

IN THE SENATE

SENATE BILL NO. 1379

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO PURCHASING BY POLITICAL SUBDIVISIONS; AMENDING SECTION 67-2803,
2 IDAHO CODE, TO REVISE A CERTAIN EXCLUSION AND TO MAKE A TECHNICAL COR-
3 RECTION; AMENDING SECTION 67-2806, IDAHO CODE, TO REVISE PROVISIONS RE-
4 GARDING PROCURING SERVICES OR PERSONAL PROPERTY; AND DECLARING AN EMER-
5 GENCY AND PROVIDING AN EFFECTIVE DATE.
6

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Section 67-2803, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 67-2803. EXCLUSIONS. The procurement requirements established in
11 this chapter shall not be applicable to:

12 (1) The acquisition of personal property when the procurement dupli-
13 cates the price and substance of a contract for like goods or services that
14 has been competitively bid by the state of Idaho, one (1) of its political
15 subdivisions, or an agency of the federal government;

16 (2) Contracts or purchases where ~~in~~ expenditures to procure public
17 works construction are less than fifty thousand dollars (\$50,000) or where
18 expenditures to procure services or personal property are less than sev-
19 enty-five thousand dollars (\$75,000), provided such contracts or purchases
20 shall be guided by the best interests of the political subdivision procuring
21 the goods and services as determined by the governing board;

22 (3) Disbursement of wages or compensation to any employee, official or
23 agent of a political subdivision for the performance of personal services
24 for the political subdivision;

25 (4) Procurement of personal or professional services to be performed by
26 an independent contractor for the political subdivision;

27 (5) Procurement of an interest in real property;

28 (6) Procurement of insurance;

29 (7) Costs of participation in a joint powers agreement with other units
30 of government;

31 (8) Procurement of used personal property;

32 (9) Procurement from federal government general services administra-
33 tion (GSA) schedules or federal multiple award schedules (MAS);

34 (10) Procurement of personal property or services through contracts en-
35 tered into by the division of purchasing of the department of administration
36 of the state of Idaho;

37 (11) Procurement of goods for direct resale;

38 (12) Procurement of travel and training;

39 (13) Procurement of goods and services from Idaho correctional indus-
40 tries;

41 (14) Procurement of repair for heavy equipment;

- 1 (15) Procurement of software maintenance, support and licenses of an
2 existing system or platform that was bid in compliance with state law;
3 (16) Procurement of public utilities;
4 (17) Procurement of food for use in jails or detention facilities; or
5 (18) Procurement of used equipment at an auction if authorized by the
6 governing board.

7 SECTION 2. That Section 67-2806, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 67-2806. PROCURING SERVICES OR PERSONAL PROPERTY. (1) When a polit-
10 ical subdivision contemplates an expenditure to purchase or lease personal
11 property or to procure services, other than personal property or services
12 excluded pursuant to section 67-2803, Idaho Code, valued at or in excess of
13 ~~fifty~~ seventy-five thousand dollars (\$~~50~~75,000) but not to exceed one hun-
14 dred fifty thousand dollars (\$~~100~~150,000), the procurement procedures of
15 this subsection shall apply.

16 (a) The solicitation for bids shall be supplied to no fewer than three
17 (3) vendors by written means, either by electronic or physical deliv-
18 ery. The solicitation shall describe the personal property or services
19 to be purchased or leased in sufficient detail to allow a vendor dealing
20 in such goods or services to understand what the political subdivision
21 seeks to procure.

22 (b) The solicitation for bids shall describe the electronic or physi-
23 cal delivery method or methods authorized to submit a bid, the date and
24 time by which a bid proposal must be received by the clerk, secretary or
25 other authorized official of the political subdivision, and shall pro-
26 vide a reasonable time to respond to the solicitation, provided that ex-
27 cept in the event of an emergency, such time shall not be less than three
28 (3) business days.

29 (c) Written objections to specifications or bid procedures must be re-
30 ceived by the clerk, secretary or other authorized official of the po-
31 litical subdivision at least one (1) business day before the date and
32 time upon which bids are scheduled to be received.

33 (d) When written bids have been received, by either physical or elec-
34 tronic delivery, they shall be compiled and submitted to the governing
35 board or governing board-authorized official which shall approve the
36 responsive bid proposing the lowest procurement price or reject all
37 bids and publish notice for bids, as before.

38 (e) If the political subdivision finds that it is impractical or im-
39 possible to obtain three (3) bids for the proposed procurement, the
40 political subdivision may acquire the property in any manner the polit-
41 ical subdivision deems best from a qualified vendor quoting the lowest
42 price. When fewer than three (3) bids are considered, a description
43 of the efforts undertaken to procure at least three (3) bids shall be
44 documented by the political subdivision and such documentation shall
45 be maintained for at least six (6) months after any such procurement is
46 made. If two (2) or more bids are the same and the lowest responsive
47 bids, the authorized decision maker may accept the one (1) it chooses.

48 (2) When a political subdivision contemplates an expenditure to pur-
49 chase or lease personal property or to procure services, other than personal

1 property or services excluded pursuant to section 67-2803, Idaho Code, val-
2 ued in excess of one hundred fifty thousand dollars (~~\$100~~150,000), the pro-
3 curement procedures of this subsection shall apply.

4 (a) The purchase or lease shall be made pursuant to an open competitive
5 sealed bid process with the procurement to be made from the qualified
6 bidder submitting the lowest bid price complying with bidding pro-
7 cedures and meeting the specifications for the goods and/or services
8 sought to be procured.

9 (b) The request for bids shall set a date, time and place for the opening
10 of bids. Two (2) notices soliciting bids shall be published in the of-
11 ficial newspaper of the political subdivision. The first notice shall
12 be published at least two (2) weeks before the date for opening bids,
13 with the second notice to be published in the succeeding week at least
14 seven (7) days before the date that bids are scheduled to be opened. The
15 notice shall succinctly describe the personal property and/or service
16 to be procured. Copies of specifications, bid forms, bidder's instruc-
17 tions, contract documents, and general and special instructions shall
18 be made available upon request by any interested bidder.

19 (c) Written objections to specifications or bidding procedures must be
20 received by the clerk, secretary or other authorized official of the po-
21 litical subdivision at least three (3) business days before the date and
22 time upon which bids are scheduled to be opened.

23 (d) If the political subdivision deems it is in the political subdi-
24 vision's best interest, it may require the bidder to provide bid secu-
25 rity in an amount equal to at least five percent (5%) of the amount bid.
26 If required, a bid shall not be considered unless one (1) of the forms
27 of bidder's security is enclosed with it, and unless the bid is submit-
28 ted in a form which substantially complies with the form provided by the
29 political subdivision. The political subdivision may require that the
30 bid security be in one (1) of the following forms:

31 (i) Cash;

32 (ii) A cashier's check made payable to the political subdivision;

33 (iii) A certified check made payable to the political subdivision;

34 or

35 (iv) A bidder's bond executed by a qualified surety company, made
36 payable to the political subdivision.

37 (e) Any bid received by the political subdivision may not be withdrawn
38 after the time set in the notice for opening of bids. When sealed bids
39 have been received, they shall be opened in public at a designated place
40 and time, thereafter to be compiled and submitted to the governing board
41 for award or, if a designee is authorized, for approval of the award.

42 (f) If the successful bidder fails to execute the contract, the amount
43 of his bidder's security may be forfeited to the political subdivision
44 at the sole discretion of the governing board and thereafter the pro-
45 ceeds may be deposited in a designated fund out of which the reasonable
46 expenses for procuring substitute performance are paid.

47 (g) The political subdivision may, on the refusal or failure of the suc-
48 cessful bidder to execute the contract, award the contract to the next
49 lowest qualified bidder. If the governing board awards the contract to
50 the next lowest qualified bidder, the amount of the lowest qualified

1 bidder's security may be applied by the political subdivision to the
2 difference between the lowest responsive bid and the next lowest re-
3 sponsive bid, and the surplus, if any, shall be returned to the lowest
4 bidder if cash or check is used, or to the surety on the bidder's bond
5 if a bond is used, less reasonable administrative costs not to exceed
6 twenty-five percent (25%) of the amount of the bidder's security.

7 (h) In its discretion, the governing board or its designee may reject
8 all bids presented and re-bid or, after finding it to be a fact, the gov-
9 erning board may pass a resolution declaring that the subject goods or
10 services can be procured more economically on the open market. If two
11 (2) or more bids are the same and the lowest responsive bids, the gov-
12 erning board or its designee may accept the one (1) it chooses. In its
13 discretion, the governing board of a political subdivision may preau-
14 thorize the purchase of equipment at a public auction.

15 (i) If the governing board of any political subdivision chooses to
16 award a competitively bid contract involving the procurement of per-
17 sonal property or services to a bidder other than the apparent low
18 bidder, the political subdivision shall declare its reason or reasons
19 on the record and shall communicate such reason or reasons in writing to
20 all who have submitted a competing bid.

21 (j) If any participating bidder objects to such award, such bidder
22 shall respond in writing to the notice from the political subdivision
23 within seven (7) calendar days of the date of transmittal of the notice,
24 setting forth in such response the express reason or reasons that the
25 award decision of the governing board is in error. Thereafter, staying
26 performance of any procurement until after addressing the contentions
27 raised by the objecting bidder, the governing board shall review its
28 decision and determine whether to affirm its prior award, modify the
29 award, or choose to re-bid, setting forth its reason or reasons there-
30 for. After completion of the review process, the political subdivision
31 may proceed as it deems to be in the public interest.

32 SECTION 3. An emergency existing therefor, which emergency is hereby
33 declared to exist, this act shall be in full force and effect on and after
34 July 1, 2022.