

IN THE SENATE

SENATE BILL NO. 1372

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO PROCUREMENT; AMENDING SECTION 67-2805, IDAHO CODE, TO REVISE  
2 PROCEDURES FOR PROCUREMENT OF PUBLIC WORKS CONSTRUCTION BY A POLITI-  
3 CAL SUBDIVISION; AND AMENDING SECTION 67-2806, IDAHO CODE, TO REVISE  
4 PROCEDURES FOR PROCURING SERVICES OR PERSONAL PROPERTY BY A POLITICAL  
5 SUBDIVISION.  
6

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

8 SECTION 1. That Section 67-2805, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 67-2805. PROCUREMENT OF PUBLIC WORKS CONSTRUCTION. (1) For any con-  
11 templated public works construction project with an estimated total cost of  
12 less than fifty thousand dollars (\$50,000), where the political subdivision  
13 determines that there may be a lack of available licensed contractors, a po-  
14 litical subdivision may publish a notice of intent to procure in its official  
15 newspaper, concurrently sending such notice to the public works contractors  
16 license board, in order to solicit statements of interest from licensed  
17 public works contractors to determine whether one (1) or more licensed con-  
18 tractors is interested in submitting bids. Such notice of intent to procure  
19 shall be provided by the same means required for published solicitation  
20 of competitive bids and shall contain essentially the same information as  
21 such published notice. If no licensed public works contractor submits a  
22 statement of interest, the political subdivision may purchase public works  
23 construction from other than a licensed public works contractor by using the  
24 same procurement procedures otherwise specified herein.

25 (2) When a political subdivision contemplates an expenditure to pro-  
26 cure public works construction valued in excess of twenty-five thousand dol-  
27 lars (\$25,000) but not to exceed one hundred thousand dollars (\$100,000),  
28 the procurement procedures of this subsection (2) shall apply:

29 (a) The solicitation for bids for the public works construction to be  
30 performed shall be supplied to no fewer than three (3) owner-desig-  
31 nated licensed public works contractors by written means, either by  
32 electronic or physical delivery. The solicitation shall describe the  
33 construction work to be completed in sufficient detail to allow an expe-  
34 rienced public works contractor to understand the construction project  
35 the political subdivision seeks to build.

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

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

5 (d) When written bids have been received, by either physical or elec-  
6 tronic delivery, they shall be submitted to the governing board or  
7 governing board-authorized official which shall approve the respon-  
8 sive bid proposing the lowest procurement price or reject all bids and  
9 publish notice for bids, as before. After the time of bid approval or  
10 rejection of all bids, all bids and bid documents shall be open to public  
11 inspection in accordance with the provisions of sections 9-337 through  
12 9-347, Idaho Code.

13 (e) If the political subdivision finds that it is impractical or impos-  
14 sible to obtain three (3) bids for the proposed public works procure-  
15 ment, the political subdivision may acquire the work in any manner the  
16 political subdivision deems best from a qualified public works contrac-  
17 tor quoting the lowest price. When fewer than three (3) bids are consid-  
18 ered, a description of the efforts undertaken to procure at least three  
19 (3) bids shall be documented by the political subdivision and such docu-  
20 mentation shall be maintained for at least six (6) months after the pro-  
21 curement decision is made. If two (2) or more price quotations offered  
22 by different licensed public works contractors are the same and the low-  
23 est responsive bids, the governing board or governing-board authorized  
24 official may accept the one (1) it chooses.

25 (3) When a political subdivision contemplates an expenditure to pur-  
26 chase public works construction valued in excess of one hundred thousand  
27 dollars (\$100,000), the procurement procedures of this subsection (3) shall  
28 apply. The purchase of construction services shall be made pursuant to a  
29 competitive sealed bid process with the purchase to be made from the quali-  
30 fied public works contractor submitting the lowest bid price complying with  
31 bidding procedures and meeting the prequalifications, if any are provided,  
32 established by the bid documents. Competitive bidding for public works may  
33 proceed through either of two (2) alternative procedures as set forth below:

34 (a) Category A. Competitive bidding procedures shall be open to receipt  
35 of bids from any licensed public works contractor desiring to bid upon a  
36 public works project. For a category A bid, the political subdivision  
37 may only consider the amount bid, bidder compliance with administrative  
38 requirements of the bidding process, and whether the bidder holds the  
39 requisite license, and shall award the bid to the qualified bidder sub-  
40 mitting the lowest responsive bid.

41 (i) The request for bids for a category A procurement shall set  
42 a date and place for the public opening of bids. Two (2) notices  
43 soliciting bids shall be published in the official newspaper of  
44 the political subdivision. The first notice shall be published  
45 at least two (2) weeks before the date for opening bids, with the  
46 second notice to be published in the succeeding week at least seven  
47 (7) days before the date that bids are scheduled to be opened. The  
48 notice shall succinctly describe the project to be constructed.  
49 Copies of specifications, bid forms, bidder's instructions, con-  
50 tract documents, and general and special instructions shall be

1 made available upon request and payment of a reasonable plan copy  
2 fee by any interested bidder.

3 (ii) Written objections to specifications or bidding procedures  
4 must be received by the clerk, secretary or other authorized of-  
5 ficial of the political subdivision at least three (3) business  
6 days before the date and time upon which bids are scheduled to  
7 be opened. The administrative officer or governing board super-  
8 vising the bidding process shall respond to any such objection  
9 in writing and communicate such response to the objector and all  
10 other plan holders, adjusting bidding timeframes if necessary.

11 (iii) All bids shall be presented or otherwise delivered under  
12 sealed cover to the clerk of the political subdivision or other au-  
13 thorized agent of the political subdivision designated by the in-  
14 formation provided to bidders by the political subdivision with a  
15 concise statement marked on the outside generally identifying the  
16 expenditure to which the bid pertains.

17 (iv) If the political subdivision deems it is in the political  
18 subdivision's best interest, it may require the bidder to provide  
19 bid security in an amount equal to at least five percent (5%) of the  
20 amount bid. If required, a bid shall not be considered unless one  
21 (1) of the forms of bidder's security is enclosed with it, and un-  
22 less the bid is submitted in a form which substantially complies  
23 with the form provided by the political subdivision. The politi-  
24 cal subdivision may require that the bid security be in one (1) of  
25 the following forms:

26 (A) Cash;

27 (B) A cashier's check made payable to the political subdivi-  
28 sion;

29 (C) A certified check made payable to the political subdivi-  
30 sion; or

31 (D) A bidder's bond executed by a qualified surety company,  
32 made payable to the political subdivision.

33 (v) Any bid received by the political subdivision may not be  
34 withdrawn after the date and time set in the notice for opening of  
35 bids. When sealed bids have been received, they shall be opened in  
36 public at a designated place and time, thereafter to be compiled  
37 and submitted to the governing board for award. After the time of  
38 bid approval or rejection of all bids, all bids and bid documents  
39 shall be open to public inspection in accordance with the provi-  
40 sions of sections 9-337 through 9-347, Idaho Code.

41 (vi) If the successful bidder fails to execute the contract, the  
42 amount of his bidder's security may be forfeited to the political  
43 subdivision at the sole discretion of the political subdivision  
44 and the proceeds shall be deposited in a designated fund out of  
45 which the expenses of procuring substitute performance are paid.

46 (vii) The political subdivision may, on the refusal or failure of  
47 the successful bidder to execute the contract, award the contract  
48 to the qualified bidder submitting the next lowest responsive bid.  
49 If the governing board awards the contract to the next lowest qual-  
50 ified bidder, the amount of the lowest qualified bidder's secu-

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

8 (viii) In its discretion, the governing board may reject all bids  
9 presented and re-bid, or the governing board may, after finding it  
10 to be a fact, pass a resolution declaring that the project sought  
11 to be accomplished by the expenditure can be performed more eco-  
12 nomically by purchasing goods and services on the open market. If  
13 identical bids are received, the governing board may choose the  
14 bidder it prefers. If no bids are received, the governing board  
15 may procure the goods or services without further competitive bid-  
16 ding procedures.

17 (ix) If the governing board of any political subdivision chooses  
18 to award a competitively bid contract involving the procurement of  
19 public works construction to a bidder other than the apparent low  
20 bidder, the political subdivision shall declare its reason or rea-  
21 sons on the record and shall communicate such reason or reasons in  
22 writing to all persons who have submitted a competing bid.

23 (x) If any participating bidder objects to such award, such bid-  
24 der shall respond in writing to the notice from the political sub-  
25 division within seven (7) calendar days of the date of transmittal  
26 of the notice, setting forth in such response the express reason  
27 or reasons that the award decision of the governing board is in er-  
28 ror. Thereafter, staying performance of any procurement until af-  
29 ter addressing the contentions raised by the objecting bidder, the  
30 governing board shall review its decision and determine whether to  
31 affirm its prior award, modify the award, or choose to re-bid, set-  
32 ting forth its reason or reasons therefor. After completion of the  
33 review process, the political subdivision may proceed as it deems  
34 to be in the public interest.

35 (b) Category B. Competitive bidding procedures shall be open to li-  
36 censed public works contractors only after meeting preliminary supple-  
37 mental qualifications established by the political subdivision. The  
38 solicitation for bids in a category B procurement shall consist of two  
39 (2) stages, an initial stage determining supplemental prequalifica-  
40 tions for licensed contractors, either prime or specialty contractors,  
41 followed by a stage during which bid prices will be accepted only from  
42 prequalified contractors.

43 (i) Notice of the prequalification stage of the category B com-  
44 petitive bidding process shall be given in the same manner that  
45 notice of competitive bidding is provided for a category A com-  
46 petitive bid request, providing a specific date and time by which  
47 qualifications statements must be received. Political subdivi-  
48 sions may establish prequalification standards premised upon  
49 demonstrated technical competence, experience constructing simi-  
50 lar facilities, prior experience with the political subdivision,

1 available nonfinancial resources, equipment and personnel as  
2 they relate to the subject project, and overall performance his-  
3 tory based upon a contractor's entire body of work. Such request  
4 must include the standards for evaluating the qualifications of  
5 prospective bidders.

6 (ii) During the initial stage of the category B bidding process,  
7 licensed contractors desiring to be prequalified to bid on a  
8 project must submit a written response to a political subdivi-  
9 sion's request for qualifications.

10 (iii) Written objections to prequalification procedures must be  
11 received by the clerk, secretary or other authorized official of  
12 the political subdivision at least three (3) business days before  
13 the date and time upon which prequalification statements are due.  
14 The administrative officer or governing board supervising the  
15 bidding process shall respond to any such objection in writing  
16 and communicate such response to the objector and all other con-  
17 tractors seeking to prequalify, adjusting bidding timeframes if  
18 necessary. After a review of qualification submittals, the po-  
19 litical subdivision may select licensed contractors that meet the  
20 prequalification standards. If any licensed contractor submits  
21 a statement of qualifications but is not selected as a qualified  
22 bidder, the political subdivision shall supply a written state-  
23 ment of the reason or reasons why the contractor failed to meet  
24 prequalification standards. After the time of selection of quali-  
25 fied bidders, all qualification submittals and qualification sub-  
26 mittal documents shall be open to public inspection in accordance  
27 with the provisions of sections 9-337 through 9-347, Idaho Code.

28 (iv) Any licensed contractor that fails the prequalification  
29 stage can appeal any such determination to the governing board  
30 within seven (7) days after transmittal of the prequalification  
31 results to contest the determination. If the governing board  
32 sustains the decision that a contractor fails to meet prequali-  
33 fication standards, it shall state its reason or reasons for the  
34 record. A governing board decision concerning prequalification  
35 may be appealed to the public works contractors license board  
36 no more than fourteen (14) days following any decision on appeal  
37 made by the governing board. The public works contractors license  
38 board shall decide any such appeal within thirty-five (35) days  
39 of the filing of a timely appeal. The public works contractors  
40 license board shall allow participation, written or oral, by the  
41 appealing contractor and the political subdivision, either by  
42 employing a hearing officer or otherwise. The public works con-  
43 tractors license board shall not substitute its judgment for that  
44 of the political subdivision, limiting its review to determining  
45 whether the decision of the governing board is consistent with the  
46 announced prequalification standards, whether the prequalifi-  
47 cation standards comport with the law and whether the governing  
48 board's decision is supported by the entirety of the record. The  
49 decision of the public works contractors license board shall be  
50 written and shall state the reason or reasons for the decision.

1 Category B prequalification procedures that are appealed shall be  
2 stayed during the pendency of the prequalification appeal until  
3 the public works contractors license board completes its review,  
4 but in no instance more than forty-nine (49) days after the appel-  
5 late decision of the governing board regarding prequalification.  
6 Any licensed public works contractor affected by a decision on  
7 appeal by the public works contractors license board may, within  
8 twenty-eight (28) days of the final decision, seek judicial review  
9 as provided by chapter 52, title 67, Idaho Code.

10 (v) Following the conclusion of the prequalification adminis-  
11 trative procedures, the bidding stage shall proceed by the setting  
12 of a time, date and place for the public opening of bids. In cir-  
13 cumstances involving prequalified prime contractors, a notice  
14 soliciting bids shall be transmitted to prequalified bidders at  
15 least fourteen (14) days before the date of opening the bids. In  
16 circumstances involving prequalified specialty or subordinate  
17 contractors, the notice soliciting bids shall be published in the  
18 same manner applicable to category A bids. The notice shall suc-  
19 cinctly describe the project to be constructed. Copies of speci-  
20 fications, bid forms, bidder's instructions, contract documents,  
21 and general and special instructions shall be made available upon  
22 request and payment of a reasonable plan copy fee by any eligible  
23 bidder.

24 (vi) Written objections to specifications or bidding procedures  
25 must be received by the clerk, secretary or other authorized of-  
26 ficial of the political subdivision at least three (3) business  
27 days before the date and time upon which bids are scheduled to be  
28 opened.

29 (vii) All category B bids shall be presented or otherwise deliv-  
30 ered under sealed cover to the clerk or other authorized agent  
31 of the political subdivision designated by the instructions to  
32 bidders with a concise statement marked on the outside generally  
33 identifying the expenditure to which the bid pertains. After the  
34 time of bid award or rejection of all bids, all bids and bid doc-  
35 uments shall be open to public inspection in accordance with the  
36 provisions of sections 9-337 through 9-347, Idaho Code.

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

46 (A) Cash;

47 (B) A cashier's check made payable to the political subdivi-  
48 sion;

49 (C) A certified check made payable to the political subdivi-  
50 sion; or

1 (D) A bidder's bond executed by a qualified surety company,  
2 made payable to the political subdivision.

3 (ix) Any category B bid received by a political subdivision may  
4 not be withdrawn after the date and time set in the notice for  
5 opening of bids. When sealed bids have been received, they shall  
6 be opened in public at a designated place and time, thereafter to  
7 be compiled and submitted to the governing board for award. If  
8 identical bids are received, the governing board may choose the  
9 bidder it prefers. If the successful bidder fails to execute the  
10 contract, the amount of his bidder's security may be forfeited to  
11 the political subdivision, in the sole discretion of the political  
12 subdivision, and the proceeds shall be deposited in a designated  
13 fund out of which the expenses for procuring substitute perfor-  
14 mance are paid.

15 (x) The political subdivision may, on the refusal or failure of  
16 the successful bidder to execute the contract, award the contract  
17 to the qualified bidder submitting the next lowest responsive bid.  
18 If the governing board awards the contract to the next lowest qual-  
19 ified bidder, the amount of the lowest qualified bidder's secu-  
20 rity, if forfeited, shall be applied by the political subdivision  
21 to the difference between the lowest responsive bid and the next  
22 lowest responsive bid, and the surplus, if any, shall be returned  
23 to the lowest bidder if cash or check is used, or to the surety on  
24 the bidder's bond if a bond is used, less reasonable administra-  
25 tive costs not to exceed twenty-five percent (25%) of the amount of  
26 the bidder's security.

27 (xi) In its discretion, the governing board may reject all bids  
28 presented and re-bid, or the governing board may, after finding it  
29 to be a fact, pass a resolution declaring that the project sought  
30 to be accomplished by the expenditure can be performed more eco-  
31 nomically by purchasing goods and services on the open market. If  
32 no bids are received, the governing board may make the expenditure  
33 without further competitive bidding procedures.

34 (xii) If the governing board of any political subdivision chooses  
35 to award a competitively bid contract involving the procurement of  
36 public works construction to a bidder other than the apparent low  
37 bidder, the political subdivision shall declare its reason or rea-  
38 sons on the record and shall communicate such reason or reasons in  
39 writing to all persons who have submitted a competing bid.

40 (xiii) If any participating bidder objects to such award, such  
41 bidder shall respond in writing to the notice from the political  
42 subdivision within seven (7) calendar days of the date of trans-  
43 mittal of the notice, setting forth in such response the express  
44 reason or reasons that the award decision of the governing board  
45 is in error. Thereafter, staying performance of any procurement  
46 until after addressing the contentions raised by the objecting  
47 bidder, the governing board shall review its decision and deter-  
48 mine whether to affirm its prior award, modify the award, or choose  
49 to re-bid, setting forth its reason or reasons therefor. After

1 completion of the review process, the political subdivision may  
2 proceed as it deems to be in the public interest.

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

5 67-2806. PROCURING SERVICES OR PERSONAL PROPERTY. (1) When a polit-  
6 ical subdivision contemplates an expenditure to purchase or lease personal  
7 property or to procure services, other than those services excluded pursuant  
8 to section 67-2803, Idaho Code, valued in excess of twenty-five thousand  
9 dollars (\$25,000) but not to exceed fifty thousand dollars (\$50,000), the  
10 procurement procedures of this subsection (1) shall apply.

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

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

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

28 (d) When written bids have been received, by either physical or elec-  
29 tronic delivery, they shall be compiled and submitted to the governing  
30 board or governing board-authorized official which shall approve the  
31 responsive bid proposing the lowest procurement price or reject all  
32 bids and publish notice for bids, as before. After the time of bid ap-  
33 proval or rejection of all bids, all bids and bid documents shall be  
34 open to public inspection in accordance with the provisions of sections  
35 9-337 through 9-347, Idaho Code.

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

47 (2) When a political subdivision contemplates an expenditure to pur-  
48 chase or lease personal property or to procure services, other than those  
49 services excluded pursuant to section 67-2803, Idaho Code, valued in excess



1 of fifty thousand dollars (\$50,000), the procurement procedures of this sub-  
2 section (2) shall apply.

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

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

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

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

30 (i) Cash;

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

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

33 or

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

36 (e) Any bid received by the political subdivision may not be withdrawn  
37 after the time set in the notice for opening of bids. When sealed bids  
38 have been received, they shall be opened in public at a designated place  
39 and time, thereafter to be compiled and submitted to the governing  
40 board. After the time of bid approval or rejection of all bids, all bids  
41 and bid documents shall be open to public inspection in accordance with  
42 the provisions of sections 9-337 through 9-347, Idaho Code.

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

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

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

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

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

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