

Idaho Association of Counties

Idaho Procurement Statutes and Helpful Resources

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3 Objectives – 1 Hour

1

**Basic
Procurement
Laws**

2

**Procurement
Resources**

3

**Help Answer
Any Questions**



“Fairness is what justice really is”
Potter Stewart

Procurement Laws = Transparency, Fairness and Value

Title 67 Chapter 28

Purchasing by Political Subdivisions

- 67-2801 Legislative Intent
- 67-2802 Applicability
- 67-2803 Exclusions
- 67-2804 Waiver
- 67-2805 Procurement of Public Works
- 67-2806 Procuring Services or Personal Property
- 67-2806A Request for Proposal
- 67-2807 Cooperative Purchasing
- 67-2808 Emergency Expenditures – Sole Source
- 67-2809 Legislative Intent – Public Works



Procurement Law Changes

1. 31-602 Delegation of Authority
2. 67-2805 Public Works Bid Thresholds Increased
3. 67-2806 Goods and Services Bid Threshold Increased
4. 67-2803 Addition of Exclusions
5. 67-2806A RFP Process
6. 67-2320 QBS Process
7. 54-305 Idaho Architect Required
8. 67-2346 Anti-Boycott Against Israel Act
9. 67-2347 Prohibition Against ESG
10. 67-2347A Prohibition on Contracts with Companies Boycotting Certain Sectors
11. 67-2359 Prohibition on Contracting with Companies Owned by the Chinese Government
12. 67-2807 Cooperative Purchasing

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.

Law of Agency:

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

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:

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

54-1926 Performance and Payment Bonds

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

67-2806 Personal Property and Services

- **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.

67-2320 Qualified Based Selection for Design Firms

For Design Professional Services Over \$50,000

1. General Description of Project
2. Measurable scoring and ranking w/criteria
3. Scoring and Ranking to be made available to the public
4. Publish notice twice in paper

Pre-approved list

Design Services less than \$50,000

54-305 Idaho Architect Required

- Must have an Idaho Licensed Architect identified on offer for design projects

67-2346 Anti-Boycott Against Israel Act

1. If a contract is one hundred thousand dollars (\$100,000) or more;
2. And/or a seller employs ten (10) or more persons;
3. 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.

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

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.

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

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

67-2347A Prohibition on Contracts with Companies Boycotting Certain Sectors

Must have written Certification that a company a county intends to contract will not boycott any company that:

1. Engages in or supports the exploration, production, utilization, transportation, sale, or manufacture of:
 - a. Fossil Fuel Base Energy
 - b. Timber
 - c. Minerals
 - d. Hydroelectric Power
 - e. Nuclear Energy
 - f. Agriculture

2. Engages in or supports the manufacture, distribution, sale, or use of Firearms as defined in section 18-3302(2)(d)

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;

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.

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.

67-2807 Cooperative Purchasing

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

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.**

Best Practices

1. **Separation of Duties:**
2. **Use a Purchase Order or Contract for Purchases**
3. **Updated Policy and Procedure Manual**
4. **Legal and Risk Review of Procurement Documents**
5. **Fair and Consistent procurement practices**

THANKS!

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