filed, the county must review its decision and determine whether to continue awarding the bid, modify the award, or reopen the bid process. In making its decision, the county must provide the reasons for its final decision and proceed as it sees fit in the public's interest.<sup>16</sup>

### Category B Procurement

Under Category B, a county prequalifies licensed public works contractors to submit sealed, competitive bids. Category B procurement follows a two-stage process for the submission and selection of bids. The first stage consists of establishing the prequalification for licensed contractors to submit bids. The second stage consists of the formal bid acceptance and award process.

Notice of the prequalification process is the same as the process established for Category A procurement with the noted difference of the inclusion of prequalification standards. A county may establish prequalification requirements that demonstrate technical competence, prior experience constructing the required facility, prior experience with the county, available nonfinancial resources (labor force, materials, supplies, equipment, etc.), and performance history. As part of the notice process, the county must also include the standards for evaluating the qualifications of potential bidders.<sup>17</sup> Any licensed contractor interested in being prequalified to bid must submit a written response to the county answering the prequalification questions.

### Self-Performance of Public Works

Idaho's local government procurement law provides a waiver for counties and other local units of government to self-perform construction work.<sup>18</sup> This allows a county to construct or repair county facilities and infrastructure. Most commonly, counties construct, repair, and maintain county highways and bridges using county road and bridge equipment, materials, and personnel. Counties may also choose to paint, lay carpet, renovate restrooms, etc., if the county

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<sup>16</sup> Idaho Code §67-2805(2)(a)(x)

<sup>17</sup> Idaho Code §67-2805(2)(b)(i)

<sup>18</sup> Idaho Code §67-2804(2)

has employees qualified to do the work. More complex construction projects like the construction of a county courthouse or jail are generally contracted out to licensed public works constructors through the competitive bidding process outlined in Chapter 28, Title 67, Idaho Code.

## Quality Based Selection

For certain professional services, a county must select a vendor based not on price, but qualification.<sup>19</sup> This type of selection process is known as quality based selection or QBS. Quality based selection must be used for the selection of architects, engineers, construction managers, and land surveyors. Quality based selection encompasses both qualifications and demonstrated competencies. Quality based selection must be used anytime the anticipated cost of the service exceeds \$50,000. A county must still follow established guidelines for the selection of design professionals even when costs are less than \$50,000. Additionally, a county may use the same design professional for a projected completed in phases.<sup>20</sup>

A county may go about selecting designee professionals in one of two ways. The first, and simplest method is to preapprove two or more persons or firms and maintain the preapproved individuals or firms on a formal list approved by the county.<sup>21</sup> For a preapproved individual or firm to be included on the list, the county must follow applicable public notice and selection requirements (see below). The list of preapproved design professionals may be used for up to five years. Once established, a county may select the top-ranked individual or firm from the preapproved list and negotiate a price for the project rather than going through the formal public notice and RFQ process for each project. If the county and top-ranked design professional cannot agree on a price, the county may negotiate with the second-ranked design professional and so forth.

The second method for selecting a design professional is to follow a formal request for qualifications (RFQ) process each time a county is in need of a design professional.<sup>22</sup> To select a design professional, a county must first establish the criteria, procedures, and qualifications for the design professional services being sought, including methods for scoring, ranking, and selecting qualified design professionals. Note that because design professionals are selected based on qualifications and not cost, cost is not to be included in the RFQ or statement of qualifications. A county must make available to the public the system for scoring and ranking used in the RFQ process.

Once a county has established the procedures for selecting a design professional, it must publish the RFQ in the official county newspaper twice, once two weeks prior to the RFQ deadline and

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<sup>19</sup> Idaho Code §67-2320

<sup>20</sup> Idaho Code §67-2320(4)

<sup>21</sup> Idaho Code §67-2320(2)(i)

<sup>22</sup> Idaho Code §67-2320(2)

again one week prior to the deadline. Once RFQs are received, the board of county commissioners or their designee must score and rank the responding individuals and firms based on their qualifications and demonstrated competencies in accordance with the county's established criteria and procedures. Examples of selection criteria include, but are not limited to:

- A description of the firm, including location, years in operation, size, etc.
- Past performance of similar projects
- Experience with state and federal grants, including reporting and compliance (if the project is grant funded)
- Experience of project managers and staff, including education, training, certifications, and competencies
- The approach the individual or firm would take on the project
- Quality control measures implemented by the individual or firm
- Proposed schedule for project completion

The county must select the top-rated individual or firm for the project. Once the individual or firm is selected, the county then begins negotiating a price with the individual or firm. Project costs should be negotiated such that the price is fair and reasonable to the county when considering the value, scope, complexity, schedule, and nature of the project. In the event that the county is unable to negotiate a fair and reasonable price with the top-ranked firm or individual, the county may suspend negotiations with that firm or individual and initiate negotiations with the second-ranked individual or firm. The county may continue negotiating with the next individual or firm on the list if it is unable to agree on a contract or price until such point that it has either selected an individual or firm or is unable to select from the list of individuals or firms, the county may cancel the procurement and start the process over from the beginning. If the project is to be completed in different phases, the county, at its discretion, may negotiate an extension of the contract or issue a new professional services contract with the individual or firm selected to complete the first phase of the project.

## **Special Provisions of Public Purchasing**

In addition to establishing requirements for the purchase of goods and services, public works construction, and the service of design professionals, the Idaho Legislature has also adopted numerous laws to provide exceptions to the formal bidding and procurement process. These special provisions are outlined in the paragraphs below.

### **Cooperative Purchasing**

The board of county commissioners may enter into cooperative purchasing agreements with the state, other local governments, or local government associations and authorize county officials

and department heads to make purchases through associated cooperative purchasing agreements. Additionally, county offices and departments may make purchases from state, regional, or national cooperative purchasing programs so long as the programs are the result of a competitive bid process. Any goods or services procured through a competitive procurement agreement or program may be made in lieu of following Idaho bidding and procurement laws.<sup>23</sup>

## Emergency Expenditures

In the event of a public emergency, the board of county commissioners may make purchases without following statutory bidding processes. In order to count as an emergency, a purchase must be made when there is a natural disaster (such as an earthquake, epidemic, fire, flood, or storm), to prepare for national or local defense (such as in times of war or when there is rioting), or when the county must take immediate action to safeguard life, health, or property.<sup>24</sup> To qualify as a public emergency, the board of county commissioners must make a formal emergency declaration that it is in the public's interest and that there is a necessity to immediately expend public money to address the declared emergency.

## Sole Source Expenditures

In the event that there is only one vendor or contractor capable of providing public works construction, services, or personal property, the board of county commissioners may purchase the public works construction, service, or personal property through a process known as "sole source purchasing."<sup>25</sup> Sole source purchases must be made upon declaration of the board of county commissioners that there is only one vendor capable of providing the public works construction, service, or personal property. Sole source purchasing may be made in the following situations:

1. Where public works construction, services or personal property is required to respond to a life-threatening situation or a situation which is immediately detrimental to the public welfare or property;
2. Where the compatibility of equipment, components, accessories, computer software, replacement parts or service is the paramount consideration;
3. Where a sole supplier's item is needed for trial use or testing;
4. The purchase of mass-produced movies, videos, books or other copyrighted materials;
5. The purchase of public works construction, services or personal property for which it is determined there is no functional equivalent;
6. The purchase of public utility services;
7. The purchase of products, merchandise or trademarked goods for resale at a political subdivision facility; or

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<sup>23</sup> Idaho Code §67-2807

<sup>24</sup> Idaho Code §67-2808(1)

<sup>25</sup> Idaho Code §67-2808(2)

8. Where competitive solicitation is impractical, disadvantageous or unreasonable under the circumstances.

Except in cases of emergency, a county must publish notice of its intent to engage in sole source procurement in the county's newspaper of record at least 14 days prior to the award of the sole source contract.

## Joint Power Agreements

A county may enter into a formal agreement (or contract) with the State of Idaho, another county, or another governmental entity having the same rights and powers under the Idaho Constitution and Idaho law, to jointly exercise powers in the performance of a government service.<sup>26</sup> Under a joint purchase agreement (JPA), two or more counties or other governmental entities may jointly hire employees, contract for a service, own property or otherwise provide a service or services. When entering into a JPA, the participating counties or other governmental entities may elect to create a separate legal entity to provide the service and/or own the facility.

Many counties have regionally entered into a JPA to provide solid waste services and operate regional landfills, provide juvenile justice services (including juvenile detention centers), and jail services, as well as with cities to operate regional airports. In reality, there are no limits to entering into a JPA with another governmental entity to provide a service as long as the entities entering into the JPA have the same constitutional or statutory authority to provide the service. Two of the state's largest JPAs are the Idaho County Risk Management Program (ICRMP) which was founded in the 1980's by IAC and the Government Employees Medical Plan (GEM Plan) founded by counties in the early 2000's. These JPAs enable counties to pool resources to provide both risk and liability insurance pools and medical insurance pools.

In order to enter into a JPA a county must enact an ordinance or adopt a resolution authorizing the JPA prior to entering into such agreements. A JPA must include all of the following:

- The duration of the JPA
- The purposes of the JPA
- The manner of financing the JPA
- The process for termination (or partial termination) of the JPA
- If a separate legal entity is established, the organization, composition, and nature of the separate legal entity
- Any other items necessary for the JPA to successfully operate

If the JPA does not establish a separate legal entity, the JPA must also include the following:

- Provisions for either an administrator or a joint governing board

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<sup>26</sup> Idaho Code §67-2326 – §67-2331

- The manner of acquiring, operating, maintaining, and disposing of any real and/or personal property used under the JPA

A county entering into a JPA with another county or governmental entity is authorized to appropriate public funds to the JPA entity, make staff available to the JPA entity, provide services for the JPA entity, and may sell, lease, give, or supply real and/or personal property to the JPA entity.

### Conveyance of County Property to Another Government

Counties may sell county real or personal property to another unit of local government, the State of Idaho, or the United States Government or counties may convey or transfer real or personal property to another governmental entity without payment when it is in the best interest of the public and in the judgement of the board of county commissioners.<sup>27</sup> If a county elects to convey or transfer county real or personal property valued less than \$10,000 to another governmental entity, it may do so without a public notice or hearing. If the property to be conveyed is more than \$10,000, the county must provide notice to the public of the general terms of the conveyance in the county newspaper of record twice, with the first notice made no less than 12 days prior to the public hearing at which the property will be conveyed and the second notice made no less than five days prior to the public hearing at which time the property will be conveyed. A two-thirds vote is required to convey, transfer, or exchange real or personal property with another local governmental entity.

### Exchange of County Property

The board of county commissioners may exchange real property owned by the county for any real property of equal value with a private or public entity.<sup>28</sup> The county may also exchange or grant property owned by the county, excluding property acquired by tax deed prior to July 1, 2024, with the United State Government, the State of Idaho, or another unit of local government.<sup>29</sup> Beginning July 1, 2024, the board of county commissioners cannot exchange property acquired by tax deed with another unit of local government if the property was acquired by tax deed on or after July 1, 2024.<sup>30</sup> Any exchange of property with another governmental entity may be undertaken with or without compensation at the discretion of the board of county commissioners. Prior to granting or conveying county property, the board of county commissioners must provide public notice in the county newspaper of record no less than ten days prior to the meeting in which the property is to be exchanged or conveyed.

### Bathrooms, Showers, and Changing Facilities

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<sup>27</sup> Idaho Code §67-2322 – §67-2324

<sup>28</sup> Idaho Code §31-808(7)

<sup>29</sup> Idaho Code §31-808(9)

<sup>30</sup> Idaho Code §31-808(9)



In 2023, the Idaho Legislature enacted legislation prohibiting counties and other local governments from requiring public works contractors to provide restrooms, showers, and changing room facilities on any basis other than biological sex.<sup>31</sup>

## Other Limitations on Contracting and Procurement

In 2021, the Idaho Legislature adopted the Anti-Boycott Against Israel Act.<sup>32</sup> Under the Act, a county or other governmental entity in Idaho may not contract or buy from a company unless the company from which the goods or services are sought certifies in writing that the company is not, and will not, boycott goods and services from Israel. Purchase of goods or services totaling \$100,000 or less are exempt from the Act. Under the Act, a company which refuses to do business with Israel, has terminated a contract to do business with Israel, has limited commercial relations with Israel, discriminates against Israel, or has enacted policies with the intention of inflicting economic harm on Israel is deemed to be boycotting Israel.

In 2023, the Idaho Legislature enacted legislation banning counties and other governmental entities from purchasing goods or services from, or contracting with, any company (whether for profit or nonprofit) that is owned by the government of China.<sup>33</sup> Specifically, counties may not do business with any entity that is partially or wholly owned by the People's Republic of China led by the Chinese Communist Party. The limitations do not apply to businesses or entities owned and operated by Chinese citizens.

In 2023, the Idaho Legislature enacted legislation to prohibit governmental entities, including counties, from using Environmental Social Governance (ESG) standards in making decisions regarding the purchase of goods or services or in ranking public works contractors.<sup>34</sup> ESG standards include any criteria or scoring that screen, score, or rank contracts or public works contractors on subjective ethical or sustainability criteria unrelated to the specifications of a contract or the qualifications of a contractor. A contractor not selected for a contract may challenge the contract award under applicable laws of the state by alleging they were not selected for a contract based on the use of ESG standards. Purchase of goods or services totaling less than \$100,000 are exempt from the prohibition of using ESG standards.

In 2024, the Idaho Legislature enacted legislation that prohibits governmental entities, including counties, from purchasing goods or services from, or contracting with, any company that boycotts any individual or company that engages in or supports natural resource extraction, energy activities, agriculture, timber, or firearms.<sup>35</sup> There are exceptions to the contract prohibitions, including if the limitations are inconsistent with a county's constitutional or statutory duties related to the "deposit, custody, management, borrowing, or investment of funds;" the

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<sup>31</sup> Idaho Code §67-2802(2)

<sup>32</sup> Idaho Code §67-2346

<sup>33</sup> Idaho Code §67-2359

<sup>34</sup> Idaho Code §67-2347

<sup>35</sup> Idaho Code §67-2347A

county determines that a contract is necessary to fulfill a “its legal duties and obligations;” or purchases of goods or services totaling \$100,000 or less that are made from a company with less than 10 employees are exempt from the Act.

## Sale of County Property

The board of county commissioners is empowered to sell real and personal property no longer necessary to the county.<sup>36</sup> Public notice of the sale of county property is required for property valued in excess of \$250. Public notice of county property to be auctioned off must be made in the county newspaper of record no less than ten days prior to the auction. In the event that the county is unable to sell county property at auction, including property acquired via tax deed, the county may proceed to sell the property with no further public notice. Proceeds from the general sale of county property may be placed in the county current expense fund for general county use. Proceeds from the sale of tax deeded property are apportioned to parties of interest after payment of any outstanding property taxes, penalties, interest, and costs (including costs of maintaining the property).

## Engineer Review of Public Works

Prior to engaging in the construction, reconstruction, maintenance, or repair of public works projects with a cost greater than \$10,000, a county (or other unit of local government) must have a professional engineer prepare and review project plans and estimates as well as a review of the final construction project.<sup>37</sup>

## Labor Laws – Preference for Employing Idaho Residents

Idaho law<sup>38</sup> requires public works contractors to employ Idaho residents to construct, repair, and maintain state, county, municipal, and school facilities. Under these laws, 95% of construction workers employed by construction contractors must be Idaho residents (or 90% for contracts requiring employment of less than 50 persons) unless such requirement is in conflict with federal laws giving employment preferences to those honorably discharged from the US armed forces. These prohibitions extend to the hiring of anyone who is not a US citizen. Public works contracts having been found guilty of violating this law may be guilty of a misdemeanor.

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<sup>36</sup> Idaho Code §31-808

<sup>37</sup> Idaho Code §54-1218

<sup>38</sup> Chapter 10, Title 44, Idaho Code

## Additional Resources

Chapter 28, Title 67 – Purchasing by Political Subdivisions:

<https://legislature.idaho.gov/statutesrules/idstat/Title67/T67CH28/>

Chapter 19, Title 54 – Public Works:

<https://legislature.idaho.gov/statutesrules/idstat/Title54/T54CH19/>

Idaho Division of Purchasing – Writing Effective Specifications:

[https://purchasing.idaho.gov/wp-content/uploads/Publications/writing\\_effective\\_specs.pdf](https://purchasing.idaho.gov/wp-content/uploads/Publications/writing_effective_specs.pdf)

Idaho Public Purchasing Association – <https://nigp-idaho.org/>

NIGP The Institute for Public Procurement – <https://www.nigp.org>

Public Surplus (IAC endorsed online auction site for surplus county property) –

<https://idcounties.org/programs-and-services/public-surplus-program/>