IDAHO ASSOCIATION OF COUNTIES

# Buying Right

Idaho Local Government Procurement Law

IDAHO ASSOCIATION OF COUNTIES

2026 Fall County Officials Institute

INTRODUCTION

## Why Procurement Rules Matter

### Public accountability

Local governments should buy through a publicly accountable process that respects both economy and quality.

IC § 67-2801

### Buy Idaho

Political subdivisions shall endeavor to buy from vendors with a significant Idaho economic presence.

IC § 67-2801

### Personal liability

Spending beyond an appropriation is not a county liability. The official who spent it is personally liable, and commissioners who approve the claim are liable to the county.

IC § 31-1607

AUTHORITY AND BUDGET

## Who Holds the Purchasing Power

**The board of county commissioners (BOCC) holds the county's purchasing power — and can delegate it.**

Delegation may go to another elected official or a county employee (IC § 31-602). A written procurement policy makes the delegation clear and defensible.

**Your procurement policy should answer:**

- Who may buy on the county's behalf?
- Up to what dollar limit?
- Which purchases need board approval first?
- How are delegations documented and reviewed?



AUTHORITY AND BUDGET

## An Appropriation Is Not Authority to Buy

**1. Budget adopted**

Final budget expenditures are the fiscal-year appropriations; the fiscal year begins Oct. 1 (IC §§ 31-1601, 31-1606).

**2. Authority confirmed**

Check the procurement policy. Large purchases often still need BOCC approval, even when budgeted.

**3. Purchase made**

Follow the Chapter 28 procedure that matches the value of the purchase.

**Legal requirement: personal liability for overspending**

The official who spends beyond an appropriation is personally liable; approving commissioners are liable to the county. Exceptions: court-ordered payments and budget-law emergency expenditures (IC § 31-1607).

DOLLAR TIERS

## The Value of the Purchase Decides the Procedure

Chapter 28 uses one set of dollar tiers for every county. Goods and services follow § 67-2806; public works construction follows § 67-2805.

### Under $100,000

Goods, services, and public works

BOCC determines policy, guided by the county's best interests (§ 67-2803(2))

### $100,000 – $250,000

Goods and services

Written solicitation to at least three vendors (§ 67-2806(1))

Public works

Written solicitation to at least three licensed contractors the county selects (§ 67-2805(1))

### Over $250,000

Goods and services

Open competitive sealed bid with two published notices (§ 67-2806(2))

Public works

Competitive sealed bid, Category A or Category B (§ 67-2805(2))



DOLLAR TIERS

## Under $100,000: Your Policy Governs

# $100,000

**Below this line, Chapter 28 imposes no bidding procedure.**

Purchases must still be guided by the best interests of the county as the governing board determines (IC § 67-2803(2)).

### Suggested policy practices

- Set quote requirements by dollar level, such as informal quotes above a local threshold
- Require a short record of how the vendor was chosen
- Watch for purchases split to stay under a threshold
- Remember that budget limits and contract certifications still apply

DOLLAR TIERS

## $100,000 – $250,000: Three-Vendor Solicitation

1. **Solicit in writing**
   Send to at least three vendors or licensed contractors, with enough detail to understand the job.
2. **Allow time**
   At least three business days to respond, except in an emergency. State how and when bids are due.
3. **Take objections**
   Written objections must reach the clerk at least one business day before bids are due.
4. **Award**
   The board or an authorized official approves the lowest responsive bid, or rejects all and solicits again.
5. **Fewer than three?**
   Buy from the qualified vendor quoting the lowest price; document efforts and keep the record six months.

**Tie bids:** the board or authorized official may accept the one it chooses (§§ 67-2805(1)(e), 67-2806(1)(e)).

**Trade-ins:** with BOCC consent; if bids are required, the call for bids must ask for trade-in allowances (§ 31-829).



EXCLUSIONS

## 18 Purchases Chapter 28 Does Not Cover

IC § 67-2803 excludes purchases under $100,000 (item 2) plus the 17 categories below. Statute item numbers are in parentheses.

### Already bid or contracted

- Piggyback on a like contract competitively bid by the state, a political subdivision, or a federal agency (1)
- Federal GSA or multiple award schedules (9)
- State Division of Purchasing contracts (10)
- Software maintenance and licenses for a system bid under state law (15)

### Property and goods

- Interests in real property (5)
- Used personal property (8)
- Goods for direct resale (11)
- Idaho Correctional Industries (13)
- Food for jails and detention facilities (17)
- Used equipment at auction, if the board authorizes (18)

### Services and other costs

- Employee and official compensation (3)
- Personal or professional services by an independent contractor (4)
- Insurance (6)
- Joint powers agreement costs (7)
- Travel and training (12)
- Heavy equipment repair (14)
- Public utilities (16)

EXCLUSIONS

# Cooperative Purchasing and Its Limits

### Cooperative purchasing (IC § 67-2807)

- With board approval, join cooperative purchasing agreements with the state, other Idaho political subdivisions, other governments, or their associations
- Or use any association program that offers goods or services through a competitive solicitation
- Purchases made this way are deemed compliant with Chapter 28

### An exclusion lifts only Chapter 28

Still required on excluded purchases:

- Budget appropriation and authority
- Contract certifications in other statutes
- Qualifications-based selection for design professionals
- Publication of personal service contracts over $30,000



SEALED BIDS

# Over $250,000: The Sealed Bid Timeline

| At least two weeks before | Next week, seven or more days before | Three business days before | Opening day | After opening |
|---|---|---|---|---|
| **First notice** Published in the county's official newspaper; briefly describes the purchase | **Second notice** Same newspaper; bid documents available on request | **Objections due** Written objections to specs or procedures reach the clerk | **Public opening** Sealed bids opened in public at the set time and place; no withdrawals | **Award** The board or authorized designee awards to the lowest responsive bid, or rejects all |

**Public works only:** the county must answer each objection in writing to the objector and all plan holders, adjusting timeframes if needed (§ 67-2805(2)(a)(ii)).

SEALED BIDS

# Bid Security and the Bidder Who Won’t Sign

**5%** **minimum bid security, if the county requires it**

- Cash
- Cashier’s check
- Certified check
- Surety bidder’s bond

A bid without required security is not considered.

## If the winning bidder won’t sign

1. Security may be forfeited, at the county’s discretion
2. Award to the next-lowest responsive bidder
3. Apply the security to the price difference between the two bids
4. Return any surplus, less administrative costs up to 25 percent of the security



SEALED BIDS

# Awarding to Someone Other Than the Low Bidder

1. **State reasons on the record**
2. **Send reasons in writing to every competing bidder**
3. **Bidders have seven calendar days to object in writing**
4. **Stay performance; review and affirm, modify, or rebid, with reasons**

### Other board options

- Reject all bids and rebid
- Resolve, after finding it as fact, that the open market is more economical
- Identical bids: the board may choose

### Reciprocal Idaho preference

An out-of-state bidder must beat the lowest Idaho bidder by the same percentage its home state would require of an Idaho bidder. A supplier with a significant Idaho economic presence for the prior year counts as Idaho-domiciled (IC §§ 67-2348, 67-2349(1)).

SEALED BIDS

## Request for Proposals: When Price Isn’t Everything

### Use an RFP when

- Fixed specs might rule out a cost-effective solution
- The problem has several possible solutions
- Price is not the only factor

§ 67-2806A(1)

### The RFP must state

- Process instructions
- Scope of work
- Selection criteria
- Contract terms
- Scoring method with relative weights

§ 67-2806A(3)

### Transparency

- Notice and contests follow § 67-2806 minimums
- Scoring records open to public inspection when a recommendation goes to the board

§ 67-2806A(4)



PUBLIC WORKS CATEGORIES

## Large Public Works: Category A vs. Category B

| | Category A: open bidding | Category B: prequalified bidding |
|---|---|---|
| Who may bid | Any licensed public works contractor | Only licensed contractors who pass prequalification |
| What the county weighs | Bid amount, administrative compliance, and license; nothing else | Published standards: competence, similar work, resources, and track record |
| Process | One stage: two published notices, then public opening | Two stages: qualifications first, then bids from prequalified firms |
| Bid notice | Published twice in the official newspaper | Sent to prequalified primes at least 14 days before opening |
| Challenges | Objection to award within seven calendar days | Prequalification appeal to the BOCC (seven days), then the license board, then court |

PUBLIC WORKS CATEGORIES

## Case Lesson: Hillside v. City of Lewiston

***Hillside Landscape Construction, Inc. v. City of Lewiston***

151 Idaho 749, 264 P.3d 388 (2011)

**What happened**
The city rejected the low Category A bidder because it lacked experience.

**What the Court held**
Category A permits no qualification beyond the public works license.

**The lesson**
If experience or capacity matters, use Category B before you advertise.



DESIGN PROFESSIONALS

## Design Professionals: Qualifications First

Engineering, architecture, landscape architecture, construction management, and land surveying (IC § 67-2320(1))

1. **Publish RFQ** — Notice as for a public works sealed bid; publish scoring and ranking criteria
2. **Score and rank** — Rank on qualifications and demonstrated competence; make ranking and scores public
3. **Negotiate** — Start with the top-ranked firm for a fair and reasonable price
4. **Move down if needed** — Formally end failed talks, then go to the next-ranked firm

**Over $50,000**
The four steps above are mandatory (§ 67-2320(2))

**Under $50,000**
Use these steps or county qualifications-based guidelines, then negotiate (§ 67-2320(3))

**Preapproved list**
Publish once to approve two or more firms; valid up to five years (§ 67-2320(2)(i)–(j))

**Design-build**
One firm designs and builds; select through the same qualifications process (§ 67-2309)

EMERGENCY AND SOLE SOURCE

# Emergency Purchases: Bidding Waived, Budget Not

**The board may declare an emergency when:**

- A great public calamity: extraordinary fire, flood, storm, epidemic, or other disaster
- Emergency work is needed for national or local defense
- Emergency work is needed to safeguard life, health, or property

RESULT

Any sum required in the emergency may be spent without formal bidding (IC § 67-2808(1)).

⚠ **Budget law still applies.** Emergency expenditures beyond the budget require a resolution adopted by unanimous vote, entered in the minutes, stating the facts of the emergency (IC § 31-1608).



EMERGENCY AND SOLE SOURCE

# Sole Source: When Only One Vendor Can Do It

**Qualifying situations include (IC § 67-2808(2)(a)):**

| | |
|---|---|
| Life-threatening or immediately harmful situation | Compatibility of equipment, software, or parts is paramount |
| Item needed for trial use or testing | Mass-produced movies, videos, books, or copyrighted materials |
| No functional equivalent exists | Public utility services |
| Goods for resale at a county facility | Competitive solicitation impractical or unreasonable |

**14**

calendar days' published notice in the official newspaper before award

- Not required for life-threatening or immediately detrimental situations
- No emergency declaration needed (§ 67-2808(2)(c))

CONTRACT REQUIREMENTS

# Before You Sign: Bonds, Bids, and Labor

### Bonds and payment

- Performance and payment bonds of at least 85 percent on public works of $50,000 or more (§ 54-1926)
- Retainage capped at 5 percent when bonds over 50 percent are required (§ 54-1926(3))
- Pay within 60 days or interest accrues (§ 67-2302)

### Bids and labor

- Name plumbing, HVAC, and electrical subcontractors, or the bid is void (§ 67-2310)
- 95 percent Idaho residents; 90 percent if 50 or fewer workers (§§ 44-1001, 44-1002)
- No mandated wage rates or project labor agreements (§ 67-2809)



CONTRACT REQUIREMENTS

# Before You Sign: Certifications and Transparency

**Missing certification?** The contract becomes void if it isn't obtained within 90 days after discovery (§§ 67-2346, 67-2347A, 67-2359).

### Written certifications

- No Israel boycott: $100,000+, 10+ employees (§ 67-2346)
- No boycott of energy, timber, mining, agriculture, or firearms: $100,000+, 10+ full-time employees (§ 67-2347A)
- Not owned or run by China's government: all contracts (§ 67-2359)

### Fair dealing and transparency

- No ESG-based acceptance or denial: $100,000+ (§ 67-2347)
- No race, sex, or ethnicity discrimination or preference (§ 67-2802A)
- Personal services over $30,000 a year: publish within 15 days (§ 67-2810)

CONTRACT REQUIREMENTS

# Doing the Work Yourself and Writing Specs

### County crews on county facilities

The county may build or repair its own facilities (§ 67-2804(2)). When public health or safety is involved, a professional engineer prepares plans and reviews construction (§ 54-1218(1)).

Small-project exception — all four required (§ 54-1218(2)):

- Under $10,000 total
- County employees do the work
- Follows PE-certified standards the BOCC adopted
- A PE finds no material risk to health or safety

### Writing bid specifications

- Clearly detail the number, size, kind, and quality of materials and services
- Don't specify a brand or patented product when viable equivalents exist
- Specs need only enough detail for fair competition; unit-price quantity ranges are allowed

*SE/Z Construction, LLC v. Idaho State University*, 140 Idaho 8 (2004)

Contractor license not required for a single project under $100,000 (§ 54-1903(9)).



WRAP-UP

# Scenario Check: Which Procedure Applies?

1

**The road department wants a new $180,000 motor grader.**

2

**The jail needs a $300,000 roof replacement, and the board wants an experienced roofer.**

3

**The county needs an engineer to design a bridge replacement; the fee is estimated at $120,000.**

4

**A spring flood washes out a culvert on a main county road.**

WRAP-UP

# Key Takeaways

- Value decides the procedure: none under $100,000, three-vendor solicitation to $250,000, and a sealed bid above
- Check exclusions and cooperative purchasing before you solicit
- Screening public works bidders on experience requires Category B from the start
- Hire design professionals on qualifications first, then negotiate price
- Spending beyond an appropriation can make officials personally liable

### Resources

- Idaho Code Title 67, Ch. 28 (purchasing)
- Title 67, Ch. 23 (certifications, design professionals)
- Title 54, Chs. 12 and 19 (engineers, contractors)
- Title 44, Ch. 10 (public works labor)
- Title 31, Chs. 6, 8, and 16 (county powers, budget law)

## Questions?