

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 538

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO STATE PROCUREMENT; REPEALING SECTIONS 67-5714 THROUGH 67-5721,
2 IDAHO CODE, RELATING TO STATE PURCHASING; REPEALING SECTIONS 67-5723
3 THROUGH 67-5732, IDAHO CODE, RELATING TO STATE PURCHASING; REPEALING
4 SECTIONS 67-5733 THROUGH 67-5736, IDAHO CODE, RELATING TO STATE PUR-
5 CHASING; AMENDING TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER
6 92, TITLE 67, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DECLARE POLICY, TO
7 DEFINE TERMS, TO ESTABLISH THE DIVISION OF PURCHASING IN THE DEPARTMENT
8 OF ADMINISTRATION AND TO PROVIDE FOR APPOINTMENT OF AN ADMINISTRATOR,
9 TO PROVIDE POWERS AND DUTIES OF THE ADMINISTRATOR, TO PROVIDE REQUIRE-
10 MENTS FOR DELEGATION OF THE ADMINISTRATOR'S AUTHORITY, TO REQUIRE
11 CERTAIN TRAINING AND TO PROVIDE THAT THE ADMINISTRATOR SHALL ESTABLISH
12 TRAINING, TO ESTABLISH PROVISIONS REGARDING SOLICITATIONS OF PROPERTY,
13 TO PROVIDE FOR COMPETITIVE BIDS, TO PROVIDE REQUIREMENTS FOR THE AWARD
14 OF CONTRACTS, TO PROVIDE FOR MULTIPLE AWARDS OF CONTRACTS, TO PROVIDE
15 THAT CONTRACTS SHALL BE IN WRITING, TO PROVIDE THAT CERTAIN CONTRACTS
16 ARE VOID, TO PROVIDE REQUIREMENTS FOR THE ACCEPTANCE OF PROPERTY, TO
17 PROVIDE FOR THE PRESERVATION AND DISCLOSURE OF CERTAIN RECORDS, TO ES-
18 TABLISH PROVISIONS REGARDING OPEN CONTRACTS, TO PROVIDE FOR DISQUALI-
19 FICATION OF VENDORS UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE FOR PAYMENT
20 OF CONTRACTORS, TO PROVIDE FOR CONTRACT OVERSIGHT, TO ESTABLISH PRO-
21 VISIONS REGARDING PROPERTY INVENTORIES, TO PROVIDE FOR NONCOMPETITIVE
22 AND EMERGENCY PROCUREMENTS UNDER CERTAIN CIRCUMSTANCES, TO ESTABLISH
23 PROVISIONS REGARDING NONOWNED PROPERTY ACQUISITIONS, TO PROVIDE FOR
24 THE EXCHANGE OF STATE PROPERTY, TO AUTHORIZE GROUP DISCOUNT PURCHAS-
25 ING UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE FOR PROCUREMENT BY STATE
26 INSTITUTIONS OF HIGHER EDUCATION, TO PROVIDE THAT CERTAIN EMPLOYEES
27 SHALL OBTAIN DISCOUNTS WHEN POSSIBLE, TO EXEMPT CONTRACTS WITH THE FED-
28 ERAL GOVERNMENT FROM CERTAIN PROVISIONS, TO PROVIDE FOR ACQUISITION OF
29 PROPERTY ACCORDING TO THE TERMS OF A FEDERAL SUPPLY SCHEDULE CONTRACT,
30 TO CLARIFY THE APPLICATION OF THE ADMINISTRATIVE PROCEDURE ACT, TO ES-
31 TABLISH PROHIBITIONS, TO PROVIDE PENALTIES, TO ESTABLISH PROVISIONS
32 REGARDING CHALLENGES AND APPEALS, TO ESTABLISH PROVISIONS REGARDING
33 ETHICS IN PROCUREMENT AND TO PROVIDE SEVERABILITY; AMENDING SECTION
34 18-1359, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AMENDING SEC-
35 TION 33-125B, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO
36 MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-2503, IDAHO CODE, TO
37 PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 33-3406, IDAHO CODE,
38 TO REVISE TERMINOLOGY AND TO PROVIDE A CORRECT CODE REFERENCE; AMEND-
39 ING SECTION 33-5402, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE;
40 AMENDING SECTION 33-5504, IDAHO CODE, TO REVISE TERMINOLOGY AND TO PRO-
41 VIDE A CORRECT CODE REFERENCE; AMENDING SECTION 39-130, IDAHO CODE, TO
42 PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION;
43 AMENDING SECTION 54-2013, IDAHO CODE, TO REVISE TERMINOLOGY AND TO PRO-
44 VIDE A CORRECT CODE REFERENCE; AMENDING SECTION 60-103, IDAHO CODE, TO
45

1 REVISE TERMINOLOGY AND TO PROVIDE CORRECT CODE REFERENCES; AMENDING
 2 SECTION 67-455A, IDAHO CODE, TO REVISE TERMINOLOGY AND TO PROVIDE COR-
 3 RECT CODE REFERENCES; AMENDING SECTION 67-5711C, IDAHO CODE, TO PROVIDE
 4 A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING
 5 SECTION 67-5711D, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE;
 6 AMENDING SECTION 67-5722, IDAHO CODE, TO REMOVE LANGUAGE REGARDING
 7 EXCHANGE OF STATE PROPERTY; AMENDING SECTION 67-5737, IDAHO CODE, TO
 8 REMOVE A CODE REFERENCE AND TO REVISE TERMINOLOGY; AMENDING SECTION
 9 67-7451, IDAHO CODE, TO REVISE TERMINOLOGY AND TO PROVIDE A CORRECT CODE
 10 REFERENCE; AND AMENDING SECTION 74-511, IDAHO CODE, TO PROVIDE CORRECT
 11 CODE REFERENCES.

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

13 SECTION 1. That Sections [67-5714](#) through [67-5721](#), Idaho Code, be, and
 14 the same are hereby repealed.

15 SECTION 2. That Sections [67-5723](#) through [67-5732](#), Idaho Code, be, and
 16 the same are hereby repealed.

17 SECTION 3. That Sections [67-5733](#) through [67-5736](#), Idaho Code, be, and
 18 the same are hereby repealed.

19 SECTION 4. That Title 67, Idaho Code, be, and the same is hereby amended
 20 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
 21 ter 92, Title 67, Idaho Code, and to read as follows:

22 CHAPTER 92
 23 STATE PROCUREMENT ACT

24 67-9201. SHORT TITLE. This chapter shall be known and may be cited as
 25 the "State Procurement Act."

26 67-9202. DECLARATION OF POLICY. The Idaho legislature, recognizing
 27 that an offered low price is not always indicative of the greatest value,
 28 declares it to be the policy of the state:

- 29 (1) To engage in open, competitive acquisitions of property; and
 30 (2) To maximize the value received by the state with attendant benefits
 31 to the citizens.

32 67-9203. DEFINITIONS. As used in this chapter:

- 33 (1) "Acquisition" means the process of procuring property.
 34 (2) "Administrator" means the administrator of the division of pur-
 35 chasing as created by section 67-9204, Idaho Code.
 36 (3) "Agency" means all officers, departments, divisions, bureaus,
 37 boards, commissions and institutions of the state, including the public
 38 utilities commission, but excluding:
 39 (a) The legislative and judicial branches of government;
 40 (b) The governor, lieutenant governor, secretary of state, state con-
 41 troller, state treasurer, attorney general and superintendent of pub-
 42 lic instruction; and

- 1 (c) A state institution of higher education that complies with the pro-
2 visions of section 67-9225, Idaho Code.
- 3 (4) "Bid" means a written offer to perform a contract to sell or other-
4 wise supply property in response to a solicitation.
- 5 (5) "Bidder" means a vendor who has submitted a bid on property to be
6 acquired by the state.
- 7 (6) "Contract" means an agreement for the acquisition of property, in-
8 cluding a purchase order.
- 9 (7) "Contractor" means a vendor who has been awarded a contract.
- 10 (8) "Director" means the director of the department of administration
11 as created by section 67-5701, Idaho Code.
- 12 (9) "Lowest responsible bidder" means the responsible bidder whose bid
13 reflects the lowest acquisition price to be paid by the state, except that
14 when specifications are valued or comparative performance evaluations are
15 conducted, the results of such examinations and the relative score of valued
16 specifications will be weighed, as set out in the specifications, in deter-
17 mining the lowest acquisition price.
- 18 (10) "Open contract" means a contract awarded by the state through the
19 division of purchasing as a result of a competitive solicitation to one (1)
20 or more vendors who have agreed to allow all agencies to procure specified
21 property under the terms and conditions set forth in the contract.
- 22 (11) "Procure" means to obtain property for state use in a manner other
23 than by gift including, but not limited to, purchase, lease or rent.
- 24 (12) "Property" means goods, services, parts, supplies and equipment,
25 both tangible and intangible, including, but not limited to, designs, plans,
26 programs, systems, techniques and any rights or interests in such property.
- 27 (13) "Sole source" means the only vendor from whom specific property is
28 available to procure.
- 29 (14) "Solicitation" means an invitation to bid, a request for proposal
30 or a request for quote issued pursuant to this chapter for the purpose of
31 procuring property.
- 32 (15) "Specifications" means the standards or requirements for property
33 to be procured as explicitly stated in a solicitation or contract.
- 34 (16) "State institution of higher education" means Boise State Uni-
35 versity, Eastern Idaho Technical College, Idaho State University or
36 Lewis-Clark State College.
- 37 (17) "Vendor" means a person or entity capable of supplying property to
38 the state.

39 67-9204. DIVISION OF PURCHASING -- ADMINISTRATOR. (1) There is hereby
40 created within the department of administration the division of purchasing.
41 The director shall appoint an administrator for the division, subject to the
42 approval of the governor.

43 (2) The administrator shall be exempt from the provisions of the state
44 merit system.

45 (3) The administrator may employ additional personnel as may be neces-
46 sary.

47 (4) The administrator may enter into contracts for professional ser-
48 vices or assistance when necessary or desirable.

1 67-9205. POWERS AND DUTIES OF THE ADMINISTRATOR. The administrator of
2 the division of purchasing:

3 (1) Shall acquire all property for state agencies according to the pro-
4 visions of this chapter;

5 (2) Shall acquire all property by competitive solicitation, except as
6 otherwise provided;

7 (3) Shall determine, based on the specifications and matters relating
8 to responsibility, the lowest responsible bidder in all competitive solici-
9 tations;

10 (4) Shall enter into contracts and any modifications thereto for the
11 acquisition of property on behalf of and in the name of state agencies;

12 (5) Shall, when economically feasible and practical, consolidate so-
13 licitations and acquire property in amounts as large as can be efficiently
14 managed and controlled;

15 (6) May, in the evaluation of paper product bids, give those items that
16 meet the recycled content standards as specified by the administrator a five
17 percent (5%) purchasing preference. As such, those qualifying paper prod-
18 ucts may be considered to cost five percent (5%) less when choosing the low-
19 est responsible bidder;

20 (7) May appoint a deputy who shall have the power to act for the adminis-
21 trator and in the administrator's place while absent, which deputy shall be
22 bonded to the state of Idaho as prescribed by chapter 8, title 59, Idaho Code;

23 (8) May require from any contractor the submission of a performance
24 bond for such sum as will, in the opinion of the administrator, guarantee
25 the faithful performance of such contract, and the amount and requirement
26 therefor shall be set out in the specifications;

27 (9) May enter into open contracts based on actual or estimated require-
28 ments;

29 (10) May enter into contracts, including leases and rentals, for peri-
30 ods of time exceeding one (1) year, provided that such contracts contain no
31 penalty to or restriction upon the state in the event cancellation is neces-
32 sitated by a lack of funding for any such contract;

33 (11) Is authorized and empowered to formulate rules, subject to the ap-
34 proval of the director, to effect the provisions of this chapter;

35 (12) May enter into negotiations for acquisitions in accordance with
36 established rules of the division;

37 (13) May inspect property supplied by a contractor to determine whether
38 it meets specifications;

39 (14) May classify, after review with the various agencies, the require-
40 ments of the state for all property that may be acquired, and may adopt stan-
41 dards of quality for property, and may establish specifications for acquisi-
42 tion. Each specification shall, until revised or rescinded, apply alike in
43 terms and effect to each future acquisition of the classified property;

44 (15) May delegate authority pursuant to section 67-9206, Idaho Code;
45 and

46 (16) May carry out such acts as are necessary to enforce the provisions
47 of this chapter.

48 67-9206. DELEGATION OF AUTHORITY. (1) The administrator may delegate
49 such authority as the administrator deems appropriate to an employee of the

1 division, an agency employee or an agency, provided that any such employee or
2 the procurement staff of any such agency demonstrates sufficient competence
3 in procurement as to satisfy the administrator.

4 (2) A delegation made pursuant to subsection (1) of this section shall
5 be made in writing and shall state with specificity:

6 (a) The nature of the authority being delegated;

7 (b) The terms, conditions and limitations of the delegation; and

8 (c) The duration of the delegation.

9 (3) The administrator shall, subject to approval of the director, for-
10 mulate rules specifying:

11 (a) The process by which delegation of authority may be granted, con-
12 tinued or revoked; and

13 (b) The factors influencing the decision to delegate such authority in
14 addition to the demonstrated competence required by subsection (1) of
15 this section.

16 67-9207. PROCUREMENT TRAINING. (1) A person who may procure property
17 for the state or whose employment with the state includes duties relating
18 to procurement, such as contract administration, management or monitoring,
19 shall undergo procurement training, including a person whose office or em-
20 ployer is excluded from the definition of "agency" under section 67-9203,
21 Idaho Code. The training shall address the person's specific procurement
22 duties and shall include continuing education requirements when appropri-
23 ate.

24 (2) The administrator shall establish training for those persons de-
25 scribed in subsection (1) of this section.

26 67-9208. SOLICITATIONS. (1) The administrator shall not make or
27 cause to be made any acquisition until a requisition for the property to
28 be acquired has been submitted to the administrator's office by the req-
29 uisitioning agency. The requisition shall certify to the administrator's
30 satisfaction that there are sufficient funds or balance in appropriations
31 out of which the amount of the requisition may be lawfully paid, except as
32 provided in section 67-9221(3), Idaho Code.

33 (2) Upon determining that an agency's requisition complies with the
34 provisions of subsection (1) of this section, the administrator shall issue
35 a solicitation. Notice of the solicitation shall be posted in a conspicuous
36 manner as prescribed by rule. The notice shall describe the property to be
37 acquired in sufficient detail to apprise a vendor of the exact nature of the
38 property being sought and shall set forth the bid closing date, time and
39 location.

40 (3) The administrator may establish by rule exceptions to the notice
41 provisions in subsection (2) of this section; provided however, that the
42 procurements excepted from the notice provisions must be minor in nature.

43 67-9209. BIDS. (1) In response to a solicitation issued pursuant to
44 section 67-9208, Idaho Code, a vendor seeking to supply the property so-
45 licited shall submit a bid in a manner prescribed by rule.

1 (2) To enhance small business bidding opportunities, the administra-
2 tor shall seek a minimum of three (3) bids from vendors having a significant
3 Idaho economic presence as defined in section 67-2349, Idaho Code.

4 (3) All bids received shall be opened at the time and place specified in
5 the solicitation. The bids shall be opened in public view, and a record of
6 each bid shall then and there be made. The administrator shall have the right
7 to reject any and all bids pursuant to rules established for the division.

8 67-9210. AWARD OF CONTRACT. (1) The administrator shall award con-
9 tracts to, and place orders for property with, the lowest responsible
10 bidder. Qualifications for responsibility shall be prescribed by rule.

11 (2) Where both the bids and quality of property offered are the same,
12 preference shall be given to property of local and domestic production and
13 manufacture or from bidders having a significant Idaho economic presence as
14 defined in section 67-2349, Idaho Code. In connection with the award of any
15 contract for the placement of any order for state printing, binding, engrav-
16 ing or stationery work, the provisions of sections 60-101 and 60-103, Idaho
17 Code, shall apply to the extent that the same may be inconsistent with any re-
18 quirements contained in this section.

19 67-9211. MULTIPLE AWARDS. (1) Notwithstanding any provision of this
20 chapter to the contrary, the administrator may make an award of a contract to
21 two (2) or more bidders to furnish the same or similar property when more than
22 one (1) contractor is necessary:

23 (a) To furnish the types of property and quantities required by state
24 agencies;

25 (b) To provide expeditious and cost-efficient acquisition of property
26 for state agencies; or

27 (c) To enable state agencies to acquire property that is compatible
28 with property previously acquired.

29 (2) No award of a contract to multiple bidders shall be made under this
30 section unless the administrator makes a written determination showing that
31 multiple awards satisfy one (1) or more of the criteria set forth in this sec-
32 tion.

33 (3) When a contract for property has been awarded to two (2) or more bid-
34 ders in accordance with this section, a state agency shall make purchases
35 from the contractor whose terms and conditions regarding price, availabil-
36 ity, support services and delivery are most advantageous to the agency.

37 (4) A multiple award of a contract for property under this section shall
38 not be made when a single bidder can reasonably serve the acquisition needs
39 of state agencies. A multiple award of a contract shall only be made to the
40 number of bidders necessary to serve the acquisition needs of state agen-
41 cies.

42 67-9212. CONTRACTS SHALL BE IN WRITING. Every contract made by the ad-
43 ministrator on behalf of the state shall be in writing and shall be signed
44 manually or electronically by the contracting parties. Every contract shall
45 be filed in the office of the administrator, together with all bids, speci-
46 fications and other documents and records associated with the acquisition or
47 intended acquisition.

1 67-9213. VOID CONTRACTS. (1) All contracts made in violation of the
2 provisions of this chapter shall be void. Any sum of money advanced by the
3 state in consideration of a void contract shall be repaid forthwith.

4 (2) In the event of a refusal or delay when repayment is demanded by the
5 proper officer of the state of Idaho, under whose authority such contract
6 shall have been made or entered into, every person so refusing or delaying,
7 together with that person's surety or sureties, shall be prosecuted at law
8 for the recovery of such sum of money so advanced.

9 67-9214. ACCEPTANCE OF PROPERTY. No property to be acquired by an
10 agency shall be accepted by the agency unless the property meets the specifi-
11 cations set forth in the solicitation or contract.

12 67-9215. PRESERVATION AND DISCLOSURE OF RECORDS -- EXCEPTION. (1) The
13 administrator shall preserve all records relating to solicitations in the
14 administrator's office, and information with respect thereto, in such form
15 as the administrator shall prescribe by rule, for a period of three (3) years
16 after the date of final action, or for a period of time as may be prescribed
17 by a record retention guideline schedule approved by the director. Records
18 preserved under the provisions of this section shall be subject to disclo-
19 sure according to chapter 1, title 74, Idaho Code.

20 (2) If a solicitation is canceled prior to award of a contract, the
21 administrator shall immediately return all bids to the submitting vendors
22 or delete bids that were received electronically. Bids returned or deleted
23 pursuant to this subsection shall not be subject to disclosure under chapter
24 1, title 74, Idaho Code.

25 67-9216. OPEN CONTRACTS. (1) If property is available on an open con-
26 tract, then all agencies seeking to procure such property must do so from the
27 open contract. Provided however, that the administrator may grant an exemp-
28 tion to a requesting agency if the administrator determines that an exemp-
29 tion would be in the best interest of the state.

30 (2) A request for an exemption shall be made in writing and explain why
31 the exemption would be in the best interest of the state.

32 (3) The administrator's determination to grant an exemption shall be
33 made in writing and explain the justification for the exemption.

34 (4) The administrator shall make an annual report to the legislature on
35 the first day of the regular session, which report shall detail:

- 36 (a) The exemptions requested during the previous year;
37 (b) Whether the exemptions were granted or denied; and
38 (c) The reason each exemption was granted or denied.

39 67-9217. DISQUALIFICATION OF VENDORS. (1) A disqualified vendor may
40 not submit a bid.

41 (2) A vendor may be disqualified by the administrator for any of the
42 following reasons:

- 43 (a) Failure to perform according to the terms of any contract;
44 (b) Attempts by whatever means to cause specifications to be drawn so as
45 to favor a specific vendor;

1 (c) Use of the provisions of this chapter to obstruct or unreasonably
2 delay acquisitions by the state;

3 (d) Perjury in a vendor disqualification hearing;

4 (e) Knowingly violate the provisions of this chapter; or

5 (f) Debarment, suspension or ineligibility from federal contracting of
6 the vendor, its principals or its affiliates.

7 (3) A vendor shall be notified by registered mail within ten (10) days
8 of the vendor's disqualification by the administrator. The vendor may,
9 within thirty (30) days of the receipt of such notice, request a hearing,
10 which shall be held in accordance with chapter 52, title 67, Idaho Code.

11 (4) In lieu of disqualification, the determinations officer at a hear-
12 ing conducted pursuant to subsection (3) of this section may recommend to the
13 director specific conditions to the vendor's continued participation in ac-
14 quisitions by the state.

15 (5) Disqualification or conditions may be imposed for a period of not
16 less than six (6) months or not more than five (5) years.

17 (6) For purposes of this section, "obstruction" means a lack of success
18 in more than fifty percent (50%) of the specification challenges made in each
19 of three (3) different acquisitions during any twenty-four (24) month pe-
20 riod.

21 67-9218. PAYMENT OF CONTRACTORS. (1) Within ten (10) days after the
22 property acquired is delivered as called for by the specifications, the ac-
23 quiring agency shall complete all processing required of that agency to per-
24 mit the contractor to be paid according to the terms of the contract.

25 (2) Within ten (10) days of receipt of the documents necessary to permit
26 payment of the contractor according to the terms of the contract, the state
27 controller shall cause a warrant to be issued in favor of the contractor and
28 delivered.

29 (3) Contracts let or entered into by or through the division of purchas-
30 ing are exempt from the provisions of section 67-2302, Idaho Code; provided
31 however, that late contract payments may be assessed interest by the con-
32 tractor at the rate set forth in section 63-3045, Idaho Code, unless another
33 rate is established by the contract.

34 67-9219. CONTRACT OVERSIGHT. (1) Subject to approval of the director,
35 the administrator shall formulate rules that establish policies and proce-
36 dures relating to the administration, management, monitoring and oversight
37 of contracts entered by an agency.

38 (2) Any officer, institution or entity that is excluded from the def-
39 inition of "agency" under section 67-9203, Idaho Code, but that may enter
40 contracts obligating the state, shall establish policies and procedures re-
41 lating to the administration, management, monitoring and other oversight of
42 such contracts.

43 (3) Policies and procedures established pursuant to subsection (1) or
44 (2) of this section shall define the roles and responsibilities of those per-
45 sons assigned to administer, manage, monitor or otherwise oversee state con-
46 tracts.

47 (4) Each officer, agency, institution or entity that may enter con-
48 tracts obligating the state, regardless of whether such officer, agency,

1 institution or entity is included in the definition of "agency" under sec-
2 tion 67-9203, Idaho Code, shall make an annual report to the legislature on
3 all qualifying contracts entered into by the officer, agency, institution or
4 entity during the previous year. The report shall be made on the first day of
5 the regular legislative session and shall include the following information
6 for each contract:

- 7 (a) The amount;
- 8 (b) The duration;
- 9 (c) The parties; and
- 10 (d) The subject.

11 (5) For purposes of this section, a qualifying contract is one valued
12 at more than one million five hundred thousand dollars (\$1,500,000) over the
13 duration of the contract and that is:

- 14 (a) Awarded as a result of a sole source or other noncompetitive pro-
15 curement pursuant to section 67-9221, Idaho Code;
- 16 (b) A multiyear contract; or
- 17 (c) Part of a multiple award.

18 67-9220. INVENTORIES. Every agency shall submit to the administrator,
19 at such times as the administrator may require, a written statement contain-
20 ing full information as to all property then in the agency's possession and
21 the estimated requirements of the agency for such period as the administra-
22 tor may designate. Further, the administrator may, at any time, inspect or
23 cause to be inspected and inventoried all such property in any agency, and
24 it shall be the duty of each officer and employee thereof to assist and fur-
25 nish to the administrator full information for purposes of such examination
26 or investigation.

27 67-9221. NONCOMPETITIVE AND EMERGENCY PROCUREMENTS. (1) The adminis-
28 trator may allow noncompetitive procurements when:

- 29 (a) A particular savings to the state may be obtained through the use of
30 educational discounts, reverse public auctions or acquisition of fed-
31 eral surplus or excess property;
- 32 (b) The property is available only from a sole source;
- 33 (c) Immediate delivery of the property is required by public exigencies
34 and the administrator has declared that an emergency exists; or
- 35 (d) Other circumstances justify a noncompetitive procurement in the
36 opinion of the director and the administrator.

37 (2) Prior to procuring property from a sole source, the administrator
38 shall post notice of a sole source procurement, unless the property is re-
39 quired for a life-threatening situation or a situation that is immediately
40 detrimental to the public welfare or property. The notice shall be posted in
41 a conspicuous manner as prescribed by rule.

42 (3) When the administrator has declared an emergency, payment vouchers
43 may be issued on behalf of an agency without sufficient funds to make an emer-
44 gency procurement. A payment voucher shall include a statement of justifi-
45 cation for the emergency procurement.

46 67-9222. NONOWNED PROPERTY. (1) Bids submitted for the acquisition of
47 any property, the terms of payment for which are other than those of a pro-

1 curement with attendant passage of title, shall be prepared on a basis that
2 will allow the state full unlimited use, except for those periods required by
3 the owner of such property for normal maintenance, without incurring addi-
4 tional costs to the state beyond those included in the bid price submitted.

5 (2) Any exercise by the state of an option to acquire previously
6 nonowned property, or any other procedure that shall serve to pass title to
7 the state where no passage of title existed before, shall be deemed to be a
8 new acquisition and, prior to execution, all applicable provisions and pro-
9 cedures of this chapter shall be exercised.

10 67-9223. EXCHANGE OF STATE PROPERTY. (1) Whenever an agency owns prop-
11 erty no longer economical to use, the administrator may dispose of such prop-
12 erty by exchanging the same in part payment for new property, as provided for
13 in this section. The administrator shall include in the solicitation a full
14 description of the property to be exchanged as part payment and shall permit
15 vendors to examine the same. The contract shall be awarded on the basis of
16 net cost to the state after allowance for the property to be exchanged in part
17 payment. In addition, the administrator may permit an exchange of property
18 in part payment for new property acquisitions from contracts for the same or
19 similar property.

20 (2) Exchange of property pursuant to this section will be permitted
21 only when it is determined by the administrator that all other methods of
22 disposal of the property sought to be exchanged will yield less value to the
23 state.

24 67-9224. GROUP DISCOUNT PURCHASING. (1) The administrator may autho-
25 rize an agency to become a participating member of a group discount purchas-
26 ing organization if the administrator finds that:

27 (a) The property to be acquired is at least equal in quality to same or
28 similar property that the agency uses;

29 (b) The property to be acquired is less costly to the state than if ac-
30 quired by other means authorized in this chapter;

31 (c) The state's participation in the organization is formalized by a
32 written contract that extends for no longer than one (1) year at a time;
33 and

34 (d) The state's entrance fee or participation fee in the organization
35 is based on criteria applied to all other members of the organization.

36 (2) Any contract entered pursuant to this section shall be maintained
37 on file with the division as well as with the agency entering into the con-
38 tract.

39 (3) Property acquired pursuant to this section shall be used solely
40 by the state and may not be transferred from state ownership until it is no
41 longer of use to the state. Such property may not be provided to individuals
42 except those in the custody of the state or those receiving direct personal
43 services from the state.

44 67-9225. PROCUREMENT BY STATE INSTITUTIONS OF HIGHER EDUCATION. (1) A
45 state institution of higher education may establish policies and procedures
46 for procuring property that shall be substantially consistent with the re-
47 quirements for procuring property as set forth in this chapter and that shall

1 be approved by the state board of education. When the state board of edu-
2 cation has approved such policies and procedures for a state institution of
3 higher education, the institution shall not be subject to the provisions of
4 this chapter, except as provided in subsection (2) of this section.

5 (2) When the state enters into an open contract, no state institution of
6 higher education shall fail to use such contract; provided however, that if
7 the property to be acquired may be procured at equal or less expense to the
8 institution from a vendor that is not party to the open contract, then the
9 institution may, at the institution's discretion, procure the property from
10 the nonparty vendor.

11 67-9226. DISCOUNTS. (1) Whenever an employee of an agency is charged
12 with the responsibility of procuring property for and on behalf of the state,
13 the employee shall, if possible, negotiate discounts normally given in the
14 ordinary course of business including, but not limited to, discounts for
15 prompt payment and discounts for bulk acquisitions.

16 (2) It shall be the duty of the administrator to prescribe by rule the
17 manner by which to obtain discounts.

18 67-9227. CONTRACTS WITH FEDERAL GOVERNMENT EXEMPT FROM CERTAIN PRO-
19 VISIONS. The administrator, on behalf of any agency, and the comparable
20 purchasing officers of the several political subdivisions, municipal cor-
21 porations and public agencies of the state on behalf of such political
22 subdivisions, municipal corporations and public agencies, within the limits
23 of available appropriations and requisitions made for acquisition thereof,
24 may enter into any contract with the United States of America, or with any
25 agency thereof, or with any agency established for disposition or distribu-
26 tion of surplus federal properties within this state, for the acquisition
27 of any property, real or personal, without regard to provisions of law that
28 require:

29 (1) The posting of notices;

30 (2) Public advertising;

31 (3) Inviting or receiving competitive bids; or

32 (4) Delivery of property acquired before payment in any case in which
33 delivery may be constructively accomplished without manual possession.

34 67-9228. ACQUISITION OF PROPERTY -- GENERAL SERVICES ADMINISTRATION
35 FEDERAL SUPPLY SCHEDULE CONTRACTS. Notwithstanding any provision in this
36 chapter to the contrary, the administrator may, instead of soliciting bids,
37 contract for property at a price equal to or less than the contractor's
38 current federal supply contract price for sales to the general services
39 administration of the United States without the use of competitive bids,
40 so long as the contractor has indicated a willingness in writing to extend
41 such contractor pricing, terms and conditions to the administrator, and the
42 administrator considers the price to be advantageous to the state.

43 67-9229. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (1) All rules
44 of the division of purchasing shall be adopted in accordance with the pro-
45 visions of chapter 52, title 67, Idaho Code. Only appeals conducted as
46 contested cases pursuant to section 67-9232(3)(a)(iii), Idaho Code, shall

1 be subject to the judicial review provisions of chapter 52, title 67, Idaho
2 Code. This section shall not impair any contract right or contract remedy
3 that may exist between the state and a properly licensed contractor or ven-
4 dor.

5 (2) A determinations officer appointed by the director pursuant to the
6 provisions of this chapter may subpoena witnesses and evidence and adminis-
7 ter oaths.

8 (3) In the event that a determinations officer is appointed pursuant to
9 the provisions of section 67-9232, Idaho Code, any vendor who has submitted a
10 bid in the process under review shall, notwithstanding any other disability,
11 have standing to intervene in the proceeding as a party, and such intervenor
12 may participate in the purchase appeal or appeal from any final order entered
13 in a contested case conducted under section 67-9232 (3) (a) (iii), Idaho Code.

14 67-9230. PROHIBITIONS. (1) No contract or any interest therein shall
15 be transferred by the contractor to whom such contract is given to any other
16 party without approval in writing by the administrator and by the board of
17 examiners pursuant to section 67-1027, Idaho Code. Transfer of a contract
18 without approval shall cause the annulment of the contract so transferred,
19 at the option of the state. All rights of action, however, for any breach of
20 such contract by the contracting parties are reserved to the state.

21 (2) No member of the legislature or any officer or employee of any
22 branch of the state government shall directly, himself, or by any other per-
23 son in trust for him or for his use or benefit or on his account, undertake,
24 execute, hold or enjoy, in whole or in part, any contract made or entered into
25 by or on behalf of the state of Idaho, if made by, through, or on behalf of the
26 department in which he is an officer or employee; or if made by, through or
27 on behalf of any other department unless the same is made after competitive
28 bids.

29 (3) Except as provided in this chapter, no officer or employee shall in-
30 fluence or attempt to influence the award of a contract to a particular ven-
31 dor, or to deprive or attempt to deprive any vendor of a contract.

32 (4) No officer or employee shall conspire with a vendor or its agent,
33 and no vendor or its agent shall conspire with an officer or employee, to in-
34 fluence or attempt to influence the award of a contract, or to deprive or at-
35 tempt to deprive a vendor of a contract.

36 (5) No officer or employee shall fail to use an open contract except as
37 provided in this chapter.

38 (6) No officer or employee shall accept property knowing that the prop-
39 erty does not meet specifications or other acceptance criteria set forth in
40 the contract.

41 (7) Deprivation, influence or attempts thereat shall not include writ-
42 ten reports, based upon substantial evidence, sent to the administrator con-
43 cerning matters relating to the responsibility of vendors.

44 (8) No vendor or related party, or subsidiary, or affiliate of a ven-
45 dor, may submit a bid to obtain a contract to provide property to the state,
46 if the vendor or related party, or affiliate or subsidiary was paid for ser-
47 vices used in preparing the specifications or if the services influenced the
48 procurement process.

1 67-9231. PENALTIES. (1) Any person convicted of a violation of subsec-
2 tion (1), (2), (3) or (8) of section 67-9230, Idaho Code, shall be guilty of a
3 misdemeanor.

4 (2) Any person convicted of a violation of subsection (4) of section
5 67-9230, Idaho Code, shall be guilty of a felony.

6 (3) Any officer or employee found to have violated the provisions of
7 subsection (5) or (6) of section 67-9230, Idaho Code, may, by order of a de-
8 terminations officer appointed by the director, be suspended without pay for
9 not more than ninety (90) working days, have a reprimand entered in his per-
10 sonnel file, or both.

11 67-9232. CHALLENGES AND APPEALS. (1) Bid specifications.

12 (a) There shall be, beginning with the date of receipt of notice, a
13 period of not more than ten (10) working days in which any vendor, quali-
14 fied and able to sell or supply the items to be acquired, may notify the
15 administrator in writing of his intention to challenge the specifica-
16 tions and shall specifically state the exact nature of his challenge.
17 The specific challenge shall describe the location of the challenged
18 portion or clause in the specification document, unless the challenge
19 concerns an omission, explain why any provision should be struck, added
20 or altered, and contain suggested corrections.

21 (b) Upon receipt of the challenge, the administrator shall either deny
22 the challenge, and such denial shall be considered the final agency de-
23 cision, or he shall present the matter to the director for appointment
24 of a determinations officer. If the director appoints a determinations
25 officer, then all vendors, who are invited to bid on the property sought
26 to be acquired, shall be notified of the appeal and the appointment of
27 a determinations officer and may indicate in writing their agreement or
28 disagreement with the challenge within five (5) days. The notice to the
29 vendors may be electronic. Any vendor may note his agreement or dis-
30 agreement with the challenge. The determinations officer may, on his
31 own motion, refer the challenge portion and any related portions of the
32 challenge to the author of the specification to be rewritten with the
33 advice and comments of the vendors capable of supplying the property,
34 rewrite the specification himself and/or reject all or any part of any
35 challenge. If specifications are to be rewritten, the matter shall be
36 continued until the determinations officer makes a final determination
37 of the acceptability of the revised specifications.

38 (c) The administrator shall reset the bid opening no later than fif-
39 teen (15) days after final determination of challenges or the amendment
40 of the specifications. If the administrator denies the challenge, then
41 the bid opening date shall not be reset.

42 (d) The final decision of the determinations officer or administrator
43 on the challenge to specifications shall not be considered a contested
44 case within the meaning of the administrative procedure act; provided
45 that a vendor disagreeing with specifications may include such dis-
46 agreement as a reason for asking for appointment of a determinations
47 officer pursuant to subsection (3) of this section.

48 (2) Nonresponsive bids.

1 (a) There shall be, beginning with the day following receipt of notice
2 of rejection, a period of five (5) working days in which a bidder whose
3 bid was found nonresponsive may appeal such decision to the director
4 of the department of administration. A nonresponsive bid, within the
5 meaning of this chapter, is a bid that does not comply with the bid invi-
6 tation and specifications and shall not apply to a vendor whose bid is
7 considered but who is determined not to be the lowest responsible bidder
8 as defined in this chapter. The director shall:

9 (i) Deny the application; or

10 (ii) Appoint a determinations officer to review the record and
11 submit a recommended order to the director to affirm or reverse the
12 administrator's decision of bid nonresponsiveness.

13 (b) The director shall, upon receipt of a written recommendation from
14 the determinations officer, sustain, modify or reverse the administra-
15 tor's nonresponsive bid decision. An appeal conducted under the pro-
16 visions of this subsection shall not be considered a contested case and
17 shall not be subject to judicial review under the provisions of chapter
18 52, title 67, Idaho Code.

19 (3) Lowest responsible bidder.

20 (a) A vendor whose bid is considered may, within five (5) working days
21 following receipt of notice that he is not the lowest responsible bid-
22 der, apply to the director for appointment of a determinations officer.
23 The application shall set forth in specific terms the reasons why the
24 administrator's decision is thought to be erroneous. Upon receipt of
25 the application, the director shall within five (5) working days:

26 (i) Deny the application, and such denial shall be considered the
27 final agency decision;

28 (ii) Appoint a determinations officer to review the record to de-
29 termine whether the administrator's selection of the lowest re-
30 sponsible bidder is correct; or

31 (iii) Appoint a determinations officer with authority to conduct a
32 contested case hearing in accordance with the provisions of chap-
33 ter 52, title 67, Idaho Code.

34 (b) A determinations officer appointed pursuant to paragraph (a) (ii)
35 of this subsection shall inform the director by written recommendation
36 whether, in his opinion, the administrator's selection of the lowest
37 responsible bidder is correct. The determinations officer in making
38 this recommendation may rely on the documents of record, statements
39 of employees of the state of Idaho participating in any phase of the
40 selection process, and statements of any vendor submitting a bid. A
41 contested case hearing shall not be allowed and the determinations
42 officer shall not be required to solicit statements from any person.
43 Upon receipt of the recommendation from the determinations officer,
44 the director shall sustain, modify or reverse the decision of the ad-
45 ministrator on the selection of the lowest responsible bidder, or the
46 director may appoint a determinations officer pursuant to paragraph
47 (a) (iii) of this subsection.

48 (c) A determinations officer appointed pursuant to paragraph (a) (iii)
49 of this subsection shall conduct a contested case hearing and upon con-
50 clusion of the hearing shall prepare findings of fact, conclusions of

1 law and a recommended order for the director of the department of admin-
2 istration. Upon receipt of the findings of fact, conclusions of law and
3 recommended order, the director shall enter a final order sustaining,
4 modifying or reversing the decision of the administrator on the selec-
5 tion of the lowest responsible bidder.

6 (4) Sole source procurement.

7 (a) In the case of a sole source procurement, there shall be a period of
8 not more than five (5) working days from the last date of public notice
9 in which any vendor, able to sell or supply the property to be acquired,
10 may notify the administrator, in writing, of his intention to challenge
11 the sole source procurement and briefly explain the nature of the chal-
12 lenge.

13 (b) Upon receipt of the challenge, the director shall either:

14 (i) Deny the application; or

15 (ii) Appoint a determinations officer to review the record and
16 submit a recommended order to the director to affirm or reverse the
17 administrator's sole source determination.

18 (c) The director shall, upon receipt of a written recommendation from
19 the determinations officer, sustain, modify or reverse the administra-
20 tor's sole source determination. An appeal conducted under the provi-
21 sions of this subsection shall not be considered a contested case and
22 shall not be subject to judicial review under the provisions of chapter
23 52, title 67, Idaho Code.

24 (5) The administrator may, on his own initiative, file a complaint with
25 the director for a hearing before a determinations officer. The director
26 shall appoint a determinations officer who shall make written recommenda-
27 tions to the director and the director shall render whatever decision is nec-
28 essary to resolve the complaint.

29 (6) The director is hereby authorized and directed to appoint a deter-
30 minations officer whenever one is required by this chapter. The officer
31 shall meet and render whatever determination is called for. When a complaint
32 is filed pursuant to subsection (2) of this section, no bid may be awarded
33 until the final decision is rendered by the director; provided that in all
34 other cases where a determinations officer is appointed by the director, the
35 director shall have the power to allow the acquisition contract to be awarded
36 to the successful bidder prior to or after the decision of the determinations
37 officer if he determines such award to be in the best interests of the state.
38 Any determinations officer appointed pursuant to this section shall exist
39 only for the duration of unresolved complaints on an acquisition and shall
40 be dismissed upon resolution of all such complaints. The determinations
41 officer shall be guided in his determination by the best economic interests
42 of the state for both the near future and more extended periods of time. In
43 addition to the powers conferred on the determinations officer, the director
44 may:

45 (a) Impose the penalty prescribed by section 67-9231 (3), Idaho Code;

46 (b) Enjoin any activity that violates this chapter;

47 (c) Direct that bids be rejected or sustained;

48 (d) Direct that specifications be rejected, sustained or modified; and

49 (e) Direct further legal action.

1 (7) Challenges or appeals conducted pursuant to subsection (1), (2),
2 (3) (a) (i) or 3(a) (ii) of this section shall not be considered to be a con-
3 tested case as that term is defined in the administrative procedure act. An
4 appeal conducted pursuant to subsection (3) (a) (iii) of this section shall be
5 conducted as a contested case according to the provisions of chapter 52, ti-
6 tle 67, Idaho Code.

7 67-9233. ETHICS IN PROCUREMENT. (1) It is the intent of the legisla-
8 ture that all persons involved in the process of procuring property for the
9 state conduct themselves in a manner that protects the public interest and
10 fosters confidence in the integrity of the process. To that end, this sec-
11 tion shall apply to all such persons, including:

12 (a) State officers, even if the officer or officer's employer is ex-
13 cluded from the definition of "agency" under section 67-9203, Idaho
14 Code;

15 (b) State employees, even if the employee works for an officer, insti-
16 tution or entity that is excluded from the definition of "agency" under
17 section 67-9203, Idaho Code; and

18 (c) Vendors or any person acting on behalf of a vendor.

19 (2) In any matter relating to state procurement, it is an unethical
20 breach of the public trust to:

21 (a) Knowingly attempt to realize personal gain through state office or
22 employment by any conduct inconsistent with this chapter or any other
23 applicable law or rule;

24 (b) Attempt to influence a state officer or employee to violate the pol-
25 icy or provisions of this chapter or any other applicable law or rule; or

26 (c) Knowingly violate an applicable law or rule.

27 (3) Subject to due process requirements, and in addition to any other
28 administrative, civil or criminal sanctions provided by law or rule, a state
29 employee's supervisor may impose the following sanctions on the employee for
30 an unethical breach of the public trust:

31 (a) A reprimand or warning, either oral or written;

32 (b) Suspension with or without pay for a specified period of time; or

33 (c) Termination of employment.

34 (4) In addition to any other administrative, civil or criminal sanction
35 provided by law or rule, a vendor who commits an unethical breach of the pub-
36 lic trust, or whose advocate or representative commits an unethical breach
37 of the public trust, may be disqualified pursuant to section 67-9217, Idaho
38 Code.

39 67-9234. SEVERABILITY. Insofar as a provision of this chapter or the
40 application of such provision to any person or circumstance is declared in-
41 valid for any reason, such declaration shall not affect the validity of the
42 remaining portions of this chapter.

43 SECTION 5. That Section 18-1359, Idaho Code, be, and the same is hereby
44 amended to read as follows:

45 18-1359. USING PUBLIC POSITION FOR PERSONAL GAIN. (1) No public ser-
46 vant shall:

1 (a) Without the specific authorization of the governmental entity for
2 which he serves, use public funds or property to obtain a pecuniary ben-
3 efit for himself.

4 (b) Solicit, accept or receive a pecuniary benefit as payment for
5 services, advice, assistance or conduct customarily exercised in the
6 course of his official duties. This prohibition shall not include triv-
7 ial benefits not to exceed a value of fifty dollars (\$50.00) incidental
8 to personal, professional or business contacts and involving no sub-
9 stantial risk of undermining official impartiality.

10 (c) Use or disclose confidential information gained in the course of or
11 by reason of his official position or activities in any manner with the
12 intent to obtain a pecuniary benefit for himself or any other person or
13 entity in whose welfare he is interested or with the intent to harm the
14 governmental entity for which he serves.

15 (d) Be interested in any contract made by him in his official capacity,
16 or by any body or board of which he is a member, except as provided in
17 section 18-1361, Idaho Code.

18 (e) Appoint or vote for the appointment of any person related to him by
19 blood or marriage within the second degree, to any clerkship, office,
20 position, employment or duty, when the salary, wages, pay or compen-
21 sation of such appointee is to be paid out of public funds or fees of
22 office, or appoint or furnish employment to any person whose salary,
23 wages, pay or compensation is to be paid out of public funds or fees of
24 office, and who is related by either blood or marriage within the second
25 degree to any other public servant when such appointment is made on the
26 agreement or promise of such other public servant or any other public
27 servant to appoint or furnish employment to anyone so related to the
28 public servant making or voting for such appointment. Any public ser-
29 vant who pays out of any public funds under his control or who draws or
30 authorizes the drawing of any warrant or authority for the payment out
31 of any public fund of the salary, wages, pay, or compensation of any such
32 ineligible person, knowing him to be ineligible, is guilty of a misde-
33 meanor and shall be punished as provided in this chapter.

34 (f) Unless specifically authorized by another provision of law, com-
35 mit any act prohibited of members of the legislature or any officer or
36 employee of any branch of the state government by section 67-57269230,
37 Idaho Code, violations of which are subject to penalties as provided in
38 section 67-57349231, Idaho Code, which prohibition and penalties shall
39 be deemed to extend to all public servants pursuant to the provisions of
40 this section.

41 (2) No person related to any member of the legislature by blood or mar-
42 riage within the second degree shall be appointed to any clerkship, office,
43 position, employment or duty within the legislative branch of government
44 or otherwise be employed by the legislative branch of government when the
45 salary, wages, pay or compensation of such appointee or employee is to be
46 paid out of public funds.

47 (3) No person related to a mayor or member of a city council by blood or
48 marriage within the second degree shall be appointed to any clerkship, of-
49 fice, position, employment or duty with the mayor's or city council's city

1 when the salary, wages, pay or compensation of such appointee or employee is
2 to be paid out of public funds.

3 (4) No person related to a county commissioner by blood or marriage
4 within the second degree shall be appointed to any clerkship, office, po-
5 sition, employment or duty with the commissioner's county when the salary,
6 wages, pay or compensation of such appointee or employee is to be paid out of
7 public funds.

8 (5) (a) An employee of a governmental entity holding a position prior to
9 the election of a local government official, who is related within the
10 second degree, shall be entitled to retain his or her position and re-
11 ceive general pay increases, step increases, cost of living increases,
12 and/or other across the board increases in salary or merit increases,
13 benefits and bonuses or promotions.

14 (b) Nothing in this section shall be construed as creating any property
15 rights in the position held by an employee subject to this section, and
16 all authority in regard to disciplinary action, transfer, dismissal,
17 demotion or termination shall continue to apply to the employee.

18 (6) The prohibitions contained within this section shall not include
19 conduct defined by the provisions of section 74-403(4), Idaho Code.

20 (7) The prohibitions within this section and section 18-1356, Idaho
21 Code, as it applies to part-time public servants, do not include those ac-
22 tions or conduct involving the public servant's business, profession or
23 occupation and unrelated to the public servant's official conduct, and do
24 not apply to a pecuniary benefit received in the normal course of a leg-
25 islator's business, profession or occupation and unrelated to any bill,
26 legislation, proceeding or official transaction.

27 SECTION 6. That Section 33-125B, Idaho Code, be, and the same is hereby
28 amended to read as follows:

29 33-125B. PAY FOR SUCCESS CONTRACTING -- DUTIES OF THE STATE DEPARTMENT
30 OF EDUCATION. (1) The state department of education may enter into contracts
31 for approved services. Notwithstanding ~~section 67-5718~~ the provisions of
32 chapter 92, title 67, Idaho Code, the department may issue a request for in-
33 formation for a contract upon identification of a need for a special service,
34 or interested parties may identify a need for service within the department
35 and submit a proposal to the department to negotiate a contract. Any con-
36 tract entered into pursuant to this section shall provide for:

37 (a) An evidence-based program delivered by the service provider de-
38 signed to enhance student academic achievement;

39 (b) Mutually agreed upon grade-level performance targets and efficacy
40 standards;

41 (c) Identified source of department moneys from which savings will be
42 realized;

43 (d) An external evaluator who shall have expertise in all of the follow-
44 ing areas:

45 (i) Education;

46 (ii) Program evaluation and assessment;

47 (iii) Collection and maintenance of program data;

48 (iv) Demonstrated ability to link an individual student's data
49 from grade to grade; and

- 1 (v) Knowledge of the Idaho-specific academic performance scores
 2 used to demonstrate efficacy of the service provider's program;
 3 (e) The state's payment obligations from the money appropriated to the
 4 public school support program, if the efficacy standards are met under
 5 the contract;
 6 (f) Terms under which the state may terminate the contract;
 7 (g) An annual audit to be performed by a certified public accountant;
 8 and
 9 (h) A mutually agreed upon formula for the distribution of savings re-
 10 alized by the service provider program.

11 An external evaluator shall approve the negotiated contract provisions re-
 12 lating to efficacy standards before the department may enter into any such
 13 contract.

- 14 (2) Investor moneys shall be adequate to cover all contract costs.
 15 (3) The third-party administrator shall:
 16 (a) Manage all moneys pursuant to subsection (2) of this section;
 17 (b) When appropriate, direct payments to be made under the terms of the
 18 contract;
 19 (c) Ensure an annual audit is conducted under the terms of the contract;
 20 (d) Issue financial reports as required by the contract; and
 21 (e) Complete all other compliance requirements of state or federal law.
 22 (4) The department shall approve the local education agencies (LEA)
 23 from which each cohort will be chosen. The priority for selection of LEAs
 24 shall be given to:
 25 (a) LEAs reporting the greatest number of students who are not profi-
 26 cient to meet grade-level performance targets being used to evaluate
 27 the service provider's program;
 28 (b) LEAs reporting the greatest number of students on free and reduced
 29 lunch; and
 30 (c) LEAs in different regions of the state.

31 The selection of cohorts shall be made by mutual agreement between the ser-
 32 vice provider and the approved LEA.

- 33 (5) The external evaluator shall:
 34 (a) Determine whether the service provider has met the agreed upon ef-
 35 ficacy standards under the terms of the contract by determining the out-
 36 comes for each cohort based on the following criteria:
 37 (i) Whether there was an increase in the number of children profi-
 38 cient to meet grade-level performance targets at levels specified
 39 in the contract; and
 40 (ii) Calculate moneys no longer expended or distributed by the de-
 41 partment for intervention or remediation as specified in the con-
 42 tract;
 43 (b) Annually report the service provider efficacy standards to the de-
 44 partment; and
 45 (c) Report the service provider efficacy standards to the third-party
 46 administrator for the purpose of determining whether payment should be
 47 made under the terms of the contract.
 48 (6) An oversight committee is hereby created for the purpose of decid-
 49 ing whether or not the state department of education will enter into a nego-
 50 tiation with an interested party under this section, and for the purpose of

1 monitoring contracts entered into under this section. The committee shall
2 meet as often as is necessary to fulfill its obligations under this subsec-
3 tion. The committee shall consist of the following people:

- 4 (a) The chief financial officer of the state department of education;
- 5 (b) The subject matter expert at the state department of education;
- 6 (c) A representative from the state controller's office;
- 7 (d) The house of representatives education committee chairman; and
- 8 (e) The senate education committee chairman.

9 (7) The state department of education shall report to the legislature
10 on or before February 1 of each year on all contracts entered into pursuant to
11 this section.

12 (8) The state board of education may promulgate rules implementing the
13 provisions of this section.

14 (9) As used in this section:

15 (a) "Cohort" means a group of individuals who enter the service
16 provider's program on the same date.

17 (b) "Department" means the state department of education.

18 (c) "External evaluator" means the entity that is responsible for de-
19 termining the efficacy of a service provider's program.

20 (d) "Investor" means an individual or entity that provides the capital
21 for the services specified in a contract.

22 (e) "Local education agency" or "LEA" means a public authority legally
23 constituted by the state as an administrative agency to provide control
24 of and direction for kindergarten through grade 12 public educational
25 institutions.

26 (f) "Service provider" means an organization that implements an evi-
27 denced-based program that conforms to the terms of the contract.

28 (g) "Third-party administrator" means an SSAE-16 compliant firm or a
29 firm licensed under chapter 2, title 54, Idaho Code, that manages all
30 moneys deposited pursuant to this section and controlled by a contract.

31 SECTION 7. That Section 33-2503, Idaho Code, be, and the same is hereby
32 amended to read as follows:

33 33-2503. BOARD OF LIBRARY COMMISSIONERS -- POWERS AND DUTIES. The
34 board of library commissioners is designated as the policymaking body for
35 the Idaho commission for libraries. The board of library commissioners
36 shall have the following powers and duties:

37 (1) To foster and promote library service in the state of Idaho.

38 (2) To promulgate all rules and make policies as necessary for the
39 proper conduct of its business.

40 (3) To receive donations of money, materials and other real and per-
41 sonal property, for the benefit of the Idaho commission for libraries. Title
42 to donations in any form shall vest in the state of Idaho. Donations shall be
43 held and controlled by the board of library commissioners.

44 (4) To promote and facilitate the establishment, use, and cooperation
45 of libraries throughout the state so all Idahoans have access to the re-
46 sources of those libraries.

47 (5) To support or deliver statewide library programs and services.

48 (6) To accept, receive, administer and expend, in accordance with the
49 terms thereof, any moneys, materials or other aid granted, appropriated, or

1 made available to Idaho by the United States, or any of its agencies, or by
2 any other public or private source, for library purposes. The board of li-
3 brary commissioners is authorized to file any accounts required with ref-
4 erence to receiving and administering all such moneys, materials and other
5 aid.

6 (7) To assist in the establishment of financing of a statewide program
7 of cooperative library services, which may be in cooperation with any taxing
8 unit, or public or private agency.

9 (8) To contract with other libraries or agencies, within or without the
10 state of Idaho, to render library services to people of the state of Idaho.
11 The board of library commissioners shall have authority to reasonably com-
12 pensate other library units or agencies for the cost of the services provided
13 by the other library unit or agency under any such contract. Such contracts
14 and compensation shall be exempt from the provisions of chapter 5792, title
15 67, Idaho Code.

16 SECTION 8. That Section 33-3406, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 33-3406. POWERS AND DUTIES OF THE BOARD OF DIRECTORS. The board of di-
19 rectors for the Idaho bureau of educational services for the deaf and the
20 blind shall have the following powers and duties:

21 (1) Recommend policies to be established by rule of the state board of
22 education for effecting the purposes of this chapter.

23 (2) Operate a school for the deaf and the blind, including but not lim-
24 ited to:

25 (a) With the advice of the administrator, prescribe the course of
26 study, the textbooks to be used, and for those pupils who complete the
27 requirements for grade twelve (12), the time and standard of gradua-
28 tion;

29 (b) Upon advice and recommendation from the administrator that any
30 pupil has ceased to make progress, or is no longer being benefited by the
31 school's services, approve release of such pupil from the school and/or
32 discontinue school services;

33 (c) Maintain general supervision and control of all property, real and
34 personal, appertaining to the school, and to ensure the same;

35 (d) Employ architects or engineers as necessary in planning the con-
36 struction, remodeling or repair of any building and, whenever no other
37 agency is designated so to do, to let contracts for such construction,
38 remodeling or repair and to supervise the work thereof; and

39 (e) Provide for the conveyance of pupils to and from the school.

40 (3) Employ or contract with outreach and other staff as necessary. The
41 Idaho bureau of educational services for the deaf and the blind shall be
42 exempt from the provisions of sections 33-513, 33-514, 33-514A, 33-515 and
43 33-515A, Idaho Code, and shall be exempt from chapter 53, title 67, Idaho
44 Code. At the discretion of the board, all employees of the Idaho bureau of
45 educational services for the deaf and the blind or a school for the deaf and
46 the blind eligible for benefits may be permitted to elect to receive their
47 salary on a year-round basis. Such a payment schedule shall not be consid-
48 ered a guarantee of employment.

1 (4) Purchase such supplies and equipment as are necessary to implement
2 the provisions of this chapter, which purchases shall be exempt from the
3 ~~purchasing laws~~ state procurement act in chapter 5792, title 67, Idaho Code.

4 (5) Enter into contracts with any other governmental or public agency
5 whereby the bureau agrees to render services to or for such agency in ex-
6 change for a charge reasonably calculated to cover the costs of rendering
7 such service.

8 (6) Accept, receive and utilize any gifts, grants or funds and personal
9 and real property that may be donated to it for the fulfillment of the pur-
10 poses outlined in this chapter.

11 (7) Obtain and maintain facilities to house operations of outreach or
12 supplemental services as needed.

13 (8) Manage the moneys disbursed to the bureau from any and all sources.

14 (9) Acquire, by purchase, exchange, or lease any property which in the
15 judgment of the board is needed for the operation of the Idaho bureau of ed-
16 ucational services for the deaf and the blind, including a school for the
17 deaf and the blind, and to lease, dispose of, by sale or exchange, any prop-
18 erty which in the judgment of the board is not needed for the operation of the
19 same.

20 (10) Enter into contracts or agreements as may be necessary to carry out
21 the purposes of this chapter.

22 SECTION 9. That Section 33-5402, Idaho Code, be, and the same is hereby
23 amended to read as follows:

24 33-5402. STATE COLLEGE SAVINGS PROGRAM BOARD -- COLLEGE SAVINGS PRO-
25 GRAM -- POWERS AND DUTIES. There is hereby created the state college sav-
26 ings program board. The board shall consist of the state treasurer or his
27 designee who shall serve as chair, the governor or designee, the state con-
28 troller or designee, the attorney general or designee, the superintendent of
29 public instruction or designee, and the secretary of state or designee. A
30 quorum shall be necessary to transact business. Members of the board shall
31 be compensated by their appointing entity. The state college savings pro-
32 gram board shall:

33 (1) Develop and implement the program in a manner consistent with this
34 chapter through the adoption of rules, guidelines and procedures;

35 (2) Retain professional services, if necessary, including accoun-
36 tants, auditors, consultants and other experts;

37 (3) Seek rulings and other guidance from the United States department
38 of the treasury, the internal revenue service and the state tax commission
39 relating to the program;

40 (4) Make changes to the program required for the participants in the
41 program to obtain the federal income tax benefits or treatment provided by
42 section 529 of the Internal Revenue Code of 1986, as amended;

43 (5) Interpret, in rules, policies, guidelines and procedures, the pro-
44 visions of this chapter broadly in light of its purpose and objectives;

45 (6) Charge, impose and collect administrative fees and service charges
46 in connection with any agreement, contract or transaction relating to the
47 program;

48 (7) Select the depositories and act as or select managers of the program
49 in accordance with this chapter;

1 (8) Enter into contracts, within the limit of funds available there-
2 for, acquire services and personal property, and do and perform any acts that
3 may be necessary in the administration of the program. As a board comprised
4 of elected officials, the board shall be exempt from the provisions of the
5 procurement statutes and shall not be an agency as defined in section 67-
6 ~~57169203~~, Idaho Code;

7 (9) Establish, in its discretion, a trust or other method of segregat-
8 ing the funds of participants in the program from the general funds of the
9 state, the funds of the board and the funds of the members of the board;

10 (10) Administer the program and any trust established by the board as
11 instrumentalities of the state under section 529 of the Internal Revenue
12 Code of 1986, as amended, and the federal securities law, including the secu-
13 rities act of 1933, as amended, the trust indenture act of 1939, as amended,
14 and the investment company act of 1940, as amended;

15 (11) Employ and at its pleasure discharge an executive director and
16 such other employees necessary in the administration of the program. Em-
17 ployees of the board shall be nonclassified exempt employees pursuant to the
18 provisions of chapter 53, title 67, Idaho Code.

19 SECTION 10. That Section 33-5504, Idaho Code, be, and the same is hereby
20 amended to read as follows:

21 33-5504. DUTIES OF THE ACADEMY BOARD OF DIRECTORS. The board shall be
22 responsible for ensuring that academy procedures and courses are in compli-
23 ance with the rules of the state board of education and applicable statutes
24 of the state of Idaho. In addition, the board shall:

25 (1) Recommend policies to be established by rule of the state board for
26 effecting the purposes of this chapter.

27 (2) Employ or contract with staff as necessary and purchase such sup-
28 plies and equipment as are necessary to implement the provisions of this
29 chapter, which purchases shall be exempt from the ~~purchasing laws~~ state pro-
30 urement act in chapter ~~5792~~, title 67, Idaho Code.

31 (3) To enter into contracts with any other governmental or public
32 agency whereby the board agrees to render services to or for such agency in
33 exchange for a charge reasonably calculated to cover the costs of rendering
34 such service.

35 (4) To accept, receive and utilize any gifts, grants or funds and per-
36 sonal and real property that may be donated to it for the fulfillment of the
37 purposes outlined in this chapter.

38 (5) Employ or contract with necessary faculty and teaching staff who
39 are fully certificated Idaho teachers or administrators, to design and de-
40 liver planned curriculum content. The academy shall be exempt from the pro-
41 visions of sections 33-513, 33-514, 33-514A, 33-515 and 33-515A, Idaho Code,
42 and shall be exempt from chapter 53, title 67, Idaho Code. All teaching and
43 educational staff of the academy shall be exempt, at will employees. The
44 number of such staff shall largely be dictated by the number of courses under
45 development, the number of courses offered, and the number of students par-
46 ticipating in academy programs.

47 (6) Obtain housing where actual operations of the academy are conducted
48 by academy staff.

1 (7) Contract with a service provider for delivery of academy courses
2 online which shall be accessible twenty-four (24) hours a day, seven (7) days
3 a week.

4 (8) Ensure that the academy is accredited as established by rule of the
5 state board of education.

6 (9) Develop policy for earning credit in courses based on mastery of
7 the subject, demonstrated competency, and meeting the standards set for each
8 course.

9 (10) Provide for articulating the content of certain high school
10 courses with college and university courses in order to award both high
11 school and undergraduate college credit.

12 (11) Develop policies and practices which provide strict application of
13 time limits for completion of courses.

14 (12) Develop policies and practices on accountability, both by the
15 student and the teacher, and in accordance with the provisions of section
16 33-5507, Idaho Code.

17 (13) Manage the moneys disbursed to the academy board from the superin-
18 tendent.

19 (14) Set fees charged to school districts for student participation;
20 fees charged for summer school; and fees charged to students and adults for
21 professional development offerings.

22 (15) Contract with a certified public accounting firm to conduct an an-
23 nual audit of the Idaho digital learning academy.

24 SECTION 11. That Section 39-130, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 39-130. REMOVAL -- REMEDIATION -- BUNKER HILL MINING AND METALLUR-
27 GICAL COMPLEX SUPERFUND FACILITY. Notwithstanding any other provision of
28 law to the contrary, removal and remediation actions in or related to any
29 operable unit of the Bunker Hill mining and metallurgical complex superfund
30 facility performed by or on behalf of the department of environmental qual-
31 ity shall not constitute public works pursuant to chapter 57, title 67, Idaho
32 Code, chapter 19, title 54, Idaho Code, or any other provision of Idaho Code.
33 In the letting and oversight of contracts for such removal or remediation
34 actions, bonding of contractors may be required. The administrator of the
35 division of waste management and remediation, department of environmen-
36 tal quality, and the director of the department of environmental quality,
37 shall have the authority of the administrator of the division of purchasing,
38 department of administration, and the director of the department of admin-
39 istration, respectively, in requiring open competitive bidding pursuant
40 to ~~sections 67-5715 through 67-5718A, 67-5725, 67-5726, 67-5729, 67-5730~~
41 ~~and 67-5733~~ chapter 92, title 67, Idaho Code, and any relevant rules of the
42 department of administration.

43 SECTION 12. That Section 54-2013, Idaho Code, be, and the same is hereby
44 amended to read as follows:

45 54-2013. ERRORS AND OMISSIONS INSURANCE. (1) Each licensee who is ac-
46 tively licensed under this chapter shall, as a condition to licensing, carry

1 and maintain errors and omissions insurance to cover all licensed activities
2 under the provisions of this chapter.

3 (2) The commission shall make the insurance required under the provi-
4 sions of this section available to each licensee by contracting with an in-
5 surance provider for errors and omissions insurance coverage for each li-
6 censee after competitive, ~~sealed~~ bidding in accordance with chapter 5792,
7 title 67, Idaho Code. The exact premium shall be set by the commission by mo-
8 tion.

9 (3) Any policy obtained by the commission shall be available to each li-
10 censee with no right on the part of the insurance provider to cancel coverage
11 for any licensee.

12 (4) Each licensee shall have the option of obtaining errors and omis-
13 sions insurance independently if the coverage contained in an independently
14 obtained policy complies with the minimum requirements established by the
15 commission.

16 (5) The commission shall determine the terms and conditions of coverage
17 required under the provisions of this section including, but not limited to,
18 the minimum limits of coverage, the permissible deductible and the permissi-
19 ble exemptions.

20 (6) A licensee seeking to obtain or renew an active license shall
21 certify to the commission that he is in compliance with the insurance re-
22 quirements of this section. A licensee who elects not to participate in the
23 insurance program administered by the commission shall obtain a certificate
24 of coverage, signed by an authorized agent or employee of the insurance car-
25 rier, reflecting proof of insurance meeting the requirements established by
26 the commission. Upon request by the commission the licensee shall produce
27 the certificate for inspection. Requests for certificates shall be sent
28 by first class mail to the licensee's business or residence address as re-
29 flected by the commission's records and a copy of the request shall be sent
30 to the licensee's designated broker, if any. A licensee failing to produce
31 a certificate of coverage within thirty (30) days of a request to do so may
32 have his license inactivated by the commission and shall not be entitled to
33 reactivate the license unless and until he provides to the commission a cer-
34 tificate of coverage reflecting proof of insurance meeting the requirements
35 of the commission. Nothing in this subsection shall limit the ability of the
36 commission to investigate or discipline a licensee for failing to maintain
37 insurance while on active status in violation of subsection (1) of this sec-
38 tion or for violating any other section of chapter 20, title 54, Idaho Code,
39 or any rule of the commission.

40 (7) If the commission is unable to obtain errors and omissions insur-
41 ance coverage to insure all licensees who choose to participate in the insur-
42 ance program at a reasonable premium, not to exceed two hundred fifty dollars
43 (\$250) per year, per licensee, the requirement of insurance coverage as pro-
44 vided in this section shall be void during the applicable contract period.

45 SECTION 13. That Section 60-103, Idaho Code, be, and the same is hereby
46 amended to read as follows:

47 60-103. EXCEPTION IN CASE OF EXCESSIVE CHARGE -- EXCEPTIONS FOR LACK
48 OF PRODUCTION FACILITIES ON BIDS ON STATE OR COUNTY WORK. (a) Whenever it
49 shall be established that any charge for printing, engraving, binding (ex-

1 cluding binding for state supported libraries) or stationery work is in ex-
 2 cess of the charge usually made to private individuals for the same kind and
 3 quality of work, then the state or county officer or officers having such
 4 work in charge shall have power to have such work done outside of said county
 5 or state, but nothing in this chapter shall be construed to oblige any of said
 6 officers to accept any unsatisfactory work.

7 (b) Any work referred to in section 60-101 or 60-102, Idaho Code, and
 8 which is to be executed for or on behalf of the state or a county may be exe-
 9 cuted outside of this state in any case (1) where the execution of such work
 10 shall require the use of a technique or process which cannot be performed
 11 through the use of physical production facilities located within this state
 12 and the use of such technique or process is essential to a necessary func-
 13 tion to be served by the printing, binding, engraving or stationery work
 14 required; (2) where, after ~~requests for proposals or bids have a sollicita-~~
 15 tion has been made or notice thereof has been given as required by section
 16 67-57189208, Idaho Code, as amended, no bid or proposal is made thereon
 17 by any person, firm or corporation proposing to execute such work within
 18 this state; or (3) where, after ~~requests for proposals or bids have a so-~~
 19 licitation has been made or notice thereof given as required by section
 20 67-57189208, Idaho Code, the lowest bid from a person, firm or corporation
 21 proposing to execute such work within this state is more than ten percent
 22 (10%) ~~more than~~ above the lowest bid from a person, firm or corporation
 23 proposing to execute such work outside this state.

24 SECTION 14. That Section 67-455A, Idaho Code, be, and the same is hereby
 25 amended to read as follows:

26 67-455A. COMMITTEE MAY ACQUIRE AND DISPOSE OF PROPERTY. (1) The gov-
 27 ernor's housing committee may accept grants, gifts or donations of any kind
 28 from any private or public source related to the acquisition, construction,
 29 remodel, furnishing, equipping or maintenance of a governor's residence.

30 (2) The governor's housing committee may acquire real property for
 31 purposes related to a governor's residence. Any real property acquired by
 32 the governor's housing committee shall be titled in the name of the state
 33 of Idaho for the benefit of the governor's housing committee and shall be
 34 administered by the department of administration on behalf of and for the
 35 benefit of the governor's housing committee. The governor's housing com-
 36 mittee may sell such real property by public, private or negotiated sale,
 37 exchange, donation or by any other means and may rent a governor's residence
 38 and any furnishings and equipment related thereto, as the committee may deem
 39 appropriate and prudent. Any real property acquired hereunder shall not be
 40 subject to sections 58-331 through 58-335, Idaho Code, relating to surplus
 41 real property as the same may now exist or as the same may be amended from time
 42 to time. Any sale or disposal of such real property shall not require the
 43 reservation to the state of mineral or other rights in the real property.

44 (3) The governor's housing committee may acquire personal property for
 45 the purpose of remodeling, furnishing, equipping or maintaining a gover-
 46 nor's residence. Any personal property acquired by the governor's housing
 47 committee shall be the property of the state of Idaho held for the benefit
 48 of the governor's housing committee and shall be administered on behalf of
 49 the governor's housing committee by the department of administration. The

1 governor's housing committee may dispose of any personal property acquired
2 hereunder by any means as the committee may deem appropriate and prudent and
3 such disposal shall not be subject to section 67-5732A, Idaho Code, relating
4 to surplus personal property, as the same exists or may be amended from time
5 to time.

6 (4) The governor's housing committee may acquire and contract for ser-
7 vices related to the acquisition, construction, remodel, furnishing, equip-
8 ping or maintenance of a governor's residence. Notwithstanding any other
9 law to the contrary, the acquisition, construction, remodel, furnishing,
10 equipping or maintenance of a governor's residence shall not be considered
11 public works and shall not be subject to any laws related to public works
12 of the state of Idaho. Notwithstanding any other law to the contrary, the
13 governor's housing committee shall not be subject to the ~~purchasing laws for~~
14 ~~state agencies~~ state procurement act provided in chapter ~~5792~~, title 67,
15 Idaho Code.

16 (5) Notwithstanding the provisions of sections 18-1359(1)(d),
17 18-2705, 58-112, 74-501, 74-503 and 67-~~5726~~9230, Idaho Code, or any other
18 provision of law, an incumbent governor shall not be deemed prohibited from
19 purchasing real or personal property acquired hereunder, and any such pur-
20 chase shall be valid for all purposes. Insofar as the provisions of this
21 section are inconsistent with the provisions of any other law, general, spe-
22 cific or local, the provisions of this section shall be controlling.

23 (6) This section shall apply to all real and personal property acquired
24 pursuant to this section or section 67-455, Idaho Code, before or after the
25 effective date of this section.

26 SECTION 15. That Section 67-5711C, Idaho Code, be, and the same is
27 hereby amended to read as follows:

28 67-5711C. CONSTRUCTION OF PUBLIC PROJECTS -- COMPETITIVE SEALED BID-
29 DING. (1) All construction contracts for public works shall be awarded to
30 the lowest responsible and responsive bidder after receipt of competitive
31 sealed bidding except as otherwise provided in sections 67-5711B, 67-5711D
32 and 67-5713, Idaho Code.

33 (2) An invitation for bids shall be issued and shall include a project
34 description and all contractual terms and conditions applicable to the pub-
35 lic works.

36 (3) Adequate public notice of the invitation for bids shall be given at
37 least fourteen (14) days prior to the date set forth therein for the opening
38 of bids. Such notice shall include publication at least fourteen (14) days
39 prior to bid opening in a newspaper of general circulation in the area where
40 the work is located.

41 (4) When prequalification is deemed by the department and by the re-
42 spective state agency to be in the best interest of the state, competitive
43 bidding procedures shall be open only to licensed public works contractors
44 that meet preliminary supplemental qualifications. The solicitation for
45 bids in a prequalified bidder public works project shall consist of two (2)
46 stages, an initial stage for identifying prequalified contractors, either
47 prime or specialty contractors, followed by a stage during which bid prices
48 will be accepted only from prequalified contractors. Notice of the prequal-
49 ification stage shall be given in the same manner that notice of open com-

1 petitive bidding is provided. Prequalification standards must be premised
2 upon demonstrated technical competence, experience constructing similar
3 facilities, prior experience with the state, past performance (related to
4 quality, workmanship and timeliness), reliability, safety record, avail-
5 able nonfinancial resources, equipment and personnel as they relate to the
6 subject project, and overall performance history based upon a contractor's
7 entire body of work. Any request for qualifications must include the stan-
8 dards for evaluating the qualifications of prospective bidders. Licensed
9 contractors desiring to be prequalified to bid on a project must submit a
10 written response to a request for qualifications. After a review of quali-
11 fication submittals, licensed contractors that meet the prequalification
12 standards shall be so notified, and licensed contractors that do not meet
13 the prequalification standards shall also be so notified. Thereafter, bids
14 may be solicited from contractors that meet the prequalification standards.
15 The department may promulgate rules or develop procedures to implement the
16 prequalification process.

17 (5) Bids shall be opened publicly at the time and place designated in
18 the invitation for bids. The amount of each bid and such other relevant in-
19 formation as may be specified by rules, together with the name of each bid-
20 der, shall be entered on a record and the record shall be open to public in-
21 spection. After the time of the award all bids and bid documents shall be
22 open to public inspection in accordance with the provisions of chapter 1, ti-
23 tle 74, and section 67-57259215, Idaho Code.

24 (6) With respect to a project having a written cost estimate of greater
25 than twenty-five thousand dollars (\$25,000) but less than the public works
26 limit established in section 67-5711, Idaho Code, the agency, if it does not
27 perform the work with existing physical plant staff, must award a written
28 contract to the lowest responsible and responsive bidder after soliciting at
29 least three (3) documented informal bids from contractors licensed in Idaho
30 to perform public works contracts, if reasonably available. Adequate pub-
31 lic notice of the invitation for informal bids shall be given at least seven
32 (7) days prior to the date set forth therein for the receipt of the infor-
33 mal bids. Such notice may include publication at least seven (7) days prior
34 to bid opening in a newspaper of general circulation in the area where the
35 work is located; or the agency may advertise the invitation for bids in ap-
36 propriate trade journals, and otherwise notify persons believed to be inter-
37 ested in the award of a contract. Informal bids must be submitted by the con-
38 tractor in writing in response to a prepared written document describing the
39 project's scope of work in sufficient detail so as to enable a contractor fa-
40 miliar with such work to prepare a responsible bid. Nothing herein exempts
41 an agency from the responsibility of utilizing formal plans and specifica-
42 tions if the work involves the public health or safety as described in chap-
43 ters 3 and 12, title 54, Idaho Code. The agency must document receipt of the
44 informal bids in the project file.

45 (7) Any personal property including goods, parts, supplies and equip-
46 ment which is to be supplied or provided by a state agency for use in any pub-
47 lic work, project, or preventive maintenance programs, whether the public
48 work, project, or preventive maintenance program is constructed, undertaken
49 or performed by agency in-house personnel, or by delegation pursuant to sec-
50 tion 67-5710A, Idaho Code, or otherwise provided or supplied by the agency

1 to a contractor, the personal property, goods, parts, supplies or equip-
2 ment supplied or provided by the agency must be purchased or procured by the
3 agency through the division of purchasing in accordance with the Idaho Code.

4 SECTION 16. That Section 67-5711D, Idaho Code, be, and the same is
5 hereby amended to read as follows:

6 67-5711D. ENERGY SAVINGS PERFORMANCE CONTRACTS. (1) Definitions. As
7 used in this section:

8 (a) "Cost-savings measure" means any facility improvement, repair or
9 alteration to an existing facility, or any equipment, fixture or fur-
10 nishing to be added or used in any existing facility that is designed
11 to reduce energy consumption and energy operating costs or increase the
12 energy efficiency of facilities for their appointed functions that are
13 cost effective. "Cost-savings measure" includes, but is not limited
14 to, one (1) or more of the following:

15 (i) Procurement of low-cost energy supplies of all types, in-
16 cluding electricity, natural gas and water;

17 (ii) Insulating the building structure or systems in the build-
18 ing;

19 (iii) Storm windows or doors, caulking or weather stripping,
20 multiglazed windows or door systems, heat-absorbing or heat-re-
21 flective glazed and coated window and door systems, additional
22 glazing, reductions in glass area or other window and door system
23 modifications that reduce energy consumption;

24 (iv) Automated or computerized energy control systems;

25 (v) Heating, ventilation or air conditioning system modifica-
26 tions or replacements;

27 (vi) Replacing or modifying lighting fixtures to increase the en-
28 ergy efficiency of the lighting system;

29 (vii) Energy recovery systems;

30 (viii) Cogeneration systems that produce steam or forms of energy
31 such as heat, as well as electricity, for use primarily within a
32 building or complex of buildings;

33 (ix) Installing new or modifying existing day lighting systems;

34 (x) Installing or modifying renewable energy and alternate en-
35 ergy technologies;

36 (xi) Building operation programs that reduce energy costs in-
37 cluding, but not limited to, computerized programs, training and
38 other similar activities;

39 (xii) Steam trap improvement programs that reduce energy costs;

40 (xiii) Devices that reduce water consumption; and

41 (xiv) Any additional building infrastructure improvements that
42 produce energy cost savings, significantly reduce energy consump-
43 tion or increase the energy efficiency of the facilities for their
44 appointed functions and are in compliance with all applicable
45 state building codes.

46 (b) "Director" means the director of the department of administration
47 or the director's designee.

48 (c) "Energy cost savings" means any expenses that are eliminated or
49 avoided on a long-term basis as a result of equipment installed or mod-

1 ified, or services performed by a qualified energy service company or
2 a qualified provider, but does not include merely shifting personnel
3 costs or similar short-term cost savings.

4 (d) "Financial grade energy audit" means a comprehensive building en-
5 ergy systems audit performed by a professional engineer licensed in the
6 state of Idaho for the purpose of identifying and documenting feasible
7 energy and resource conservation measures and cost-savings factors.

8 (e) "Performance contract" means a contract between the director or the
9 public entity and a qualified provider or a qualified energy service
10 company for evaluation, recommendation and implementation of one (1) or
11 more cost-savings measures. A performance contract may be structured
12 as either:

13 (i) A guaranteed energy savings performance contract, which
14 shall include, at a minimum, the design and installation of equip-
15 ment and, if applicable, operation and maintenance of any of the
16 measures implemented. Guaranteed annual savings must meet or
17 exceed the total annual contract payments made by the director or
18 the user agency or the public entity for such contract, including
19 financing charges to be incurred over the life of the contract; or

20 (ii) A shared savings contract, which shall include provisions
21 mutually agreed upon by the director and the qualified provider or
22 qualified energy service company as to the rate of payments based
23 upon energy cost savings and a stipulated maximum energy consump-
24 tion level over the life of the contract.

25 (f) "Person" means an individual, corporation, partnership, firm, as-
26 sociation, limited liability company, limited liability partnership or
27 other such entity as recognized by the state of Idaho.

28 (g) "Public entity" means the cities, counties and school districts or
29 any political subdivision within the state of Idaho.

30 (h) "Qualified energy service company" means a person with a record of
31 established projects or with demonstrated technical, operational, fi-
32 nancial and managerial capabilities to implement performance contracts
33 and who currently holds an Idaho public works contractor license appro-
34 priate for the work being performed.

35 (i) "Qualified provider" means a person who is experienced in the de-
36 sign, implementation and installation of energy efficiency and facil-
37 ity improvement measures, who has the ability to secure necessary fi-
38 nancial measures to support energy savings guarantees and the technical
39 capabilities to ensure such measures generate energy cost savings, and
40 who currently holds an Idaho public works contractor license appropri-
41 ate for the work being performed.

42 (2) Performance contracts. The director of the department of admin-
43 istration, subject to the approval of the permanent building fund advisory
44 council, or any Idaho public entity may enter into a performance contract
45 with a qualified provider or qualified energy service company to reduce en-
46 ergy consumption or energy operating costs. Cost-savings measures imple-
47 mented under such contracts shall comply with all applicable state and local
48 building codes.

49 (3) Requests for qualifications. The director of the department of ad-
50 ministration or the public entity shall request qualifications from quali-

1 fied providers and qualified energy service companies inviting them to sub-
2 mit information describing their capabilities in the areas of:

3 (a) Design, engineering, installation, maintenance and repairs asso-
4 ciated with performance contracts;

5 (b) Experience in conversions to a different energy or fuel source,
6 so long as it is associated with a comprehensive energy efficiency
7 retrofit;

8 (c) Postinstallation project monitoring, data collection and report-
9 ing of savings;

10 (d) Overall project experience and qualifications;

11 (e) Management capability;

12 (f) Ability to assess the availability of long-term financing;

13 (g) Experience with projects of similar size and scope; and

14 (h) Other factors determined by the director or the public entity to
15 be relevant and appropriate relating to the ability of the qualified
16 provider or qualified energy service company to perform the project.

17 (4) Notice. Adequate public notice of the request for qualifications
18 shall be given at least fourteen (14) days prior to the date set forth therein
19 for the opening of the responses to the request for qualifications. Such no-
20 tice may be provided electronically or by publication in a newspaper of gen-
21 eral circulation in the area where the work is located.

22 (5) Public inspection. All records of the department or an agency or
23 the public entity relating to the award of a performance contract shall be
24 open to public inspection in accordance with the provisions of chapter 1, ti-
25 tle 74, and section 67-57259215, Idaho Code.

26 (6) Award of performance contract.

27 (a) The director or public entity shall select up to three (3) qualified
28 providers or qualified energy service companies who have responded to
29 the request for qualifications. Factors to be considered in selecting
30 the successful qualified provider or qualified energy service company
31 shall include, but not be limited to:

32 (i) Fee structure;

33 (ii) Contract terms;

34 (iii) Comprehensiveness of the proposal and cost-savings mea-
35 sures;

36 (iv) Experience of the qualified provider or qualified energy
37 service company;

38 (v) Quality of the technical approach of the qualified provider
39 or qualified energy service company; and

40 (vi) Overall benefits to the state or the public entity.

41 (b) Notwithstanding the provisions of section 67-5711C, Idaho Code,
42 the director or the public entity may, following the request for qual-
43 ifications and the expiration of the specified notice period, award
44 the performance contract to the qualified provider or qualified energy
45 service company which best meets the needs of the project and whose
46 proposal may or may not represent the lowest cost among the proposals
47 submitted pursuant to this section.

48 (c) Upon award of the performance contract, the successful qualified
49 provider or qualified energy service company shall prepare a financial

1 grade energy audit which, upon acceptance by the director or the public
2 entity, shall become a part of the final performance contract.

3 (7) Installment payment and lease-purchase agreements. Pursuant to
4 this section, the director or the public entity may enter into a performance
5 contract, payments for which shall be made by the user agency or public en-
6 tity. Such performance contracts may be financed as installment payment
7 contracts or lease-purchase agreements for the purchase and installation of
8 cost-savings measures. Financing implemented through another person other
9 than the qualified provider or qualified energy service company is autho-
10 rized.

11 (8) Terms of performance contract.

12 (a) Each performance contract shall provide that all payments between
13 parties, except obligations upon termination of the contract before its
14 expiration, shall be made over time and that the objective of such per-
15 formance contract is the implementation of cost-savings measures and
16 energy cost savings.

17 (b) A performance contract, and payments provided thereunder, may ex-
18 tend beyond the fiscal year in which the performance contract becomes
19 effective, subject to appropriation by the legislature or by the public
20 entity, for costs incurred in future fiscal years. The performance con-
21 tract may extend for a term not to exceed twenty-five (25) years. The
22 permissible length of the contract may also reflect the useful life of
23 the cost-savings measures.

24 (c) Performance contracts may provide for payments over a period of
25 time not to exceed deadlines specified in the performance contract from
26 the date of the final installation of the cost-savings measures.

27 (d) Performance contracts entered pursuant to this section may be
28 amended or modified, upon agreement by the director or the public entity
29 and the qualified provider or qualified energy service company, on an
30 annual basis.

31 (9) Monitoring and reports. During the term of each performance con-
32 tract, the qualified provider or qualified energy service company shall
33 monitor the reductions in energy consumption and cost savings attributable
34 to the cost-savings measures installed pursuant to the performance contract
35 and shall annually prepare and provide a report to the director or the public
36 entity documenting the performance of the cost-savings measures.

37 SECTION 17. That Section 67-5722, Idaho Code, be, and the same is hereby
38 amended to read as follows:

39 67-5722. ~~SALE, TRADE-IN OR EXCHANGE OF STATE PERSONAL DECLARATION OF~~
40 ~~SURPLUS PROPERTY.~~

41 ~~Whenever any agency owns any property no longer economical to use, the ad-~~
42 ~~ministrators of the division of purchasing may dispose of such property by ex-~~
43 ~~changing the same in part payment for new property, as provided for in this~~
44 ~~section. The administrators of the division of purchasing shall include in~~
45 ~~his request for bids a full description of the property to be exchanged as~~
46 ~~part payment and shall permit vendors to examine the same, and the contract~~
47 ~~shall be awarded on the basis of net cost to the state after allowance for the~~
48 ~~property to be exchanged in part payment. In addition, the administrators of~~
49 ~~the division of purchasing may permit an exchange of property in part payment~~

1 ~~for new property acquisitions from contracts for the same or similar prop-~~
 2 ~~erty.~~

3 ~~Exchange of property will be permitted only when it is determined by the~~
 4 ~~administrator of the division of purchasing that all other methods of dis-~~
 5 ~~posal of the property sought to be exchanged will yield a lesser monetary re-~~
 6 ~~turn to the state.~~

7 In accordance with the internal management policies, guidelines or in-
 8 structions of the board of examiners, the head of any agency may declare as
 9 surplus any item of personal property.

10 SECTION 18. That Section 67-5737, Idaho Code, be, and the same is hereby
 11 amended to read as follows:

12 67-5737. ~~PROVISIONS OF THIS CHAPTER CONTROLLING -- SEVERABIL-~~
 13 ~~ITY. Except as provided in section 67-5718, Idaho Code, i~~Insofar as the a
 14 provisions of this chapter or the application of such provision to any person
 15 or circumstance is declared invalid for any reason, such declaration shall
 16 not affect the validity of the remaining portions of this chapter.

17 SECTION 19. That Section 67-7451, Idaho Code, be, and the same is hereby
 18 amended to read as follows:

19 67-7451. LOTTERY EXEMPT FROM STATE PURCHASING LAWS PROCUREMENT
 20 ACT. Notwithstanding any other provision of law to the contrary, the state
 21 lottery shall be exempt from the ~~purchasing laws for state agencies~~ state
 22 procurement act provided in chapter 5792, title 67, Idaho Code.

23 SECTION 20. That Section 74-511, Idaho Code, be, and the same is hereby
 24 amended to read as follows:

25 74-511. VIOLATION RELATING TO PUBLIC CONTRACTS. Officers shall not
 26 commit any act prohibited by section 67-57269230, Idaho Code, violations
 27 of which are subject to penalties as provided in section 67-57349231, Idaho
 28 Code, and which prohibitions and penalties shall be deemed to extend to all
 29 public officers governed by the provisions of this chapter.