



Procurement Policy

This guidance document is not a new law. This document is an agency interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

Agency Contact

Financial Executive Officer

- I. **PURPOSE:** To establish policy governing Procurement made by the Idaho Department of Lands ("IDL"), to establish the delegation of procurement authority, and to establish approval limits and the process for soliciting Bids and contracting for work to be performed.
- II. **APPLICABILITY:** Applies to all IDL Staff engaged in Procurement activities, other than emergency fire suppression procurement as described in the IDL Fire Management Handbook, Policy #840.
- III. **EXCEPTION AUTHORIZATION:** Land Board Action
- IV. **DEFINITIONS:**

Unless defined otherwise in this policy, the definitions set forth in Section 67-9203, Idaho Code, as amended from time to time, shall apply to this policy.

 - A. **Administrator:** The IDL Division Administrator of Support Services.
 - B. **Best Value:** A procurement method that emphasizes value over price. The Best Value might not be the lowest cost. Generally achieved through the Request for Proposal (RFP) method.
 - C. **Brand Name or Equal Specification:** This means a Specification that uses a brand name to describe the standard of quality, performance or other characteristics being solicited and that invites the submission of equivalent products.
 - D. **Brand Name Specification:** This means a Specification calling for one (1) or more products by manufacturers' names or catalogue numbers.
 - E. **Buyer:** An employee of the Department of Lands designated as a Buyer, Procurement Manager, or similar designation by the Administrator, including, where appropriate, the Administrator and other management personnel. The term also includes authorized employee(s) of a Purchasing Authority.
 - F. **Department:** The Idaho Department of Lands.
 - G. **Formal Sealed Procedure:** Procedure by which the Buyer solicits competitive sealed Bids or competitive sealed Proposals by means of an Invitation to Bid or Request for Proposals.
 - H. **Information Technology:** Devices used for creating, storing, using, or exchanging information, and the design and practical application of the devices.
 - I. **Invitation to Bid:** All documents, whether attached or incorporated by reference, utilized for soliciting Bids in a Formal Sealed Procedure.
 - J. **Offeror:** A person or entity who submits an offer in response to a Solicitation.
 - K. **Open Contract:** A contract awarded by the State of Idaho through the Idaho Department of Administration, Division of Purchasing to one (1) or more Vendors who have agreed to allow

all agencies to procure or purchase specified Property under the terms and conditions set forth in the contract.

- L. Price Agreement:** A document that establishes prices, terms, conditions, and the period covered, but does not specify quantities.
- M. Professional Services:** Work rendered by an independent Contractor whose occupation is the rendering of such Services and who has a professional knowledge of some aspect of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, legal, medical, nursing, education, engineering, actuarial, architecture, veterinarian, and research.
- N. Proposal:** A written response including pricing information to a Request for Proposals that describes the solution or means of providing the Property requested and which is an offer to perform a contract in full response to the Request for Proposals.
- O. Purchasing Authority:** The Department's Procurement section exercising authority based on delegation of authority by the Administrator; or, by this policy, to an individual within the Department to engage in the conduct of purchasing.
- P. Quote:** A Vendor's offer to supply Property in response to a Request for Quote from the Department.
- Q. Request for Proposals:** All documents, whether attached or incorporated by reference, utilized for soliciting competitive Proposals.
- R. Request for Quote:** A request sent to Vendors along with a description of the commodity or Services needed and requesting the Vendor to respond with price and other information by a pre-determined date.
- S. Requisition:** A standard Department form that serves as a purchasing request and that requests that the Purchasing Authority acquire the Property.
- T. Formal Sealed Procedure Limit:** One-hundred Thousand (\$100,000), unless otherwise determined by the Administrator as set forth in Section X, Paragraph F, of this Policy.
- U. Small Purchase:** An acquisition that costs less than the Formal Sealed Procedure Limit.
- V. Solicitation:** Means an Invitation to Bid, a Request for Proposals, a Request for Quote, or other document issued by the Purchasing Authority for the purpose of soliciting Bids, Proposals, Quotes, or offers to perform a Contract.
- W. Specifications:** A description of the Property required by an Invitation to Bid, Request for Proposals or Request for Quote.

V. POLICY:

A. LEGAL AUTHORITY:

The following policy is issued by the Director in accordance with Idaho Code § 58-101 and Idaho Code § 58-104.

B. POLICY STATEMENT:

1. Procurement will be overseen by the Administrator of Support Services. Daily operations have been delegated to the Procurement Manager and will be conducted in strict adherence with this Policy, applicable federal and state laws and regulations, and applicable State Board of Land Commissioners policies.
2. Procurement activities shall be administered in a manner that provides maximum practicable open competition appropriate to the type of product or Service to be provided. Purchases shall support the goals of cost efficiency and product/Service quality, and these objectives shall be given consideration in the purchasing process.

3. This Policy will enable uniform Procurement policies throughout the organization, build public confidence in public Procurement, and ensure the fair and equitable treatment of everyone who deals with the IDL Procurement system.
4. This Policy is intended to maximize IDL's purchasing power to the fullest extent, foster effective broad-based competition from all segments of the supplier community, and safeguard the integrity of IDL's Procurement system, and help to protect against corruption, waste, fraud, and abuse.

C. PURCHASING AUTHORITY:

The Administrator has delegated to the Procurement Manager the responsibilities as follows. The Procurement Manager or his designee:

1. Shall acquire all Property for the Department according to the provisions of this Policy;
2. Shall acquire all Property by competitive Solicitation unless excepted according to this Policy or is otherwise in the best interest of the Department, as determined by the Procurement Manager;
3. Shall preserve all records of Bids and acquisitions in compliance with the Department retention policy, as amended from time to time.
4. Shall determine, based upon the requirements contained in the Specification and matter relating to responsibility, the Lowest Responsible Bidder or Best Value in all competitively solicited contracts;
5. Shall enter into all contracts and any modifications thereto, for the acquisition of any and all Property on behalf of, and in the name of the Department;
6. Shall, when economically feasible and practical, consolidate Requisitions and acquire Property in amounts as large as can be efficiently managed and controlled;
7. May require from any Contractor the submission of a performance bond for such sum as will guarantee the faithful performance of such contract, and the amount and requirement therefore shall be set out in the Specifications;
8. 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 or appropriation for any such contract or contracts;
9. May enter into negotiations for acquisitions, as provided in this Policy;

VI. SEGREGATION OF DUTIES:

According to Statewide Management Control System User Manual Internal Control Policies, the Department is required to:

- A. Segregate responsibilities for the Requisitioning, purchasing, and receiving functions from the invoice processing, accounts payable, and general ledger functions;
- B. Segregate responsibilities for the purchasing function from the Requisitioning and receiving functions.

VII. DIVISION OF PUBLIC WORKS OVERSIGHT:

- A. The Division of Public Works shall solicit and provide oversight for the following public works projects:

1. All Department Administrative Buildings, over \$100,000, or any Permanent Building Fund Advisory Council funded projects.

VIII. ACQUISITION INITIATION:

The Purchasing Activity shall require an approved purchase Requisition, as attached to this policy, from the requestor, certifying that there are proper funds and sufficient balance in appropriations out of which the amount of the Requisition may lawfully be paid, for all purchases and contract modifications requiring the obligation of funds.

IX. PROCEDURE FOLLOWED IN SOLICITATIONS:

Procurements Subject to Formal Sealed Procedure – Sealed Procedure Limit. The Formal Sealed Bid Procedure shall be used in Purchases above the Sealed Procedure Limit, except as provided in Section X of this Policy. The Sealed Procedure Limit is determined based on the total costs of Property, including renewal or extension periods.

- A. Vendor Qualification.** All Vendors submitting responses to Solicitations issued by the Department must be qualified. All Vendors are qualified unless disqualified.
1. Vendors may be disqualified for any of the following reasons:
 - a. Failure to perform according to the terms of any contract;
 - b. Attempts by whatever means to cause acquisition Specifications to be drawn so as to favor a specific Vendor;
 - c. Debarment, suspension, or ineligibility from federal contracting of the Vendor, its principles or affiliates.
 2. A Vendor shall be notified by registered mail within ten (10) days of disqualification and may, within thirty (30) days of the receipt of such notice, request of the Director of the Idaho Department of Lands a hearing.
 3. Disqualification or conditions may be imposed for a period of not less than six (6) months or not more than five (5) years.
- B. Vendor Communication.** Vendors shall not communicate with the Purchasing Authority concerning any Solicitation during the period from Solicitation issuance through contract award unless the communication is allowed by this Policy or the terms of the Solicitation. Vendors engaging in communication prohibited by this Policy and submitting a response to the Solicitation will be non-responsive.

X. EXCEPTIONS TO FORMAL SEALED PROCEDURE:

Purchases meeting the following criteria need not be purchased by the Formal Sealed Procedure:

- A. Emergency Purchases.** Emergency purchases as defined in Section XI.
- B. Small Purchases.**
- C. Sole Source Purchases.** Sole source purchases may be made through direct Solicitation to the approved sole source supplier, in accordance with Section XIII.
- D. All other exceptions allowed by the Division of Purchasing of the Department of Administration, as they exist from time to time.**

- E. Existing Open Contracts. Property available under Open Contracts will be purchased under such contracts when it is in the best interest of the Department, as determined by the Purchasing Authority.
- F. Exempt Purchases. Other than public works projects, that require competitive Bidding under Idaho Code 67-5711C, the Administrator may, by written determination, exempt from the Formal Sealed Procedure or the requirement for competitive acquisition that Property for which Bidding is impractical, disadvantageous or unreasonable under the circumstances.
 - 1. Examples include, but are not limited to:
 - a. Purchases that the Land Board has expressly exempted via formal Land Board Action;
 - b. Special market conditions;
 - c. Property requiring special contracting procedures due to uniqueness;
 - d. Legal advertising, publication or placement of advertisements by state Agency personnel directly with media sources; or
 - e. Used Property
 - 2. Such written determination shall describe the Property exempted, the duration of the exemption, and any other requirements or circumstances appropriate to the situation.
- G. InterAgency Agreements and Agreements for the Joint Exercise of Powers. Acquisitions of Property under an interAgency agreement pursuant to Section 67-2332, Idaho Code, or an agreement for the joint exercise of powers pursuant to Section 67-2328, Idaho Code, as amended from time to time.

XI. EMERGENCY PURCHASES:

- A. Definition of Emergency Conditions. An emergency condition is a situation that creates a threat to public health, welfare or safety such as may arise by reason of fire, floods, epidemics, riots, Equipment failures or other similar circumstances. The existence of such condition must create an immediate and serious need for Property that cannot be met through normal acquisition methods. The Buyer responsible for purchasing shall make a written determination stating the basis for an emergency purchase and for the selection, if applicable, of the particular supplier. Such determination shall be sent promptly to the Procurement Manager for review and written approval that the purchase be undertaken as an emergency purchase.
- B. Conditions. Emergency purchases shall be limited to only that Property necessary to meet the emergency. The Procurement Manager may delegate authority in writing to an employee or purchasing activity to make emergency purchases of up to an amount set forth in the delegation of authority.

XII. SMALL PURCHASES:

- A. Splitting of Requirements. Acquisition requirements shall not be artificially divided to avoid Bid statutes, policy, or standard operating procedures.
- B. Procedure. Unless impractical or impossible and documented in the file, the Small Purchase procedures require the Solicitation to be publicly posted. Except as otherwise provided in

this Policy, award shall be made to the responsible and responsive Bidder offering the lowest acceptable Quote.

- C. Form of Request for Quote. Unless otherwise prohibited by the Buyer, the Request for Quote and the Quote should be written, but can be oral, electronic, telephonic or facsimile, as determined by the Purchasing Authority.
- D. Quoting Time. The quoting time shall be determined by the Buyer and should provide sufficient time for the Vendor to prepare and return a quotation. The amount of time shall take into consideration such factors as complexity, urgency, availability of Property and the number and location of Vendors.
- E. Professional Services and Information Technology Services. Professional Services, and Information Technology Services acquired under this Policy, where the Services are reasonably expected to cost one hundred thousand dollars (\$100,000) or less through a fixed price/not to exceed price contract for a non-renewable term not to exceed one (1) year, may be acquired as the Procurement Manager sees fit, in accordance with good business practice and in the best interest of the Department.
- F. Public Works Greater Than Twenty Five Thousand Dollars and Less Than One Hundred Thousand
 - 1. A public work is defined as follows, or as set forth in Idaho Code 67-5710B, as amended from time to time, if such statutory definition shall differ from the following:
 - a. Any new building, alteration, repair, demolition or improvement of any land, building, structure including utilities, or remodeling or renovation of existing buildings or other physical facilities, to make physical changes necessitated by changes in the program, to meet standards required by applicable codes, to correct other conditions hazardous to health and safety of persons which are not covered by codes, or to effect a permanent improvement to the facility for any reason including aesthetics or appearance;
 - b. Site improvement or developments which constitute permanent improvements to real Property;
 - c. Purchase and installation of fixed Equipment necessary for the operation of new, remodeled, or renovated buildings and other physical facilities for the conduct of programs initially housed therein to include any Equipment that is made a permanent fixture of the building; and
 - d. Purchase of the Services of architects, engineers, and other consultants to prepare plans, program documents, life cycle cost studies, energy analysis, and other studies associated with any new building, alteration, repair, demolition or improvement and to supervise the construction or execution of such projects.
 - 2. With respect to a public works project having a written cost estimate of greater than twenty-five thousand dollars (\$25,000) but less than one hundred thousand (\$100,000), the Department must follow Idaho Code 67-5711C, as amended from time to time.

- G. Public Works in Amounts Less Than Twenty Five Thousand Dollars.**
 - 1. With respect to a public works project having a written cost estimate of less than twenty five thousand dollars (\$25,000) for Public Works, it may be acquired as the Procurement Manager sees fit, in accordance with good business practice and in the best interest of the Department. The Property must be obtained through a written agreement.
 - 2. Any public work over \$10,000 will be performed by a licensed public work Contractor as defined in Idaho Code Chapter 19, Title 54, as amended from time to time.

- H. Purchases in Amounts Less Than Ten Thousand Dollars.** If the Property to be acquired is expected to cost less than ten thousand dollars (\$10,000), it may be acquired as the Purchasing Authority sees fit, in accordance with good business practice and in the best interest of the Department. The Property must be obtained through a written Contract.

- I. Forest Management Purchases Less Than Ten Thousand Dollars.** Service contracts less than ten thousand dollars (\$10,000) may be acquired by Forest Management personnel in accordance with the Department Forest Management Project Administration Policy, as amended from time to time. The standard form Forest Management Area Contract shall be used. Any deviations from this form must be approved in writing, in advance, by the Procurement Manager. These contracts will be filed and maintained in the Area Offices and periodic on-site audits will be conducted to review these contracts for compliance with policy. Failure to adhere to policy may result in the loss of the ability to utilize this contract vehicle for up to a year.

XIII. SOLE SOURCE PURCHASES:

- A. Only a Single Supplier.** Sole source purchase shall be used if a requirement is only reasonably available from a single supplier. A requirement for a particular proprietary Property item does not justify a sole source purchase if there is more than one (1) potential Bidder or Offeror for that Property item.

- B. Examples of Sole Source.** Examples of circumstances that could necessitate a sole source purchase include, but are not limited to:
 - 1. Where the compatibility of equipment, Components, accessories, computer software, replacement Parts or Service is the paramount consideration.
 - 2. Where a sole supplier's item is needed for trial use or testing.
 - 3. Purchase of mass produced movie or video films or written publications distributed or sold primarily by the publisher.
 - 4. Purchase of Property for which it is determined there is no functional equivalent.

- C. Procurement Manager Makes Determination.** The determination as to whether an acquisition shall be made as a sole source shall be made by the Procurement Manager in writing. Each request shall be submitted in writing. The Procurement Manager may specify the application of such determination and its duration. In cases of reasonable doubt, competition should be solicited. Any request by a Requisitioning party that an acquisition be restricted to one (1) potential Contractor shall include an explanation as to why no other Contractor is acceptable.

- D. Negotiation in Sole Source Purchase. The Buyer shall conduct negotiations, as appropriate, as to price, delivery, and terms and conditions.

XIV. CONTENT OF SOLICITATIONS UNDER A FORMAL SEALED PROCEDURE:

The following shall be included in an Invitation to Bid or a Request for Proposals:

- A. Submission Information. Information regarding the applicable opening date, time and location.
- B. Specifications. Specifications developed in accordance with this policy including, if applicable, a scope of work.
- C. Contract Terms. Terms and conditions applicable to the contract.
- D. Evaluation Criteria. Any evaluation criteria to be used in determining Property acceptability.
- E. Trade-In Property. If trade-in Property is to be included, a description of the Property and location where it may be inspected.
- F. Incorporation by Reference. A brief description of any documents incorporated by reference that specifies where such documents can be obtained.
- G. Pre-Proposal Conference. The date, time and location of the pre-Proposal conference must be included in Request for Proposals.

XV. CHANGES TO INVITATION TO BID OR REQUEST FOR PROPOSALS:

An Invitation to Bid or Request for Proposals may be changed by the Buyer through issuance of an addendum, provided the change is issued in writing prior to the Bid opening date and is made available to all Vendors receiving the original Solicitation. Any material information given or provided to a prospective Vendor with regard to an Invitation to Bid or Request for Proposals shall be made available in writing by the Buyer to all Vendors receiving the original Solicitation. Oral interpretations of Specifications or contract terms and conditions shall not be binding on the Department unless confirmed in writing by the Buyer and acknowledged by the Department prior to the date of the opening. Changes to the Invitation to Bid or Request for Proposals shall be identified as such and shall require that the Vendor acknowledge receipt of all addenda issued. The right is reserved to waive any informality.

XVI. FORM OF SUBMISSION:

- A. Manual Submissions. Unless otherwise provided in this policy, to receive consideration, in addition to any specific requirements set forth in the Invitation to Bid or Request for Proposals, Bids or Proposals submitted manually must be made on the form provided, which form must be properly completed and signed in ink or contain an electronic signature as defined in Idaho Code 28-50-102, or its equivalent, as amended from time to time. All changes or erasures, made by Vendor, shall be initialed in ink. Unsigned or improperly submitted Bids or Proposals will be rejected. The Purchasing Authority assumes no responsibility for failure of the United States Postal Service, any private or public delivery Service, or any computer or other Equipment to deliver all or a portion of the Bid or Proposal at the time or to the location required by the Solicitation.

- B. **Electronic Submissions.** To receive consideration, in addition to any specific requirements set forth in the Invitation to Bid or Request for Proposals, Bids or Proposals submitted electronically must be submitted in accordance with and meet all applicable requirements of this policy and contain a scanned signature, or an electronic signature as defined in Idaho Code 28-50-102, as amended from time to time. The Purchasing Authority assumes no responsibility for failure of any electronic submission process, including any computer or other Equipment to deliver all or a portion of the Bid or Proposal at the time or to the location required by the Solicitation.

XVII. PRE-PROPOSAL CONFERENCE:

All Requests for Proposals will have a pre-Proposal conference for Vendors and will be conducted by the Purchasing Authority and project personnel. The conference will consist of a general overview of the Procurement process as well as the scope of work and requirements of the subject Request for Proposal. The Purchasing Authority will allow attendees to submit written questions and may provide an opportunity for a verbal question and answer period, provided, however, that only questions submitted and answered in written form and posted to the Department's internet site as an addendum to the Request for Proposal, will have any force or effect.

XVIII. PRE-OPENING WITHDRAWAL OR MODIFICATION:

Manual submissions may be withdrawn or modified only as follows: Bids or Proposals may be withdrawn or modified prior to the closing by written communication signed in ink by the submitting Vendor. Bids or Proposals may be withdrawn prior to closing in person upon presentation of satisfactory evidence establishing the individual's authority to act on behalf of the submitting Vendor. Bids or Proposals may be withdrawn or modified by electronic communication provided the communication is received prior to the closing. Any withdrawing or modifying communication, including an electronic communication, must clearly identify the Solicitation. A modifying communication should be worded so as not to reveal the amount of the original Bid or Proposal.

XIX. LATE BIDS/PROPOSALS, LATE WITHDRAWALS AND LATE MODIFICATIONS:

Any Bid or Proposal, withdrawal or modification received after the time and date set for closing at the place designated in the Solicitation is late. No late Bid or Proposal, late modification or late withdrawal will be considered. All late Bids, other than clearly marked "no Bids", will be returned to the Bidder. Time of receipt will be determined by the official time stamp or receipt mechanism located at the designated place for receipt of Solicitations. The Purchasing Authority assumes no responsibility for failure of the United Postal Service, any private or public delivery Services or any computer or other Equipment to deliver all or a portion of the Bid or Proposal at the time or to the location required by the Solicitation.

XX. RECEIPT, OPENING, AND RECORDING OF BIDS AND PROPOSALS:

Upon receipt, all Bids, Proposals and modifications properly marked and identified will be time stamped, but not opened. Bids shall be opened publicly at the date and time specified in the Invitation to Bid. Proposals shall be opened publicly, identifying only the names of the Offerors unless otherwise stated in the Request for Proposals.

XXI. MISTAKES:

The following procedures are established relative to claims of a mistake.

- A. Mistakes in Bids.** If a mistake is attributable to the Bidder's error in judgment, the submission may not be corrected. Correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible, but at the discretion of the Buyer and to the extent it is not contrary to the interest of the Department or the fair treatment of other submitting Vendors.
- B. Mistakes Discovered Before Opening.** The Bidder may correct mistakes that the Bidder detects, prior to opening, by submitting a timely modification or withdrawing the original submission and submitting a corrected submission to the Purchasing Authority before the opening.
- C. Mistakes Discovered After Opening But Before Award.** This subsection sets forth procedures to be applied in three (3) situations described below in which mistakes are discovered after opening but before award.
 - 1. **Minor Informalities.** Minor informalities are matters of form rather than substance evident from the Bid or Proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other submitting Vendors, that is, the effect of the mistake on price, quantity, quality, delivery or contractual conditions is not significant. The Buyer may waive such informalities. Examples include, but are not limited to, the failure of a submitting Vendor to:
 - a. Return the required number of signed submissions.
 - b. Acknowledge the receipt of an addendum, but only if:
 - i. It is clear from the submission that the submitting Vendor received the addendum and intended to be bound by its terms; or
 - ii. The addendum involved had a negligible effect on price, quantity, quality or delivery.
 - 2. **Mistakes Where Intended Submission is Evident.** If the mistake and the intended submission are clearly evident on the face of the document, the Purchasing Authority may correct the submission and the submission may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the document include, but are not limited to: typographical errors, errors in extending unit prices, transposition errors and arithmetical errors. The Purchasing Authority will always extend unit prices when they conflict with the extension price.
 - 3. **Mistakes Where Intended Submission is not Evident.** A Vendor may be permitted to withdraw a low Bid if:
 - a. A mistake is clearly evident on the face of the submission document but the intended submission is not similarly evident; or
 - b. The Vendor submits timely proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.
- D. Mistakes Discovered After Award.** Mistakes shall not be corrected after award of the contract.

- E. Written Approval or Denial Required. In the event of a mistake discovered after the opening date, the Buyer shall approve or deny, in writing, a request to correct or withdraw a submission.

XXII. EVALUATION AND AWARD:

Any contract award shall comply with these provisions.

- A. General. In an Invitation to Bid, The contract is to be awarded to the lowest responsible and responsive Bidder. The Solicitation shall set forth the requirements and criteria that will be used to make the lowest responsive and responsible determination. In a Request for Proposal, the contract is to be awarded to the Vendor whose Proposal is determined to provide the Best Value to the Department. The Best Value determination will be based on the evaluation criteria as established in the Solicitation.
- B. Standards of Responsibility. The Purchasing Authority should use the following factors in determining whether a Vendor is responsible:
 - 1. The Vendor has the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements;
 - 2. The Vendor has a satisfactory record of integrity;
 - 3. The Vendor has not unreasonably failed to supply any necessary information in connection with the inquiry concerning responsibility;
 - 4. The Vendor has experience; and
 - 5. A satisfactory prior performance record, if any
- C. Information Pertaining to Responsibility. A submitting Vendor shall supply information requested by the Buyer concerning its responsibility. If such submitting Vendor fails to supply the requested information, the Buyer shall base the determination of responsibility upon any available information or may find the submitting Vendor nonresponsible.
- D. Written Determination of Nonresponsibility Required. If a submitting Vendor that otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the Buyer.
- E. Extension of Time for Acceptance. After opening, the Buyer may request submitting Vendors to extend the time during which their Bids or Proposals may be accepted, provided that, with regard to Bids, no other change is permitted. The reasons for requesting such extension shall be documented.
- F. Partial Award. A Buyer shall have the discretion to award on an all or nothing basis or to accept any portion of a Bid, excluding others, unless the Bidder stipulates all or nothing in its Bid.
- G. Only One Submission Received. If only one (1) responsive submission is received in response to a Solicitation, an award may be made to the single submitting Vendor. In addition, the Buyer may pursue negotiations in accordance with applicable conditions and restrictions of these rules. Otherwise, the Solicitation may be rejected and:

1. New Bids or offers may be solicited; or
2. The proposed acquisition may be canceled.

XXIII. TIE RESPONSES:

The following provisions shall apply to tie Bids, or Proposals, as defined herein.

- A.** Tie Responses -- Definition. Tie responses are low responses from responsible Offerors that are identical in price or score.
- B.** Award. Award shall not be made by drawing lots, except as set forth below. In the discretion of the Buyer, award shall be made in any permissible manner that will resolve tie responses. Procedures that may be used to resolve tie responses include:
1. If price is considered excessive or for other reason such responses are unsatisfactory, reject all responses, resolicit and seek a more favorable contract in the open market;
 2. Award to an Idaho resident or an Idaho domiciled Offeror or for an Idaho produced product where other tie response(s) are from out of state or to a Offeror submitting a domestic product where other tie response is for foreign (external to Idaho) manufactured or supplied Property;
 3. Where identical low responses include the cost of delivery, award the contract to the Offeror farthest from the point of delivery;
 4. Award the contract to the Offeror who received the previous award and continue to award succeeding contracts to the same Offeror so long as all low Bids are identical;
 5. Award to the Offeror with the earliest delivery date.
- C.** Drawing Lots. If no permissible method will be effective in resolving tie responses and a written determination is made so stating, award may be made by drawing lots or tossing a coin in the presence of witnesses if there are only two (2) tie Offerors.

XXIV. PROPOSAL DISCUSSION WITH INDIVIDUAL OFFERORS:

- A.** Classifying Proposals. For the purpose of conducting Proposal discussions under this Policy, Proposals shall be initially classified as:
1. Acceptable;
 2. Potentially acceptable, that is reasonably susceptible of being made acceptable; or
 3. Unacceptable.
- B.** "Offerors" Defined. For the purposes of this section, the term "Offerors" includes only those persons submitting Proposals that are acceptable or potentially acceptable. The term shall not include persons that submitted unacceptable Proposals.
- C.** Purposes of Discussions. Discussions are held to facilitate and encourage an adequate number of potential Offerors to offer their best Proposals, by amending their original offers, if needed.
- D.** Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of Proposals. The Buyer should establish procedures and schedules for conducting discussions. If during discussions there is a need for clarification or change of the Request for Proposals, it shall be amended to incorporate

such clarification or change. Auction techniques (revealing one Offeror's price to another) and disclosure of any information derived from competing Proposals are prohibited. Any oral clarification or change of a Proposal shall be reduced to writing by the Offeror.

- E. Best and Final Offer. The Buyer shall establish a common time and date for submission of best and final offers. Best and final offers shall be submitted only once unless the Buyer makes a written determination before each subsequent round of best and final offers demonstrating another round is in the Department's interest, and additional discussions will be conducted or the Department's requirements will be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

XXV. NEGOTIATIONS:

The Buyer may negotiate acquisitions as follows:

- A. Use of Negotiations. Negotiations may be used under this rule when the Procurement Manager determines that negotiations may be in the best interest of the Department including but not limited to the following situations:
 - 1. A competitive Solicitation has been unsuccessful because, without limiting other possible reasons, all offers are unreasonable, noncompetitive or all offers exceed available funds and the available time and circumstances do not permit the delay required for re-solicitation;
 - 2. There has been inadequate competition; or
 - 3. During the evaluation process it is determined that more than one (1) Vendor has submitted an acceptable Proposal or Bid and negotiations could secure advantageous terms or a reduced cost for the Department.
 - 4. During the evaluation process it is determined that all responsive offers exceed available funds and negotiations could modify the Property solicited to reduce the cost to available funds and avoid the expenditure of resources for a re-solicitation.
- B. Conditions of Use. Negotiations, as permitted by Subsection X. of this policy, are subject to the following:
 - 1. The Solicitation must specifically allow for the possibility of negotiation and describe, with as much specificity as possible, how negotiations may be conducted;
 - 2. Submissions shall be evaluated and ranked based on the evaluation criteria in the Solicitation;
 - 3. Only those Vendors whose Proposals or Bids are determined to be acceptable, in accordance with criteria for negotiations set forth in the Solicitation, shall be candidates for negotiations;
 - 4. Negotiations shall be conducted first with the Vendor that is the apparent low responsive and responsible Bidder, or who has provided the highest ranked Proposal;
 - 5. Negotiations shall be against the requirements of and criteria contained in the Solicitation and shall not materially alter those criteria, the Specifications or scope of work;
 - 6. Auction techniques (revealing one Vendor's price to another) and disclosure of information derived from competing Proposals is prohibited;

7. Any clarifications or changes resulting from negotiations shall be documented in writing;
 8. If the parties to negotiations are unable to agree, the Buyer shall formally terminate negotiations and may undertake negotiations with the next ranked Vendor; and
 9. If negotiations, as provided for in this policy, fail to result in a contract, as determined by the Buyer, the Solicitation may be cancelled and the Buyer may negotiate in the best interest of the state with any qualified Vendor.
- C. Timing of Use. If conducted, negotiations are the last step in the Procurement process. Use of oral interviews or best and final procedures, as provided for in a Solicitation, must precede negotiations as provided for in this policy.

XXVI. PRICE AGREEMENTS:

The Procurement Manager may authorize Price Agreements with Vendors when such agreements are deemed in the best interest of the Department. Price Agreements shall provide for termination for any reason upon not more than thirty (30) days' written notice. Price Agreements may be in the best interest of the Department in the following circumstances, but this list is not exhaustive:

- A. Dollar Value. The dollar value of individual Procurements of Property is less than the maximum dollar value of a Small Purchase and multiple individual Procurements are anticipated within a State of Idaho fiscal year; or
- B. Property. The Property may not be conducive to competitive Bidding procedures; or
- C. Multiple Agreements. The Department desires to establish multiple agreements with Vendors supplying Property that is similar in nature or function but is represented by different manufacturers or needed in multiple locations; or
- D. Non-exclusive Agreements. Non-exclusive agreements for periods not exceeding two (2) years are deemed necessary, by the Purchasing Authority, to establish consistent general business terms, including without limitation, price, use of catalogs, delivery or credit terms.

XXVII. ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS:

Prior to the issuance of a Purchase Order or Contract, the Buyer shall have the right to accept or reject all or any part of a Bid or Proposal or any and all Bids or Proposals when:

- A. Best Interest. It is in the best interests of the Department;
- B. Does Not Meet Specifications. The submission does not meet the minimum Specifications;
- C. Not Lowest Responsible Bid. The submission is not the lowest responsible submission;
- D. Bidder Is Not Responsible. A finding is made based upon available evidence that a submitting Vendor is not responsible or otherwise capable of currently meeting Specifications or assurance of ability to fulfill contract performance; or

- E. Deviations. The item offered deviates to a major degree from the Specifications, as determined by the Buyer (minor deviations, as determined by the Buyer, may be accepted as substantially meeting the requirements of the Department). Deviations will be considered major when such deviations appear to frustrate the competitive process or provide a submitting Vendor an unfair advantage.

XXVIII. CANCELLATION OF SOLICITATION:

Prior to the issuance of a Purchase Order or Contract, the purchasing activity reserves the right to reject all Bids, Proposals or Quotes or to cancel a Solicitation or Request for Quote. In the event of the cancellation of an Invitation to Bid or Request for Proposals, all submitting Vendors will be notified. Examples of reasons for cancellation include but are not limited to:

- A. Inadequate or ambiguous Specifications;
- B. Specifications have been revised;
- C. Cancellation is in the best interest of the Department.

XXIX. NOTICE OF REJECTION:

Bidders or Offerors whose Bids or Proposals are rejected as non-responsive will be notified in writing of the reasons for such rejection.

XXX. LEASES:

- A. Lease for Personal Property. The Department may enter into leases, including but not limited to office equipment, provided the lease is subject to the same requirements of competition that govern the purchase of Property. Leases for periods exceeding one (1) year specifically require the approval of the Procurement Manager and must contain a term that limits the Department's obligation to the approved appropriation.
- B. Lease Purchase Option. Unless a written exemption is granted by the Procurement Manager or unless otherwise exempt by this Policy, a lease purchase option may be exercised only if the lease containing the purchase option was awarded using the competitive process.

XXXI. SPECIFICATIONS -- POLICIES AND DEVELOPMENT:

- A. Purpose. Unless exempted by this Policy, or by the Procurement manager, all Solicitations and requests for Quote require Specifications. Specifications set forth the characteristics of the Property to be acquired. Specifications serve as the basis for obtaining Property adequate and suitable for the Department's needs in a cost effective manner, taking into account the costs of ownership and operation as well as initial acquisition costs. Specifications shall be drafted clearly to describe the Department's needs and to enable the Vendors to determine and understand the Department's requirements. Specifications shall, as much as practical, be nonrestrictive to provide an equal basis for participation by an optimum number of Vendors and to encourage competition. This information may be in the form of a description of the physical, functional or performance characteristics, a reference brand name or both. It may include a description of any required inspection, testing or preparation or delivery. Specifications may be incorporated by reference or contained in an attachment that is incorporated by reference.

- B. Use of Functional or Performance Descriptions. Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the Department. To facilitate the use of such criteria, Requisitions shall include the principal functional or performance needs.
- C. Preference for Commercially Available Products. Requisitions shall be satisfied by standard commercial products whenever practicable.
- D. Brand Name or Equal Specification.
 - 1. A Brand Name or Equal Specification may be used when the Buyer determines that such a Specification is in the Department's best interest.
 - 2. A Brand Name or Equal Specification shall seek to designate as many different brands as are practicable as "or equal" and shall state that products substantially equivalent to those designated will be considered for award.
 - 3. Unless the Buyer authorized to approve Specifications determines that the essential characteristics of the brand names included in the Specifications are commonly known in the industry or trade, Brand Name or Equal Specifications shall include a description of the particular design and functional or performance characteristics required.
 - 4. Where a Brand Name or Equal Specification is used, the document shall contain explanatory language that the use of a brand name is for the purpose of designating the standard of quality, performance, and characteristics desired and is not intended to restrict competition.
- E. Brand Name Specification.
 - 1. Since use of a brand name Specification is restrictive, such a Specification may only be used when the Procurement manager, or designee, makes a written determination. Such determination may be in any form, such as a purchase evaluation or a statement of single manufacturer justification. The written statement must state specific reasons for use of the brand name Specification.
 - 2. The Procurement manager shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable.
- F. Specification of Alternates May Be Included. A Specification may provide alternate descriptions of Property where two (2) or more design, functional or performance criteria will satisfactorily meet the Department's requirements.

XXXII. CONTRACT TERMS – POLICIES AND LIMITATIONS:

- A. Prohibited Terms. The Purchasing Authority does not have the authority to bind the Department to the following terms. If a contract contains such a term, the term shall be void.
 - 1. Terms waiving the sovereign immunity of the state of Idaho.
 - 2. Terms subjecting the Department to the jurisdiction of the courts of other states.
 - 3. Terms limiting the time in which the Department may bring a legal claim under the contract to a period shorter than that provided in Idaho law.

4. Terms imposing a payment obligation, including a rate of interest for late payments, less favorable than the obligations set forth in Idaho Code 67-2302, as amended from time to time.
5. Terms indemnifying any Vendor or other third party.

B. Terms Requiring Special Consideration.

1. Unless specifically authorized by the Idaho legislature, terms requiring IDL, the Land Board, or the State of Idaho indemnify a Vendor shall be subject to the provisions of Idaho Code 59-1015, as amended from time to time, and require an appropriation by the Idaho legislature. Indemnification terms not specifically authorized by the Idaho legislature, or subject to appropriation, shall be void pursuant to Idaho Code 59-1016.
2. The Department shall consult with legal counsel prior to accepting terms submitting the contract to arbitration or waiving the State of Idaho's right to a jury trial.

XXXIII. ETHICS REQUIREMENTS:

- A.** All Department employees are required to adhere to the intent and spirit of these policies and directives. They are designed as a means to acquire the necessary Goods and Services as effectively and economically as possible, while also maintaining compliance with the laws of the State of Idaho.
- B.** Employees are prohibited from obtaining products or Services by avoiding the competitive process such as splitting purchases or creating false emergency situations.
- C.** Any effort to circumvent or abuse Department purchasing policy or procedures will not be condoned and is subject to disciplinary action up to, and including, dismissal.
- D. Purchasing Ethics and Vendor Relationships**
1. All employees are involved in business transacted by the Department in one form or another. Especially so are those professional purchasers and other personnel who purchase items and Services, including those using the P-card. Each employee has a personal responsibility to conduct Department business in an ethical manner and assure the integrity of the Procurement process.
- E. Conflict of interest:**
1. A conflict of interest occurs when a person's private interests compete with his or her professional obligations to the Department to a degree that an independent observer might reasonably question whether the person's professional actions or decisions are materially affected by personal considerations, including but not limited to personal gain, financial or otherwise.
 2. Employees are prohibited from entering into Service contracts with, or selling Goods to, the Department.
- F. Influencing/conspiring to influence:**
1. The Department prohibits the influencing or conspiring to influence purchasing decisions and contract awards. Attempts at influence may include kickbacks and bribes, peddling or payment of a fee, back door selling, hard-sell tactics,

fraternization, or offering gifts to avoid following published procedures or gain advantage.

XXXIV. TRAINING:

All Department employees who may procure Property for the Department, or manage Department contracts, will participate in Procurement training as established by the Administrator for the State of Idaho, Division of Purchasing.

XXXV. APPEALS:

All appeals will be reviewed and decided by the Director of the Department, pursuant to Idaho Code 58-104 (4).

XXXVI. REVISIONS AND REVOCATION:

Revision History

11/16/2016 New department policy.


01/01/2024 Version 1.1, renumbered from Policy #13 to #455 and reformatted. No content changes.

Implementation

This is a renumbered and reformatted version of the policy signed by the Director in November 2016 (signature page attached).

XXXVI. REVISIONS AND REVOCATION:

This is a new Department Policy.



Thomas M. Schultz, Jr.
Director

Date 11/16/16_____