

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 161

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO PURCHASING BY POLITICAL SUBDIVISIONS; AMENDING SECTION 67-2806,  
2 IDAHO CODE, TO PROVIDE FOR THE POSTING OF NOTICE FOR SOLICITATIONS OF  
3 INFORMATION TECHNOLOGY.  
4

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

6 SECTION 1. That Section 67-2806, Idaho Code, be, and the same is hereby  
7 amended to read as follows:

8 67-2806. PROCURING SERVICES OR PERSONAL PROPERTY. (1) When a politi-  
9 cal subdivision contemplates an expenditure to purchase or lease personal  
10 property or to procure services, other than personal property or services  
11 excluded pursuant to section 67-2803, Idaho Code, valued at or in excess of  
12 fifty thousand dollars (\$50,000) but not to exceed one hundred thousand dol-  
13 lars (\$100,000), the procurement procedures of this subsection shall apply.

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

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

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

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

36 (e) If the political subdivision finds that it is impractical or im-  
37 possible to obtain three (3) bids for the proposed procurement, the  
38 political subdivision may acquire the property in any manner the polit-  
39 ical subdivision deems best from a qualified vendor quoting the lowest  
40 price. When fewer than three (3) bids are considered, a description  
41 of the efforts undertaken to procure at least three (3) bids shall be  
42 documented by the political subdivision and such documentation shall

1 be maintained for at least six (6) months after any such procurement is  
2 made. If two (2) or more bids are the same and the lowest responsive  
3 bids, the authorized decision maker may accept the one (1) it chooses.

4 (2) When a political subdivision contemplates an expenditure to pur-  
5 chase or lease personal property or to procure services, other than personal  
6 property or services excluded pursuant to section 67-2803, Idaho Code, val-  
7 ued in excess of one hundred thousand dollars (\$100,000), the procurement  
8 procedures of this subsection shall apply.

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

14 (b) The request for bids shall set a date, time and place for the open-  
15 ing of bids. Two (2) notices soliciting bids shall be published in  
16 the official newspaper of the political subdivision. The first notice  
17 shall be published at least two (2) weeks before the date for opening  
18 bids, with the second notice to be published in the succeeding week  
19 at least seven (7) days before the date that bids are scheduled to be  
20 opened. For solicitations of information technology, notice may be  
21 posted electronically on the political subdivision's website in lieu of  
22 publication in the newspaper. Website notices posted pursuant to this  
23 paragraph shall be published at least two (2) weeks before the date for  
24 bid openings. The unaltered, original notice of solicitation of infor-  
25 mation technology shall remain posted before the date for bid openings.  
26 Any amendments to an information technology solicitation must be posted  
27 in the same place on the political subdivision's website, and records of  
28 any such solicitation or amendment shall be maintained by the political  
29 subdivision for six (6) months from the date of bid openings. The notice  
30 shall succinctly describe the personal property and/or service to be  
31 procured. Copies of specifications, bid forms, bidder's instructions,  
32 contract documents, and general and special instructions shall be made  
33 available upon request by any interested bidder.

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

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

46 (i) Cash;

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

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

49 or

- 1 (iv) A bidder's bond executed by a qualified surety company, made  
2 payable to the political subdivision.
- 3 (e) Any bid received by the political subdivision may not be withdrawn  
4 after the time set in the notice for opening of bids. When sealed bids  
5 have been received, they shall be opened in public at a designated place  
6 and time, thereafter to be compiled and submitted to the governing board  
7 for award or, if a designee is authorized, for approval of the award.
- 8 (f) If the successful bidder fails to execute the contract, the amount  
9 of his bidder's security may be forfeited to the political subdivision  
10 at the sole discretion of the governing board and thereafter the pro-  
11 ceeds may be deposited in a designated fund out of which the reasonable  
12 expenses for procuring substitute performance are paid.
- 13 (g) The political subdivision may, on the refusal or failure of the suc-  
14 cessful bidder to execute the contract, award the contract to the next  
15 lowest qualified bidder. If the governing board awards the contract to  
16 the next lowest qualified bidder, the amount of the lowest qualified  
17 bidder's security may be applied by the political subdivision to the  
18 difference between the lowest responsive bid and the next lowest re-  
19 sponsive bid, and the surplus, if any, shall be returned to the lowest  
20 bidder if cash or check is used, or to the surety on the bidder's bond  
21 if a bond is used, less reasonable administrative costs not to exceed  
22 twenty-five percent (25%) of the amount of the bidder's security.
- 23 (h) In its discretion, the governing board or its designee may reject  
24 all bids presented and re-bid or, after finding it to be a fact, the gov-  
25 erning board may pass a resolution declaring that the subject goods or  
26 services can be procured more economically on the open market. If two  
27 (2) or more bids are the same and the lowest responsive bids, the gov-  
28 erning board or its designee may accept the one (1) it chooses. In its  
29 discretion, the governing board of a political subdivision may preau-  
30 thorize the purchase of equipment at a public auction.
- 31 (i) If the governing board of any political subdivision chooses to  
32 award a competitively bid contract involving the procurement of per-  
33 sonal property or services to a bidder other than the apparent low  
34 bidder, the political subdivision shall declare its reason or reasons  
35 on the record and shall communicate such reason or reasons in writing to  
36 all who have submitted a competing bid.
- 37 (j) If any participating bidder objects to such award, such bidder  
38 shall respond in writing to the notice from the political subdivision  
39 within seven (7) calendar days of the date of transmittal of the notice,  
40 setting forth in such response the express reason or reasons that the  
41 award decision of the governing board is in error. Thereafter, staying  
42 performance of any procurement until after addressing the contentions  
43 raised by the objecting bidder, the governing board shall review its  
44 decision and determine whether to affirm its prior award, modify the  
45 award, or choose to re-bid, setting forth its reason or reasons there-  
46 for. After completion of the review process, the political subdivision  
47 may proceed as it deems to be in the public interest.