

# Idaho Association of Counties

## Procurement for Public Entities

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Ada County Procurement Director

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### 3 Objectives – 1 Hour

**1**

**Basic  
Procurement  
Laws**

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**Resources  
And  
Tools**

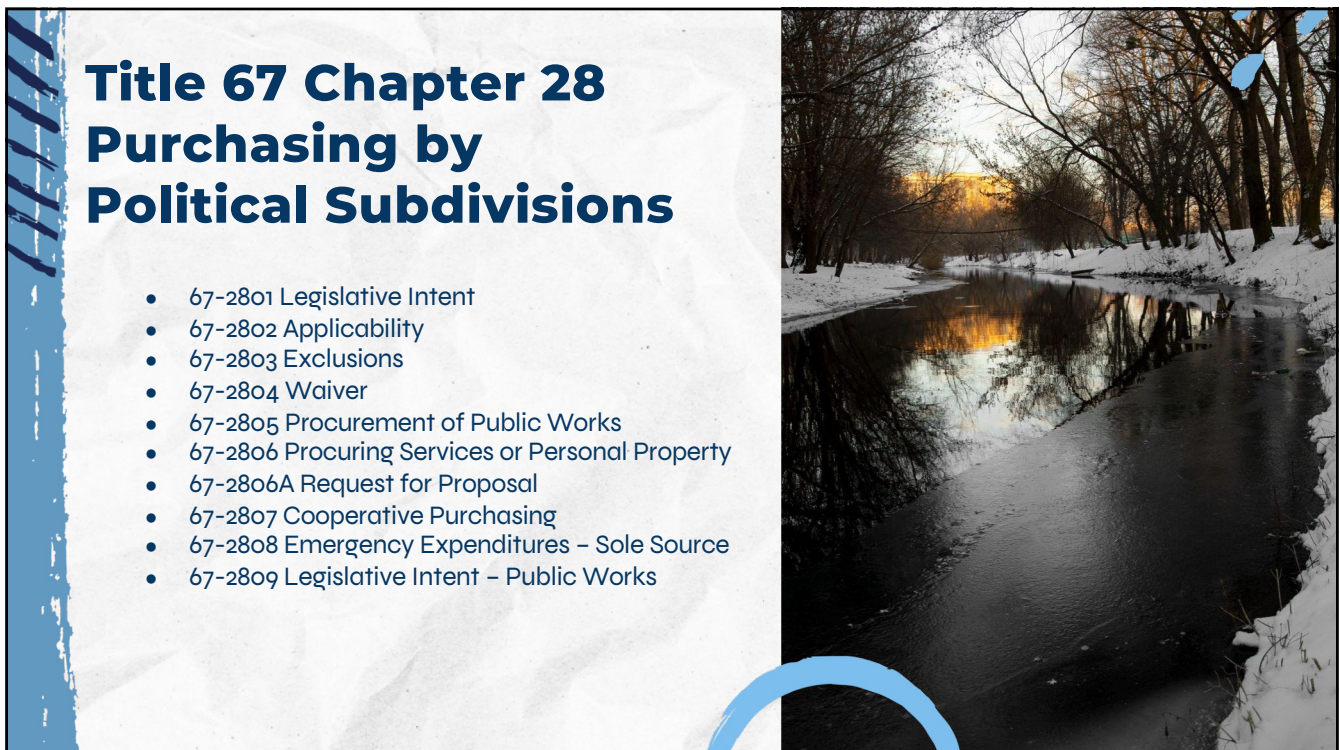
**3**

**Answer  
Questions**

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## 2017 Procurement Law Changes

- 31-602 Delegation of Authority
- 67-2805 Public Works Bid Thresholds Increased
- 67-2806 Goods and Services Bid Threshold Increased
- 67-2803 Addition of Exclusions
- 67-2806A RFP Process

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## Delegation of Authority

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

Why is this important?

Law of Agency:

- An agent is authorized by a principle to act on behalf of the principle to create a legal relationship with a 3<sup>rd</sup> party.

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## 67-2805 Public Works

### Public Works Thresholds:

- **Informal Bid** = \$50,000 to \$200,000
- **Formal Bid** = \$200,000+
  - Category A Traditional Bid (lowest responsive bidder)
  - Category B Qualification Bid (2 stage: 1Qualification , 2Bid Prices)
    - ❖ 6 qualification standards for category B

### Other Statutes to be aware of regarding Public Works:

- Public Works employment – must hire 95% bona fide Idaho residents I.C. 44-1002
- Public Works Contractor Statute I.C. 54-19
- Professional Service Contracts with Design Professionals I.C. 67-2320
- Subcontractor Naming Law I.C. 67-2310
- Engineer Review I.C. 54-1218
- Design Build method of construction can be used I.C. 67-2309

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## 54-1926 Performance and Payment Bonds

### 54-1926 Performance and Payment Bond

- Establishes a \$50,000 threshold for P&P bonding for Public Works projects.
- Also clarifies that bonds are due at the time of contract execution.
- Signed contract and bonds can be submitted simultaneously to the governing board for signature consideration

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## 67-2806 Personal Property and Services

July 1, 2023 SB1083 changes the Goods and Services threshold!

- **Informal Bid** = \$75,000 to \$150,000
- **Formal Bid** = \$150,000 and above
- \$75,000 Exclusion in 67-2803
- Can have a designee to open, award, and reject bids.

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## 67-2320 Qualified Based Selection for Design Firms

### Revisions to Statute in 2021

#### For Design Professional Services Over \$50K

1. General Description of the Service being solicited
2. Measurable scoring and ranking w/criteria
3. Scoring and Ranking to be made available to the public
4. Publish notice twice in paper - similar to public works notice
  - Cannot ask for Price!
  - May establish and select from a pre-approved list
  - Associated or Phased project
  - Services less than \$50K follow the over \$50K guidance or establish own agency guidelines based on
  - competence and qualifications

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## **67-2346 Anti-Boycott Against Israel Act**

If a contract is one hundred thousand dollars (\$100,000) or more and/or seller employs ten (10) or more persons, seller will need to certify that it is not currently engaged in and will not for the duration of the contract engage in, a boycott of goods or services from Israel or territories under its control.

So what does this mean for contracts and purchase orders?

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## **67-2347 Prohibition of Environmental, Social, and Governance Standards in Public Contracts**

New Legislation in 2023 Effective July 1, 2023

Contract awards over \$100,000 including for public works projects, must be based on competitive pricing, contract requirements and contractor qualifications. The state and political subdivision cannot consider unrelated, subjective ethical or sustainability criteria when determining whether a contractor is qualified or a bid is awarded.

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## 67-2359 Prohibition on Contracting with Companies owned or operated by the Chinese Government

New Legislation in 2023 Effective July 1, 2023

I.C. 67-2359 prohibits the County from contracting with Chinese government owned businesses and requires that the contract include a written certification that the company is not currently owned or operated by the government of China

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## 67-2803 Exclusions to Bidding

18 exclusions:

- (1) The acquisition of personal property when the procurement duplicates the price and substance of a contract for like goods or services that has been competitively bid by the state of Idaho, one (1) of its political subdivisions, or an agency of the federal government;
- (2) Contracts or purchases where expenditures to procure public works construction are less than fifty thousand dollars (\$50,000) or where expenditures to procure services or personal property are less than seventy-five thousand dollars (\$75,000), provided such contracts or purchases shall be guided by the best interests of the political subdivision procuring the goods and services as determined by the governing board;
- (3) Disbursement of wages or compensation to any employee, official or agent of a political subdivision for the performance of personal services for the political subdivision;
- (4) Procurement of personal or professional services to be performed by an independent contractor for the political subdivision;
- (5) Procurement of an interest in real property;
- (6) Procurement of insurance;
- (7) Costs of participation in a joint powers agreement with other units of government;
- (8) Procurement of used personal property;

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## 67-2803 Exclusions to Bidding Continued

- (9) Procurement from federal government general services administration (GSA) schedules or federal multiple award schedules (MAS);
- (10) Procurement of personal property or services through contracts entered into by the State of Idaho Department of Administration Division of Purchasing;
- (11) Procurement of goods for direct resale;
- (12) Procurement of travel and training;
- (13) Procurement of goods and services from Idaho Correctional Industries;**
- (14) Procurement of repair for heavy equipment;**
- (15) Procurement of software maintenance, support and licenses of an existing system/platform which was bid in compliance with state law;
- (16) Procurement of public utilities;
- (17) Procurement of food for use in jails, and detention facilities;**
- (18) Procurement of used equipment at an auction if authorized by the governing board.

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## 67-2806A Request for Proposal

Establishes the RFP process for political subdivisions.

### When to use the RFP?:

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

### At a minimum, an RFP shall state:

1. the instructions of the process;
2. the scope of work for the goods or services contemplated;
3. the selection criteria;
4. contract terms; and the
5. scoring methodology applying relative weights to factors considered.

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## 67-2807 Cooperative Purchasing

### ➤ Law Changed in 2019

By approval of Governing Board, Counties may participate in agreements or programs with:

1. State of Idaho;
  2. Other Idaho Political Subdivisions;
  3. Other Government Entities or Associations thereof;
- and...

Any Association that offers its goods or services which were the result of a competitive solicitation. All of which must be acquired in accordance with Title 67 Chapter 28

Popular Cooperative Procurement Programs: OMNIA Partners, Sourcewell, BuyBoard, and NASPO

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## 67-2808 Emergency and Sole Source Purchases

### Emergency Procurements

Suspends competitive solicitation requirement when the political subdivision declares an emergency to safeguard life, health, or property.

### Sole Source

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

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## Best Practices

**Separation of Duties:**

- Requester
- Purchaser
- Payment
- Inventory

**Use a Purchase Order or Contract for Purchases**

- P.O. with Terms and Conditions for goods
- Use Contracts for Services

**Updated Policy and Procedure Manual**


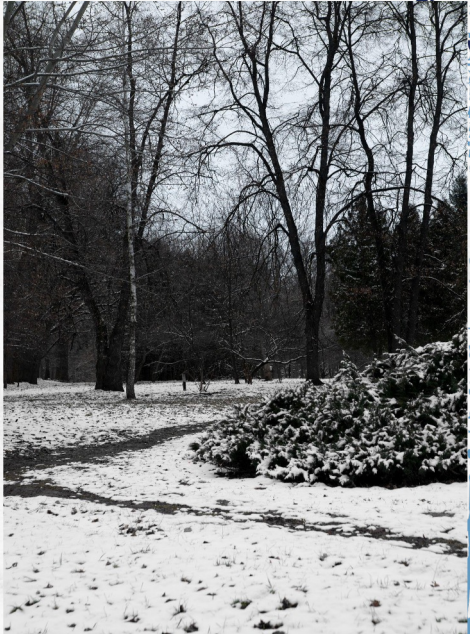
**Legal and Risk Review of Procurement Documents**

**Fair and Consistent procurement practices**

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# THANKS!

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