

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 184

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO THE DIVISION OF PURCHASING; AMENDING SECTION 67-5716, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-5716, IDAHO CODE, AS AMENDED BY SECTION 1, CHAPTER 286, LAWS OF 2010, TO REVISE DEFINITIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-5717, IDAHO CODE, TO REVISE POWERS AND DUTIES; REPEALING SECTION 67-5719, IDAHO CODE, RELATING TO STATEMENT OF SUPPLIES ON HAND; AMENDING SECTION 67-5720, IDAHO CODE, TO PROVIDE THAT THE ADMINISTRATOR MAY PURCHASE PROPERTY IN THE OPEN MARKET IN CERTAIN CIRCUMSTANCES; REPEALING SECTION 67-5721, IDAHO CODE, RELATING TO ACQUISITION OF NONOWNED PROPERTY; REPEALING SECTION 67-5727, IDAHO CODE, RELATING TO MAINTENANCE OF STOCKS; AMENDING SECTION 67-5730, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE DISQUALIFICATION OF VENDORS; REPEALING SECTION 67-5732, IDAHO CODE, RELATING TO RULES; AMENDING SECTION 67-5734, IDAHO CODE, TO REVISE PROVISIONS RELATING TO PENALTIES; AMENDING SECTION 67-5735, IDAHO CODE, TO REVISE PROVISIONS RELATING TO CERTAIN REQUIREMENTS FOR CONTRACTOR REIMBURSEMENT; AND AMENDING SECTION 67-5740, IDAHO CODE, TO REVISE CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 67-5716, Idaho Code, be, and the same is hereby amended to read as follows:

67-5716. DEFINITIONS OF TERMS. (1) Acquisition. The process of procuring or purchasing property by the state of Idaho.

(2) Procurement. Obtaining property for state use by lease, rent, or any manner other than by purchase or gift.

(3) Property. Goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights and interests in such property.

(4) Goods. Items of personal property, not qualifying as equipment, parts or supplies.

(5) Services. Personal services, in excess of personnel regularly employed for whatever duration and/or covered by personnel system standards, for which bidding is not prohibited or made impractical by statute, rules or generally accepted ethical practices.

(6) Parts. Items of personal property acquired for repair or replacement of unserviceable existing items.

(7) Supplies. Items of personal property having an expendable quality or during their normal use are consumed and which require or suggest acquisition in bulk.

(8) Equipment. Items of personal property which have a normal useful life expectancy of two (2) or more years.

1 (9) Component. An item of property normally assembled with other items
2 into a unified productive whole at the site of use, which items belong to
3 functional classes that may be interchangeable units of similar function but
4 differing operational or productive capabilities.

5 (10) Vendor. A person or entity capable of supplying property to the
6 state.

7 (11) Bidder. A vendor who has submitted a bid on a specific item or items
8 of property to be acquired by the state.

9 (12) Lowest responsible bidder. The responsible bidder whose bid re-
10 flects the lowest acquisition price to be paid by the state; except that when
11 specifications are valued or comparative performance examinations are con-
12 ducted, the results of such examinations and the relative score of valued
13 specifications will be weighed, as set out in the specifications, in deter-
14 mining the lowest acquisition price.

15 (13) Contractor. A bidder who has been awarded an acquisition contract.

16 (14) Agency. All officers, departments, divisions, bureaus, boards,
17 commissions and institutions of the state, including the public utilities
18 commission, but excluding other legislative and judicial branches of gov-
19 ernment, and excluding the governor, the lieutenant governor, the secretary
20 of state, the state controller, the state treasurer, the attorney general,
21 and the superintendent of public instruction, and, as provided in section
22 67-5728, Idaho Code, excluding Lewis-Clark State College, Idaho State Uni-
23 versity, Boise State University and Eastern Idaho Technical College.

24 (15) Bid. A written offer to perform a contract to purchase or supply
25 property or services in response to an invitation for bid or request for pro-
26 posal.

27 (16) Recyclable. Materials that still have useful physical, chemical
28 or biological properties after serving their original purposes and can,
29 therefore, be reasonably reused or recycled for the same or other purposes.

30 (17) Recycled-content product. A product containing postconsumer
31 waste and/or secondary waste as defined in this section.

32 (18) Postconsumer waste. A finished material ~~which~~ that would normally
33 be disposed of as a solid waste, having completed its life cycle as a consumer
34 item.

35 (19) Secondary waste. Fragments of products or finished products of a
36 manufacturing process, which has converted a virgin resource into a commod-
37 ity of real economic value and may include a postconsumer waste.

38 (20) Open contract. A contract awarded by the state of Idaho through the
39 division of purchasing to one (1) or more vendors who have agreed to allow
40 all agencies to procure or purchase specified property under the terms and
41 conditions set forth in the contract.

42 (21) Responsible bidder. A bidder who has the capability in all
43 respects to perform fully the contract requirements and who has the ex-
44 perience, integrity, perseverance, reliability, capacity, facilities,
45 equipment and credit that will assure good faith performance.

46 (22) Responsive bid. A bid or proposal that conforms in all material
47 respects to the requirements stated in the invitation to bid or request for
48 proposal.

1 (23) Responsive bidder. A vendor who has submitted a bid that conforms
 2 in all material respects to the requirements stated in the invitation to bid
 3 or request for proposal.

4 SECTION 2. That Section 67-5716, Idaho Code, as amended by Section 1,
 5 Chapter 286, Laws of 2010, be, and the same is hereby amended to read as fol-
 6 lows:

7 67-5716. DEFINITIONS OF TERMS. (1) Acquisition. The process of
 8 procuring or purchasing property by the state of Idaho.

9 (2) Procurement. Obtaining property for state use by lease, rent, or
 10 any manner other than by purchase or gift.

11 (3) Property. Goods, services, parts, supplies and equipment, both
 12 tangible and intangible, including, but nonexclusively, designs, plans,
 13 programs, systems, techniques and any rights and interests in such property.

14 (4) Goods. Items of personal property, not qualifying as equipment,
 15 parts or supplies.

16 (5) Services. Personal services, in excess of personnel regularly em-
 17 ployed for whatever duration and/or covered by personnel system standards,
 18 for which bidding is not prohibited or made impractical by statute, rules or
 19 generally accepted ethical practices.

20 (6) Parts. Items of personal property acquired for repair or replace-
 21 ment of unserviceable existing items.

22 (7) Supplies. Items of personal property having an expendable quality
 23 or during their normal use are consumed and which require or suggest acquisi-
 24 tion in bulk.

25 (8) Equipment. Items of personal property which have a normal useful
 26 life expectancy of two (2) or more years.

27 (9) Component. An item of property normally assembled with other items
 28 into a unified productive whole at the site of use, which items belong to
 29 functional classes that may be interchangeable units of similar function but
 30 differing operational or productive capabilities.

31 (10) Vendor. A person or entity capable of supplying property to the
 32 state.

33 (11) Bidder. A vendor who has submitted a bid on a specific item or items
 34 of property to be acquired by the state.

35 (12) Lowest responsible bidder. The responsible bidder whose bid re-
 36 flects the lowest acquisition price to be paid by the state; except that when
 37 specifications are valued or comparative performance examinations are con-
 38 ducted, the results of such examinations and the relative score of valued
 39 specifications will be weighed, as set out in the specifications, in deter-
 40 mining the lowest acquisition price.

41 (13) Contractor. A bidder who has been awarded an acquisition contract.

42 (14) Agency. All officers, departments, divisions, bureaus, boards,
 43 commissions and institutions of the state, including the public utilities
 44 commission, but excluding other legislative and judicial branches of gov-
 45 ernment, and excluding the governor, the lieutenant governor, the secretary
 46 of state, the state controller, the state treasurer, the attorney general,
 47 and the superintendent of public instruction.

1 (15) Bid. A written offer to perform a contract to purchase or supply
2 property or services in response to an invitation for bid or request for pro-
3 posal.

4 (16) Recyclable. Materials that still have useful physical, chemical
5 or biological properties after serving their original purposes and can,
6 therefore, be reasonably reused or recycled for the same or other purposes.

7 (17) Recycled-content product. A product containing postconsumer
8 waste and/or secondary waste as defined in this section.

9 (18) Postconsumer waste. A finished material ~~which~~ that would normally
10 be disposed of as a solid waste, having completed its life cycle as a consumer
11 item.

12 (19) Secondary waste. Fragments of products or finished products of a
13 manufacturing process, which has converted a virgin resource into a commod-
14 ity of real economic value and may include a postconsumer waste.

15 (20) Open contract. A contract awarded by the state of Idaho through
16 the division of purchasing to one (1) or more vendors who have agreed to allow
17 all agencies to procure or purchase specified property under the terms and
18 conditions set forth in the contract.

19 (21) Responsible bidder. A bidder who has the capability in all re-
20 spects to perform fully the contract requirements and who has the experi-
21 ence, integrity, perseverance, reliability, capacity, facilities, equip-
22 ment and credit that will assure good faith performance.

23 (22) Responsive bid. A bid or proposal that conforms in all material
24 respects to the requirements stated in the invitation to bid or request for
25 proposal.

26 (23) Responsive bidder. A vendor who has submitted a bid that conforms
27 in all material respects to the requirements stated in the invitation to bid
28 or request for proposal.

29 SECTION 3. That Section 67-5717, Idaho Code, be, and the same is hereby
30 amended to read as follows:

31 67-5717. POWERS AND DUTIES OF THE ADMINISTRATOR OF THE DIVISION OF
32 PURCHASING. The administrator of the division of purchasing:

33 (1) Shall acquire, according to the provisions of this chapter, all
34 property for state agencies;

35 (2) Shall acquire all property, unless excepted, by competitive bid,
36 and shall specifically require competitive bids for property to be rented,
37 leased or purchased through a deferred payment plan;

38 (3) Shall determine, based upon the requirements contained in the spec-
39 ification and matter relating to responsibility, the lowest responsible
40 bidder in all competitively bid acquisition contracts;

41 (4) Shall enter into all contracts and agreements, and any modifica-
42 tions thereto, for the acquisition of any and all property on behalf of and in
43 the name of the state;

44 (5) Shall, when economically feasible and practical, consolidate req-
45 uisitions and acquire property in amounts as large as can be efficiently man-
46 aged and controlled;

47 (6) May, in the evaluation of paper product bids, give those items that
48 meet the recycled content standards as specified by the administrator a five
49 percent (5%) purchasing preference. As such, those qualifying paper prod-

ucts may be considered to cost five percent (5%) less when choosing the lowest responsible bidder;

(7) May appoint a deputy, who shall have power to act for him and in his place while absent, which deputy shall be bonded to the state of Idaho as prescribed by chapter 8, title 59, Idaho Code;

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

(9) May enter into open contracts for the acquisition of property commonly used by the various agencies, based upon actual or estimated requirements;

Unless an acquiring agency can show a substantial difference between the required capabilities and the capabilities provided by such property available on open contract, all agencies must utilize such property available on such contracts and failure to comply with this provision will subject the officers responsible for the acquisition to the penalties set forth in this chapter;

(10) May enter into contracts, including leases and rentals, for periods of time exceeding one (1) year provided that such contracts contain no penalty to or restriction upon the state in the event cancellation is necessitated by a lack of financing for any such contract or contracts;

(11) Is authorized and empowered to formulate rules in the conduct of the office of the division of purchasing, subject to the approval of the director of the department of administration;

(12) In accordance with established rules of the division, may enter into negotiations for acquisitions;

(13) May inspect property delivered by a contractor to determine whether it meets minimum bid specifications;

(14) May classify, after review with the various agencies, the requirements of the state for all property which may be acquired and adopt standards of quality for property, and establish standard specifications for acquisition. Each standard specification shall, until revised or rescinded, apply alike in terms and effect to each future acquisition of the classified property.

SECTION 4. That Section [67-5719](#), Idaho Code, be, and the same is hereby repealed.

SECTION 5. That Section 67-5720, Idaho Code, be, and the same is hereby amended to read as follows:

67-5720. ACQUISITION IN OPEN MARKET -- EMERGENCY PURCHASES. (1) The administrator may allow:

(a) The purchase of property in the open market, ~~provided such items are not available from the maintenance of stocks authorized by section 67-5727, Idaho Code,~~ where the administrator finds that a particular savings to the state may be had through the use of educational discounts, acquisition of federal surplus or excess property, reverse public auctions, where there is only one (1) vendor for the property to

1 be acquired or under other circumstances approved by the ~~director of the~~
2 ~~department of administration~~ administrator.

3 (b) The purchase of property by open purchase when immediate delivery
4 of property is required by the public exigencies and the administrator
5 of the division of purchasing has declared that an emergency exists, but
6 at all times such purchases shall be made under the direction of the ad-
7 ministrator.

8 (2) When there is only one (1) vendor for the property to be acquired,
9 unless the property is required for a life-threatening situation or a situa-
10 tion that is immediately detrimental to the public welfare or property, no-
11 tice of a sole source procurement shall be published. The notice may be elec-
12 tronic. Payment vouchers for emergency acquisitions must contain upon their
13 faces the justification for such purchases.

14 SECTION 6. That Section [67-5721](#), Idaho Code, be, and the same is hereby
15 repealed.

16 SECTION 7. That Section [67-5727](#), Idaho Code, be, and the same is hereby
17 repealed.

18 SECTION 8. That Section 67-5730, Idaho Code, be, and the same is hereby
19 amended to read as follows:

20 67-5730. QUALIFICATION OF VENDORS -- DISQUALIFICATION OF VENDORS --
21 NOTICE -- APPEALS. (1) No vendor shall be allowed to submit a bid unless such
22 vendor is qualified. All vendors are qualified unless disqualified.

23 (2) Vendors may be disqualified by the administrator for any of the fol-
24 lowing reasons:

25 (a) Failure to perform according to the terms of any agreement;

26 (b) Attempts by whatever means to cause acquisition specifications to
27 be drawn so as to favor a specific vendor;

28 (c) Use of the provisions of this chapter to obstruct or unreasonably
29 delay acquisitions by the state. Obstruction is hereby defined as a
30 lack of success in more than fifty percent (50%) of the specification
31 challenges made in each of three (3) different acquisitions during any
32 twenty-four (24) month period;

33 (d) Perjury in a vendor disqualification hearing;

34 (e) To knowingly violate the provisions of this chapter; or

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

37 (3) A vendor shall be notified by registered mail within ten (10) days
38 of disqualification and may, within thirty (30) days of the receipt of such
39 notice, request of the director of the department of administration a hear-
40 ing before a determinations officer. Any hearings shall be held in accor-
41 dance with chapter 52, title 67, Idaho Code.

42 (4) In lieu of disqualification, the determinations officer may recom-
43 mend to the director of the department of administration specific conditions
44 to the vendor's continued participation in acquisitions by the state.

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

1 SECTION 9. That Section 67-5732, Idaho Code, be, and the same is hereby
2 repealed.

3 SECTION 10. That Section 67-5734, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 67-5734. PENALTIES. (1) Any person convicted of a violation of subsec-
6 tion (1) ~~or~~ (2) ~~or (6)~~ of section 67-5726, Idaho Code, shall be guilty of a
7 misdemeanor.

8 (2) Any person convicted of a violation of subsection (3) of section
9 67-5726, Idaho Code, shall be guilty of a felony.

10 (3) Any officer or employee found to have violated the provisions of
11 subsection (4) of section 67-5726, Idaho Code, may, by order of the determi-
12 nations officer, be suspended without pay for not more than ninety (90) work-
13 ing days, have a reprimand entered in his personnel file, or both.

14 SECTION 11. That Section 67-5735, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 67-5735. PROCESSING -- REIMBURSEMENT OF CONTRACTOR. Within ten (10)
17 days after the property acquired is delivered as ~~called for by the bid spec-~~
18 ifications required, the acquiring agency shall complete all processing re-
19 quired of that agency to permit the contractor to be reimbursed according to
20 the terms of the bid. Within ten (10) days of receipt of the documents nec-
21 essary to permit reimbursement of the contractor according to the terms of
22 the contract, the state controller shall cause a warrant to be issued in fa-
23 vor of the contractor and delivered. Contracts let or entered into by or
24 through the division of purchasing are exempt from the provisions of sec-
25 tion 67-2302, Idaho Code; provided, however, that late contract payments may
26 be assessed interest by the vendor at the rate set forth in section 63-3045,
27 Idaho Code, unless another rate is established by contract.

28 SECTION 12. That Section 67-5740, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 67-5740. ADDITIONAL AUTHORITY AND DUTIES OF THE ADMINISTRATOR OF THE
31 DIVISION OF PURCHASING. (a) The administrator of the division of purchasing
32 is authorized and empowered:

33 (1) ~~to~~ to acquire from the United States of America under and in confor-
34 mance with the provisions of ~~section 203(j) of the Federal Property and~~
35 ~~Administrative Services Act of 1949, as amended, hereinafter referred~~
36 ~~to as the "Act,"~~ 40 U.S.C. section 549, as amended, donations of per-
37 sonal property through state agencies, such property, including equip-
38 ment, materials, books, or other supplies under the control of any de-
39 partment or agency of the United States of America as may be usable and
40 necessary for purposes of education, public health or civil defense,
41 including research for any such purpose, and for such other purposes as
42 may now or hereafter be authorized by federal law;

43 (2) ~~to~~ to warehouse such property; and

44 (3) ~~to~~ to distribute such property within the state to tax-supported
45 medical institutions, hospitals, clinics, health centers, school sys-

1 tems, schools, colleges, and universities within the state, to other
 2 nonprofit medical institutions, hospitals, clinics, health centers,
 3 schools, colleges and universities ~~which~~ that have been held exempt
 4 from taxation under 26 U.S.C. section 501(c)(3) of the United States
 5 Internal Revenue Code of 1954, to civil defense organizations of the
 6 state, or political subdivisions and instrumentalities thereof, which
 7 are established pursuant to state law, and to such other types of insti-
 8 tutions or activities as may now be or hereafter become eligible under
 9 federal law to acquire such property.

10 (b) The administrator is hereby authorized to receive applications
 11 from eligible institutions for the acquisition of federal surplus real
 12 property, investigate the same, obtain expression of views respecting such
 13 applications from the appropriate health or educational authorities of the
 14 state, make recommendations regarding the need of such applicant for the
 15 property, the merits of its proposed program of utilization, the suitability
 16 of the property for such purposes, and otherwise assist in the processing of
 17 such applications for acquisition of real and related personal property of
 18 the United States under ~~section 203(k)~~ [40 U.S.C. sec. 484(k)] of the act
 19 section 549.

20 (c) For the purpose of executing its authority under this chapter, the
 21 administrator is authorized and empowered to adopt, amend, or rescind such
 22 rules and prescribe such requirements as may be deemed necessary and take
 23 such other action as is deemed necessary and suitable, in the administra-
 24 tion of this chapter, to assure maximum utilization by and benefit to health,
 25 educational and civil defense and other eligible institutions and organiza-
 26 tions within the state from property distributed under this chapter.

27 (d) The administrator, subject to approval of the director of admin-
 28 istration, is authorized and empowered to appoint advisory boards or com-
 29 mittees, who shall be compensated as provided by section 59-509(b), Idaho
 30 Code, and to employ such personnel and to fix their compensation and pre-
 31 scribe their duties, as are deemed necessary and suitable for the adminis-
 32 tration of this chapter. Expenditures incurred hereunder shall be paid as
 33 are other claims against the state.

34 (e) The administrator is authorized and empowered to make such cer-
 35 tifications, take such action, make such expenditures and enter into such
 36 contracts, agreements and undertakings for and in the name of the state,
 37 ~~(including cooperative agreements with any federal agencies providing for~~
 38 ~~utilization by and exchange between them of the property, facilities, per-~~
 39 ~~sonnel and services of each by the other),~~ require such reports and make such
 40 investigations as may be required by law or regulation of the United States
 41 of America in connection with the disposal of real property and the receipt,
 42 warehousing, and distribution of personal property received by him from
 43 the United States of America; provided, that all expenditures, contracts,
 44 agreements and undertakings for and in the name of the state shall have the
 45 approval of the state board of examiners.

46 (f) The administrator is authorized and empowered to act as a ~~clearing~~
 47 house clearinghouse of information for the public and private nonprofit
 48 institutions, organizations and agencies referred to in ~~subparagraph~~
 49 subsection (a), and other institutions eligible to acquire federal sur-
 50 plus real property, to locate both real and personal property available for

1 acquisition from the United States of America, to ascertain the terms and
2 conditions under which such property may be obtained, to receive requests
3 from the ~~above-mentioned~~ abovementioned institutions, organizations and
4 agencies and to transmit to them all available information in reference to
5 such property, and to aid and assist such institutions, organizations and
6 agencies in every way possible in the consummation of acquisitions or trans-
7 actions hereunder.

8 (g) The administrator, in the administration of this chapter, shall co-
9 operate to the fullest extent consistent with the provisions of the act, with
10 the departments or agencies of the United States of America and shall file a
11 state plan of operation, operate in accordance therewith, and take such ac-
12 tion as may be necessary to meet the minimum standard prescribed in accor-
13 dance with the act, and make such reports in such form and containing such in-
14 formation as the United States of America or any of its departments or agen-
15 cies may from time to time require, and it shall comply with the laws of the
16 United States of America and the rules and regulations of any of the depart-
17 ments or agencies of the United States of America governing the allocation,
18 transfer, use or accounting for, property donable or donated to the state.

19 (h) The administrator, with approval of the board of examiners, is au-
20 thorized to contract with agencies of other states responsible for the han-
21 dling of surplus property for:

22 (1) The acquisition, warehousing, and distribution of surplus prop-
23 erty on behalf of the state of Idaho and the delivery of surplus property
24 within the state of Idaho; ~~and~~

25 (2) The acquisition, warehousing, and distribution of surplus property
26 on behalf of other states and the delivery of surplus property in other
27 states; provided, that any contract negotiated under the authority of
28 this ~~sub~~paragraph ~~(2)~~ shall obligate the other states to pay the cost of
29 the surplus property and the administrative costs incurred in the ac-
30 quisition, warehousing, and distribution of the surplus property; and

31 (3) The furnishing of any services to the state of Idaho concerning the
32 acquisition, warehousing, and distribution of surplus property, and
33 the sorting, dividing into lots, crating, preparing for shipment, and
34 any other handling of surplus property for the state of Idaho.