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**IDAPA 38
TITLE 05
CHAPTER 01**

38.05.01 - RULES OF THE DIVISION OF PURCHASING

000. LEGAL AUTHORITY.

In accordance with Sections 67-5717(10), 67-5732 and 67-2356(1), Idaho Code, the Administrator for the Division of Purchasing hereby promulgates the following rules implementing the provisions of Chapter 57, Title 67, Idaho Code pertaining to the Division of Purchasing. (10-1-98)T

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 38.05.01, "Rules of the Division of Purchasing," Department of Administration, Title 05, Chapter 01. These rules constitute the procedures utilized by the Division of Purchasing in acquiring property for use by state agencies and departments. These rules shall be utilized by any other state agency with the delegated authority to acquire property. (3-20-97)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(16)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost in the office of this agency. (3-20-97)

003. ADMINISTRATIVE APPEALS.

This chapter provides for administrative appeals of certain agency actions as more fully described herein. (3-20-97)

004. (RESERVED).

005. INCLUSIVE GENDER.

For all sections and subsections of all administrative rules in Idaho, the terms and references used in the masculine include the feminine and vice versa, as appropriate. (3-20-97)

006. SEVERABILITY.

The sections and subsections of all administrative rules in Idaho are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, such invalidity does not affect the validity of any remaining portion. (3-20-97)

007. CITATION.

The official citation of this chapter is IDAPA 38.05.01.000 et sequence. For example, this section's citation is IDAPA 38.05.01.007. In documents submitted to the Division of Purchasing or issued by the Division of Purchasing, the Division's rules may be cited as DOP Rule Number. For example, this rule may be cited as DOPR 7. (3-20-97)

008. -- 010. (RESERVED).

011. DEFINITIONS.

01. APA. The Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. (3-20-97)
02. Acquisition. The process of procuring or purchasing property by the state of Idaho. (May also refer to a proposed or actual solicitation or other purchasing action.) (3-20-97)
03. Addendum or Addenda. Any written addition or alteration in specifications, delivery point, rate of delivery, period of performance, quantity, or other provisions of any bid solicitation issued by the Purchasing Activity. (3-20-97)
04. Amendment. Usually refers to any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract. May include changes to bid solicitations. (See Change Order also.) (3-20-97)
05. Administrator. The Administrator for the Division of Purchasing. The Administrator is the chief

- purchasing officer. (3-20-97)
06. Agency. All officers, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding other legislative and judicial branches of government, and excluding the governor, the lieutenant-governor, the secretary of state, the state controller, the state treasurer, the attorney general, and the superintendent of public instruction. (3-20-97)
07. Agreement. See the definition of Contract. (3-20-97)
08. Alternate. Property or services which are not at least a functional equal in features, performance, or use of the brand, model or specification designated as the standard. (3-20-97)
09. Bid. A written offer which is binding on the bidder to perform a contract to purchase or supply property or services in response to an Invitation to Bid, Request for Proposal, or Request for Quotation. (3-20-97)
10. Biddable. A condition whereby acquisition of the property or services is capable of being conducted utilizing competitive procedures, regardless of whether cost or price is an evaluation factor. (3-20-97)
11. Bidder. A registered vendor who has submitted a bid or quotation on a specific item or items of property in response to a bid solicitation. (3-20-97)
12. Bidder's Bond. As used in Idaho Code, Section 67-5717(7) shall mean either a bid guarantee or performance guarantee as addressed herein. (3-20-97)
13. Brand Name or Equal Specification. This means a specification that uses a brand name to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products. (3-20-97)
14. Brand Name Specification. This means a specification calling for one or more products by manufacturers' names or catalogue numbers. (3-20-97)
15. Business. Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, limited liability company or any other private legal entity that is registered as a vendor with the Division of Purchasing. (3-20-97)
16. Buyer. An employee of the Division of Purchasing designated as a buyer, purchasing officer, contract administrator, purchasing agent, contracting officer, 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 Activity. (3-20-97)
17. Change Order. This means a written order signed by a buyer directing the contractor to suspend work or make changes, in accordance with the appropriate clauses of the contract which authorize the buyer to order without the consent of the contractor or any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract. (3-20-97)
18. Competitive Sealed Bidding. The acquisition process of soliciting competitive bids (generally using an Invitation to Bid type solicitation) where bidding documents are submitted to the Purchasing Activity under sealed cover to be held in a secure place until the time and date set for opening of bids. Award is generally made to the lowest responsible bidder meeting the specifications and criteria outlined in the bidding documents without further discussions or negotiation. (3-20-97)
19. Competitive Sealed Proposals. The acquisition process of soliciting competitive proposals where proposals are submitted to the Purchasing Activity under sealed cover to be held in a secure place until the time and date set for opening of proposals. Evaluation and award are based on criteria such as proposer qualifications and experience, product features and characteristics, service quality and efficiency, and conformance with the specifications and requirements of the solicitation. Price may be an evaluation criterion, but will not necessarily be

- the predominant basis for contract award. (3-20-97)
20. **Component.** An item of property normally assembled or incorporated with other items into a unified productive whole at the site of use, which items belong to functional classes that may be interchangeable units of similar function but differing operational or productive capabilities. (3-20-97)
21. **Concession Services.** The granting by the Purchasing Activity of a right, franchise, authority, property interest, or option to a contractor, regardless of whether an expenditure of state or other funds occurs. (3-20-97)
22. **Consultant Services.** This means work, rendered by either independent individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis, or advise in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting, planning and data processing. The consultant's services, opinions, or recommendations will be performed according to the consultant's methods without being subject to the control of the agency except as to the result of the work. (3-20-97)
23. **Contract.** Contract means any state written agreement, including solicitation or specification documents and the accepted portions of the solicitation, for the acquisition or disposal of property. Generally, the term is used to describe term contracts, definite or indefinite quantity and/or delivery contracts, or other acquisition agreements whose subject matter involves multiple payments and deliveries. A contract shall also include any amendments or change orders. (3-20-97)
24. **Contractor.** A bidder who has been awarded an acquisition contract. (3-20-97)
25. **Cooperative Purchasing.** This means purchasing conducted by, or on behalf of, more than one (1) public purchasing unit, or by a public purchasing unit with an external purchasing unit. (3-20-97)
26. **Cost Analysis.** This means the evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, cost to be reimbursed, or costs actually incurred. May include the principals of life cycle costing which measures not only the initial acquisition cost, but may also include operating and maintenance costs, present value analysis, disposal costs, or salvage value. (3-20-97)
27. **Cost Data.** Cost data means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract. (3-20-97)
28. **Delegated Authority.** Authority to purchase property delegated to an agency by the Administrator of the Division pursuant to Idaho Code Section 67-5717(6) and which is delegated in three forms: (3-20-97)
- a. **General.** Those purchases delegated annually (or other specific term) by the Division which are common to state agencies. (3-20-97)
- b. **Specific.** Those purchases delegated annually (or other specific term) to specific agencies for continuing individual commodity and/or service requirements. (3-20-97)
- c. **Limited.** Those purchases delegated to a specific agency for a one-time commodity and/or service requirement. (3-20-97)
29. **Director.** The chief officer of the Department of Administration. (3-20-97)
30. **Division.** The Division of Purchasing of the Department of Administration as established by Idaho Code Section 67-5714. Whenever a purchase or sale is made by the Division on behalf of another agency, the Division shall be deemed to be acting in the capacity of agent for such agency. (3-20-97)
31. **Discussions.** This term as used in source selection means negotiation during which the vendor or

buyer may alter or otherwise change the terms, price or other provisions of the proposed acquisition. Discussions, including requests for best and final offers, can be conducted under competitive sealed proposals, sole source, and emergency purchases; such discussions are not permissible under competitive sealed bidding except to the extent needed in the first phase of multi-step sealed bidding. (3-20-97)

32. **Emergency Purchase.** A purchase made pursuant to the provisions of Section 67-5720, Idaho Code. Emergency purchase authorizations must be made in writing by the Administrator or authorized designee. (3-20-97)

33. **Equal.** Property or services which meet or exceed the quality, performance and use of the brand, model, or specifications in the Invitation to Bid, Request for Proposal, or Request for Quotation. (3-20-97)

34. **Equipment.** Items of personal property which have a normal useful life expectancy or measurable service life of two (2) or more years. (3-20-97)

35. **Established Catalogue Price.** This means the price included in a catalogue, price list, schedule, or other form that is regularly maintained by a manufacturer or supplier, is either published or otherwise available for inspection by customers, and states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved. (3-20-97)

36. **Established Market Price.** This means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources independent of the manufacturer or supplier. (3-20-97)

37. **External Purchasing Unit.** This means any buying organization not located in this state which, if located in this state, would qualify as a local or public purchasing unit. An agency of the United States is an external purchasing unit. (3-20-97)

38. **Formal Sealed Bid Procedure.** Procedure by which the buyer solicits written competitive bids from a sufficient or required number of prospective bidders drawn from established registered vendor lists and from any other source thought to be of advantage to the state to assure adequate price and product competition by means of a written Invitation to Bid (ITB) setting forth specifications, all material, and objectively measurable criteria for the intended purchase. All bids are to be submitted in sealed envelopes or packages to the location indicated in bid documents and must be received by the time indicated therein. No disclosure of bids or bid information is made prior to the public bid opening. After the public bid opening. All bid information shall be referred to the buyer for evaluation and treated as working papers until after award at which time all bids become public information. The award is to be made in accordance with Idaho Code Section 67-5718. (3-20-97)

39. **General Services.** This means support type services performed by independent contractors where the process is more important than the product, if any, and the services require specialized knowledge, experience or expertise. The contracts typically call for a contractor's time and effort rather than for a concrete end product. The contracts are usually awarded to partnerships, firms, or corporations rather than individuals. Examples include janitorial, equipment maintenance, security services, data entry, contract programming, etc. (3-20-97)

40. **Goods.** Items of personal property, including concession services, not qualifying as equipment, parts or supplies. (3-20-97)

41. **Grant.** Means the furnishing by the state or by any other public or private source of assistance, whether financial or otherwise, to any person or business organization to support a program authorized by law. It does not include an award whose primary purpose is to acquire an end product, whether in the form of supplies, services, or construction; a contract resulting from such an award is not a grant, but an acquisition contract. (3-20-97)

42. **GSA.** Means the General Services Administration, an agency or office of the federal government (3-20-97)

43. **Informality.** An immaterial (a matter of form rather than substance) variation from the exact requirements of the solicitation, having no effect on pricing, quality, quantity, or delivery of the supplies or

- performance of the services being purchased, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to other bidders. (3-20-97)
44. Installment Purchase Contract. See definition for Time Purchase Contract. (3-20-97)
45. Invitation to Bid. Means all documents, whether attached or incorporated by reference, utilized for soliciting formal sealed bids. (3-20-97)
46. Lease. A contract for the use of property under which title to the property does not pass to the state agency and the time period is one (1) year or more. (3-20-97)
47. Lease Purchase Option. A lease that provides an option to purchase the property at a predetermined price or fair market value during or at the end of the lease period. May include operating or capital leases. The purchasing option may only be exercised after full compliance with Idaho Code Section 67-5721. (3-20-97)
48. Local Public Purchasing Unit. Means any political subdivision or public agency of any subdivision, public authority, and to the extent provided by law, any other entity which expends public funds for the acquisition of supplies, services, and construction. It includes two (2) or more local public purchasing units acting under legislation which authorizes intergovernmental cooperation. (3-20-97)
49. Lowest Responsible Bidder. The responsible bidder whose bid conforms in all material respects to the Invitation to Bid or Request for Proposal and which reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price. (3-20-97)
50. Multi-Step Sealed Bidding. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the purchasing activity, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. (3-20-97)
51. New Equipment. Refers to property which is new, in first class condition, complete with original manufacturer warranties, and has not been previously used. Demonstrators, previously rented, refurbished, or reconditioned items are not considered new. (3-20-97)
52. Non-Biddable Services. Those services for which bidding or competitive solicitation procedures are rendered impossible or impractical by statute, rules, or generally accepted ethical practices. Such services may be periodically determined by the Division. (3-20-97)
53. Offeror. A registered vendor who has submitted a proposal in response to a Request for Proposal for a specific item or items of property to be acquired by the state. (3-20-97)
54. Parts. Items of personal property acquired for repair or replacement of unserviceable existing items. (3-20-97)
55. Person. Any business, individual, union, committee, club, or other organization, or group of individuals, not including a state or public agency. (3-20-97)
56. Prequalification for Inclusion on Special Bidders' Lists. This means determining that a prospective vendor satisfies the criteria established for receipt of solicitations when and as issued. (3-20-97)
57. Price Analysis. This means the evaluation of price data without analysis of the separate cost components and profit which may assist in arriving at prices to be paid or costs to be reimbursed. (3-20-97)
58. Price Data. This means factual information concerning prices for property or services substantially identical to those being purchased. Prices in this definition refer to offered or proposed selling prices. The definition refers to data relevant to both prime and subcontract prices. (3-20-97)

59. Procurement. The process of obtaining property for state use by lease, rent, or any manner other than by purchase or gift. The term may also refer to a proposed or actual solicitation. (3-20-97)

60. Professional Services. Work rendered by an independent contractor whose occupation is the rendering of such services and who has a professional knowledge of some department 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, veterinarians, and research. The knowledge is founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skills. (3-20-97)

61. 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. Includes concession services and rights to access or use state property or facilities for business purposes. (3-20-97)

62. Proposal. A written response including pricing information to a Request for Proposals which describes the solution or means of providing the property requested by the Request for Proposals and which proposal is considered an offer to perform a contract in full response to the Request for Proposals. Price may be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award. (3-20-97)

63. Public Agency. Means any city or political subdivision of this state, including, but not limited to counties; school districts; highway districts; port authorities; instrumentalities of counties, cities or any political subdivision created under the laws of the state of Idaho; any agency of the state government; or any city or political subdivision of another state. (Idaho Code Section 67-2327.) (3-20-97)

64. Public Purchasing Unit. This is either a local public purchasing unit or a state public purchasing unit. (3-20-97)

65. Purchase. The act of acquiring or procuring property for state use or the result of an acquisition action. (3-20-97)

66. Purchase Description. Means the words used in a solicitation to describe the property or services to be purchased, and includes specifications attached to or made a part of the solicitation. (3-20-97)

67. Purchase Order. See also definition of Contract, typically used to acquire property. It is a notification to the contractor to provide the stated property, required material, equipment, supplies or services under the terms and conditions set forth in the purchase order. It may include the form of the state's acceptance of a bidder's proposal or bid. Generally the term means the acquisition form with one order, one delivery, and one payment type purchases. (3-20-97)

68. Purchasing Activity. The Division or an agency delegated that authority by the Administrator for the Division. (3-20-97)

69. Purchasing Officer. An employee of the Division designated as a buyer, purchasing officer, contract administrator, purchasing agent, contracting officer, or similar designation by the Administrator, including, where appropriate, the Administrator and other management personnel. Also, authorized employee(s) of a Purchasing Activity. (3-20-97)

70. Qualified Products List. A list of supplies or services described by model or catalogue numbers, which, prior to solicitation, the purchasing activity has determined will meet the applicable specification requirements. (3-20-97)

71. Quotation or Quote. An offer to perform a contract to supply property or services in response to an oral, telephonic, facsimile, or written Request for Quotation as generally used in small purchase procedures. (3-20-97)

72. Registered Vendor. A qualified vendor registered with the Administrator of the Division. (3-20-97)
73. Release Order. A purchase order, field order, or other documentation authorizing releases or shipments of property from state or statewide contracts. (3-20-97)
74. Rental. An agreement for the use of property where the total term is less than one (1) year and no right or title of ownership to the State accrues. (3-20-97)
75. Request for Proposal. Includes all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals and is generally utilized in the acquisition of services or complex purchases. (3-20-97)
76. Request for Quotation. The document, form, and/or method used when purchases are solicited in accordance with small purchase procedures, or emergency purchase procedures as authorized by the Administrator of the Division. The request and the quotation in response may be either written, facsimile, or oral as specified by the buyer. (3-20-97)
77. Requisition. A standard state or agency specific form which serves as a purchasing request and which requests that the Purchasing Activity acquire the stated requirements. (3-20-97)
78. Responsive Bidder. This is a registered vendor who has submitted a bid or proposal which conforms in all material respects to the Invitation to Bid or Request for Proposal. (3-20-97)
79. Sealed Bid Limit. That dollar amount, as established in accordance with Idaho Code Section 67-5718, above which the formal sealed bid procedure will be used. Said amount may be lowered by the Administrator to maintain full disclosure or competitive purchasing or otherwise achieve overall state efficiency and economy. (3-20-97)
80. Services. Personal, general, professional, or consultant services, in excess of personnel regularly employed for whatever duration and/or covered by personnel system standards, for which bidding or competitive solicitation is not prohibited or made impractical by statute, rules and regulations or generally accepted ethical practices. (3-20-97)
81. Small Purchase. An acquisition which costs less than the formal sealed bid limit established by Idaho Code Section 67-5718. (3-20-97)
82. Sole Source Purchase. A purchase of property or services which perform a certain function for which no other items are known to exist or that will perform the same required functions and which is clearly and legitimately limited to a single source of supply. It does not include property which is proprietary to a single manufacturer but which is available from multiple sources. (3-20-97)
83. Solicitation. Means an Invitation to Bid, a Request for Proposals, or any other document, such as a Request for Quotations, issued by the Purchasing Activity for the purpose of soliciting bids, proposals, quotations, or offers to perform a contract. (3-20-97)
84. Specifications. The explicit requirements furnished with a solicitation upon which a purchase order or contract is to be based. Specifications set forth the characteristics of the property and services to be purchased so as to enable the vendor to determine and understand that which is to be supplied. 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 requirement for inspecting, testing, or preparing a material, equipment, supplies, or service for delivery. Specifications may be incorporated by reference and/or through attachment to the solicitation. (3-20-97)
85. State. This means the state of Idaho including each agency unless the context implies other states of the United States. (3-20-97)
86. State or Statewide Contract. Contracts for property and/or services administered by the Division on

behalf of or for the benefit of an agency. Statewide contracts apply to more than one agency. The contract document will identify the conditions under which usage by agencies is required. (3-20-97)

87. Supplier. A vendor of purchased or procured property and services. (3-20-97)

88. Supplies. Items of personal property having an expendable quality or during their normal use are consumed and which require or suggest acquisition in bulk. (3-20-97)

89. Time Purchase Contract. A contract for property providing for periodic payments for a specified time (generally more than one fiscal year) and containing provisions for title to pass to the state with the contractor retaining a purchase money security interest pending completion of all payments. (3-20-97)

90. Used Equipment. Property offered for sale to the state which may not have a full factory warranty. Such property may include demonstrators, previously rented, leased, refurbished, or reconditioned equipment. (3-20-97)

91. Using Agency. This means any agency which utilizes any property or services purchased under Chapter 57, Title 67 of the Idaho Code. (3-20-97)

92. Vendor. A person or entity capable of supplying property to the state. (3-20-97)

93. Vendor List. List of registered vendors maintained by the Division from which names may be drawn for solicitation of bids/proposals/quotes. (3-20-97)

012. -- 020. (RESERVED).

021. DELEGATION OF AUTHORITY OF ADMINISTRATOR.

The Division shall administer the acquisition of all property for state agencies except those for which the agencies have separate statutory purchasing authority. The Administrator may delegate in writing such authority as deemed appropriate to any employees of the Division or of a Purchasing Activity, respectively. Such delegations shall remain in effect unless modified or until revoked in writing. All delegations must be given in writing prior to the acquisition of the property. All acquisitions must be made according to these purchasing rules. (3-20-97)

022. AUTHORITY OF DELEGATED PURCHASES.

01. General. The Administrator may delegate to any using agency the authority to make a purchase expected to be less than the amount set forth in Section 67-5718, Idaho Code, for property including services. Any such delegation shall be in writing and may be limited as the Administrator directs. (3-20-97)

02. Purchasing Activities Shall Make Small Purchases Pursuant to Purchasing Rules. Purchasing activities shall exercise such authority as may be delegated and such small purchases shall be made pursuant to these rules. Such delegated small purchases shall be subject to periodic reporting or special requests as directed by the Administrator. (3-20-97)

023. AUTHORITY OF BUYERS OR PURCHASING OFFICERS.

Buyers or Purchasing officers may take any action of a purchasing nature to advance economic well-being and efficient operation of the state or agency so long as that action is not in conflict with the Idaho Code or the Rules of the Division. (3-20-97)

024. -- 029. (RESERVED).

030. TYPES OF PURCHASING.

Acquisition of property by the Division is divided into three (3) major types: (3-20-97)

01. State Contracts. Contracts for property and/or services established and administered by Division on behalf of agencies. The contract document will identify the condition(s) under which usage by agencies is required. (3-20-97)

02. Single Acquisitions. Acquisition of property for which an agency does not have statutory authority, non-delegated authority or for which there is no existing state contract. Single acquisitions must be initiated by submitting a requisition to the Division. If a proprietary item is required, the agency must attach adequate justification. (3-20-97)

03. Small Purchases or Special Delegation. The Division, or Purchasing Activity pursuant to written delegation of authority, may acquire property which costs less than the sealed bid amount established by Idaho Code Section 67-5718. A special delegation is a special delegation to a buyer within an agency to make a single acquisition of property. All small purchases and special delegations must be made in accordance with the small purchase rules herein. (3-20-97)

031. COOPERATIVE PURCHASING POLITICAL SUBDIVISIONS.

The various bid statutes relating to municipal corporations, school districts and counties may authorize these political subdivisions to utilize any contract resulting from a state bid process. A political subdivision or public agency may use state contracts as authorized by statute and the terms of the state contract. (3-20-97)

032. -- 049. (RESERVED).

050. PROCEDURE FOLLOWED IN THE SOLICITATION OF BIDS.

Except as otherwise provided, the acquisition of property and general services exceeding the sealed bid limit shall be by the formal sealed bid procedure. The Invitation to Bid may call for bid prices with and without trade-ins. (3-20-97)

051. EXCEPTIONS TO FORMAL SEALED BID PROCEDURE.

Purchases meeting the following criteria need not be purchased by formal sealed bid: (3-20-97)

01. Emergency Purchases. Emergency purchases as authorized by Idaho Code Section 67-5720 and these rules; (3-20-97)

02. Purchases Less Than Bid Limits. Purchases not exceeding the sealed bid limit unless the Administrator specifically requires a formal sealed bid; (3-20-97)

03. Sole Source Purchases. Single source, special facilities, services, or market conditions. Purchases which are clearly and legitimately limited to a single source of supply and purchases involving special facilities, services, or market conditions may be acquired through direct solicitation with documented source selection, as authorized by Idaho Code Section 67-5720 and these rules; (3-20-97)

04. Federal Government Acquisitions. Acquisitions from the United States of America or any agency thereof; (3-20-97)

05. Rehabilitation Agency Acquisitions. Acquisitions of property which are provided by non-profit corporations and public agencies operating rehabilitation facilities serving the handicapped and disadvantaged and which are offered for sale at fair market price as determined by the Administrator in accordance with these rules; or (3-20-97)

06. Correctional Industries. Purchases of road or street signs, metal motor license plates, wearing apparel, furniture, articles, or containers for state use not for resale on the open market or any other property marketed directly by Correctional Industries. See Idaho Code Section 20-245. (3-20-97)

07. Purchases from GSA Federal Supply Contractors. Acquisitions of property may be made from GSA federal supply contractors without the use of competitive bid. The Administrator shall determine whether such property meets the purchasing activity's requirements and whether the price of acquisition is advantageous to the state. The Administrator shall commemorate the determination in a written statement which shall be incorporated in the applicable file. If the Administrator determines that the acquisition of property from GSA contractors is not advantageous to the state, the acquisition shall be in accordance with competitive bidding procedures and requirements; (3-20-97)

08. Existing State or Statewide Contracts. Supplies, services, or other property available under these contracts shall be purchased under such contracts in accordance with the provisions or requirements for use thereof. (3-20-97)

09. Exempt Purchases. By written policy the Administrator may exempt from formal sealed bidding or the requirement for competitive solicitation those items of property for which bidding is impractical, disadvantageous, or unreasonable under the circumstances. Examples include, but are not limited to, special market conditions, property requiring special contracting procedures due to uniqueness, legal advertising, publication or placement of advertisements by state agency personnel directly with media sources, or services for which competitive solicitation procedures are impractical. Such policy shall describe the property exempted, the duration of the exemption, and any other requirements or circumstances appropriate to the situation. (3-20-97)

052. DETERMINATION OF FAIR MARKET PRICE FOR REHABILITATION AGENCY ACQUISITIONS.

Upon receipt of a rehabilitation agency proposal accompanied by detailed cost data, the Administrator will conduct a survey of the market place by requesting current prices from at least three (3) vendors currently marketing the property being sought. The fair market price of a rehabilitation vendor shall not be greater than twenty-five percent (25%) of the lowest price received during the survey. The Administrator will notify by letter the rehabilitation agency concerned advising it as to whether it is offering property at fair market price. The Division, or Purchasing Activity if the acquisition is less than the formal sealed bid amount and/or the contract is one year or less in duration, may then contract with the rehabilitation agency at the proposed price. (3-20-97)

053. -- 055. (RESERVED).

056. BIDS IN GENERAL.

All bids are subject to the Invitation to Bid or Request for Proposal, the specifications and plans, the applicable contract terms and conditions and the rules set forth herein. In the event of conflict among any of the above, the following order shall govern: (3-20-97)

01. Rules; (3-20-97)
02. Specifications and Plans; and (3-20-97)
03. Applicable Contract Terms and Conditions. (3-20-97)

057. PUBLIC NOTICE.

A listing or copy of all acquisitions being made through formal sealed bid by or through the Division shall be posted in the public area of the Division at its primary office location. Acquisitions issued pursuant to a specific delegation shall be posted or otherwise publicized by the purchasing office of that agency, or otherwise publicized prominently in the office of the using agency, or as otherwise directed by the Administrator. In addition, the Administrator may authorize electronic posting of acquisition notices. (3-20-97)

058. -- 059. (RESERVED).

060. CONTENT OF THE INVITATION TO BID.

The following shall be included in an Invitation to Bid. (3-20-97)

01. Use. The Invitation to Bid is used to initiate a competitive sealed bid acquisition. (3-20-97)
02. Content. The Invitation to Bid, including any addendum, shall contain the following. (3-20-97)
 - a. Instructions and information to vendors concerning the bid submission requirements, including the time and closing date for submission of bids, the address of the office to which bids are to be delivered, and any other special information; (3-20-97)
 - b. The purchase description, evaluation factors, delivery or performance schedule, and inspection and

acceptance requirements not included in the purchase description; (3-20-97)

c. Any evaluation criteria to be used in determining property acceptability, to include, but not be limited to, requirements for submission of bid samples, descriptive literature, technical data, or other material. It may also provide for: (3-20-97)

i. Inspection or testing of property prior to award for such characteristics as quality of workmanship; (3-20-97)

ii. Examination of such elements as appearance, finish, taste, or feel; or (3-20-97)

iii. Other examinations to determine whether it conforms with any other purchase description requirements. The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the Invitation to Bid. Any bidder's offering which does not meet the acceptability requirements shall be rejected; and (3-20-97)

d. If trade-in property is to be included, a description of the property and location where it may be inspected must be included. Any trade-in requests require the prior approval by the Administrator before inclusion in the bid solicitation documents; and (3-20-97)

e. The contract terms and conditions, including warranty and bonding or other security requirements, as applicable. (3-20-97)

03. Incorporation by Reference. The Invitation to Bid may incorporate documents by reference provided that the Invitation to Bid specifies where such documents can be obtained. (3-20-97)

04. Acknowledgment of Amendments/Addenda. The Invitation to Bid should require the acknowledgment by the bidder of the receipt of all amendments/addenda issued. The right is reserved to waive any informality. (3-20-97)

061. BIDDING TIME.

The bidding time shall be as determined by the buyer involved. All invitations to bid shall provide reasonable time to allow bidders an opportunity to prepare and submit their bid. The buyer shall have the discretion to lengthen or shorten bid times, should special circumstances or needs dictate a shorter or longer time frame. In no event shall the bid time be less than ten (10) days from the date of notice to the bid opening date, unless an emergency has been declared to exist by the Administrator. When extending or shortening the time allowed to submit a bid, the buyer is to issue an addendum notifying vendors of the revised opening/due date. If it is determined that regular mail will not reach vendors in time to respond, the buyer shall attempt to notify each prospective vendor by telephone or other available means of communication. All bids must be received by the date and time specified for bid opening. No deviations will be allowed. 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 Purchasing Activity. (3-20-97)

062. BIDDER SUBMISSIONS.

The Invitation to Bid shall provide an official or authorized form which shall include space in which the bid price shall be inserted and which the vendor shall sign and submit along with all other necessary submissions. (3-20-97)

01. Telegraphed Bids. Telegraphed bids will not be accepted unless solicited under emergency procedures. Timely bids may be modified by telegraphic communications under the procedures established for bid modifications. (3-20-97)

02. Telephone Bids. Telephone bids will not be accepted unless solicited under emergency purchase procedures. Telephone withdrawals of bids will not be accepted. (3-20-97)

03. Facsimile Bids. Facsimile bids will not be accepted unless solicited under emergency procedures. A facsimile withdrawal of a bid may be accepted, provided such request is made in accordance with these rules. (3-20-97)

04. Bid Samples and Descriptive Literature. (3-20-97)

a. Descriptive literature means information available in the ordinary course of business which shows the characteristics, construction, or operation of an item and assists the Purchasing Activity in considering whether the item meets requirements or criteria set forth in the Invitation to Bid. (3-20-97)

b. Bid sample means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid. (3-20-97)

c. Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid. (3-20-97)

d. Sample of items, when called for in the Invitation to Bid, must be furnished free of expense, and if not destroyed by testing, will upon request, be returned at the bidder's expense. Samples submitted by the successful bidder may be held for comparison with property furnished and will not necessarily be returned. Samples must be labeled or otherwise identified as called for by the Purchasing Activity. (3-20-97)

e. Samples accepted by the Purchasing Activity will create an express or implied warranty that the property offered in future shipments or orders will meet the same quality and characteristics of the accepted sample. (3-20-97)

05. Bid Security. Bid and performance bonds or other security may be required for purchase order contracts or other contracts as the Administrator deems advisable to protect the interests of the using agency. Any such requirements must be set forth in the solicitation. Bid or performance bonds should not be used as a substitute for a determination of bidder or offeror responsibility. (3-20-97)

06. Specification Warranty. Unless the submitted bid is clearly identified as an alternate, bidders warrant the property and services bid to be at least equal to specifications on the Invitation to Bid and shall submit with their bid complete documentation sufficient to so establish. Bids without sufficient documentation submitted with the bid may be rejected. If a bidder misrepresents their bid as being an equal when it is an alternate, the bid may be rejected. (3-20-97)

063. PUBLIC NOTICE.

Notification of bids shall be made to the public, which notification may include electronic posting of bid notices or bidding opportunities. (3-20-97)

01. Notice Distributed. Notice shall be sent to each registered vendor of the property to be acquired, except that if there are more than ten (10) registered vendors for the property to be acquired, the Administrator may, at his discretion, limit the notices sent to ten (10). Selection of the vendors to be given notice by the buyer should give priority to those registered vendors located closest to the delivery destination of the property to be acquired. Should there be more than ten (10) registered vendors with identical distances from the point of delivery, then the minimum number of vendors may be randomly picked from the applicable category(s) of the registered vendor list. For all proposed purchases exceeding two hundred thousand dollars (\$200,000), all registered vendors for the property to be acquired shall either be sent pre-survey information or a copy of the solicitation. Nothing shall prevent all registered vendors from bidding on the property to be acquired. (3-20-97)

02. Contents of Notice. The notice shall describe the property to be acquired in sufficient detail to apprise a vendor of the exact nature or the functionality of the required property. The notice shall give the time and place where bids will be opened. The notice, if it does not contain the specifications, shall state where and how specifications and required solicitation documents can be obtained. The notice may also contain other appropriate information. (3-20-97)

064. REGISTERED VENDOR LISTS.

Vendors must be registered with the Division in accordance with the applicable law and these rules. Vendor lists, categorized according to specific categories of purchased goods, services and property, shall be maintained and updated by the Division. Such lists are used by buyers to determine vendors from which to solicit bids. Due to cost

considerations not all vendors are solicited for each bid invitation. In order to be considered for inclusion on a vendor list, vendors must apply to the Division. (3-20-97)

065. (RESERVED).

066. PRE-BID CONFERENCES.

Pre-bid conferences may be conducted to explain the solicitation requirements. They shall be announced to all prospective vendors known to have received an Invitation to Bid. The conference should be held long enough after the Invitation to Bid has been issued to allow vendors to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation to Bid unless a change is made by written amendment/addenda as provided in accordance with these rules and the Invitation to Bid and the notice of the pre-bid conference shall so provide. If a written summary of the conference is deemed advisable by the buyer, a copy shall be supplied to all those prospective vendors known to have received an Invitation to Bid and shall be available as a public record. (3-20-97)

067. AMENDMENT OF INVITATION TO BID.

An Invitation to Bid may be changed or amended by the buyer involved through issuance of an addendum, provided the change is issued in writing prior to the bid opening date and issued to all vendors receiving a copy of the original invitation. Any material information given or provided to a prospective vendor with regard to an Invitation to Bid, shall be furnished in writing by the buyer to all vendors receiving a copy of the original invitation. Oral interpretations of specifications or contract terms and conditions shall not be binding on the Division unless confirmed in writing by the buyer and acknowledged by the Division prior to the date of the bid opening. (3-20-97)

01. Application. Amendments or addenda should be used to. (3-20-97)
 - a. Make any changes in the Invitation to Bid such as changes in quantity, purchase descriptions, delivery schedules, and opening dates; (3-20-97)
 - b. Correct mistakes, defects, or ambiguities; or (3-20-97)
 - c. Furnish to other vendors information given to one vendor if such information will assist the other vendors in submitting bids or if the lack of such information would be inequitable to other vendors. (3-20-97)
02. Form. Amendments to the Invitation to Bid shall be identified as such and should require that the vendor acknowledge receipt of all amendments or addenda issued. (3-20-97)
03. Distribution. Amendments/addenda shall be sent to all prospective vendors known to the buyer to have received an Invitation to Bid. (3-20-97)
04. Timeliness. Amendments/addenda shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time set for bid opening will not permit such preparation, the bid opening time may be rescheduled upon notice to the prospective bidders. (3-20-97)

068. PERFORMANCE GUARANTEES.

When required in the Invitation to Bid, the successful bidder shall post a performance and/or payment and material guarantee unilaterally payable to the state of Idaho after notice of award. The amount of the performance guarantee shall be identified in the Invitation to Bid in dollars and/or a percentage of contract worth sufficient to redress damages to the state in the event of breach by the contractor(s). The required performance guarantee shall be in the form of a surety bond with a surety company authorized to transact business in Idaho or an approved government obligation. Surety bonds must be on a form approved by the Division. Personal or company checks are not acceptable. The performance guarantee shall be held by the Division or deposited to the Division account until contract terms have been fully executed to satisfaction. Interest will not be paid on funds deposited directly with the Division. Failure to submit a performance and/or payment and material bond as required in the Invitation for Bids shall be grounds for rejection, cancellation, rescission or contract termination. (3-20-97)

069. -- 085. (RESERVED).

086. FORM OF BID.

To receive consideration, bids shall be made on the form provided by the Purchasing Activity, be properly headed and signed, properly marked on the outside of the envelope, received by the date and time specified, and be accompanied by a signed and properly completed bid form provided by the Purchasing Activity. Bids must be filled out in ink or typewritten and properly signed by an authorized representative of the bidder. Photocopied or facsimile signatures will not be acceptable. All changes and/or erasures shall be initialed in ink. Unsigned bids will be rejected on opening. (3-20-97)

087. ACCEPTANCE OF ALTERNATE BID.

The buyer shall be under no obligation whatever to accept alternate bids, but shall have the discretion to accept a bid if it substantially conforms to the bid specifications. (3-20-97)

088. BID SECURITY.

Bids must be delivered to the designated location at the Purchasing Activity and placed in a secure bid depository on or before the bid opening time stipulated on the Invitation to Bid. (3-20-97)

089. -- 095. (RESERVED).

096. PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS.

Bids may be modified or withdrawn as set forth herein. (3-20-97)

01. Procedure. Bids may be modified or withdrawn by written communication over the signature of the bidder at any time prior to the closing of the bid. (3-20-97)

a. Requests for withdrawal in person shall require presentation of satisfactory evidence establishing the individual's authority or representation to act on behalf of the bidder. A request for telegraphic or facsimile withdrawal of a bid must be received prior to the closing date and time of the bid. The Purchasing Activity does not assume any responsibility for failure of facsimile transmission or equipment. (3-20-97)

b. A modification may be submitted by letter or telegraphic communication, provided that the bid and the letter or telegram are received prior to the closing date and time of the bid. Facsimile bid modifications will not be allowed or considered unless solicited under emergency procedures. The modification (if telegraphic) must be confirmed in writing, over an original signature of the bidder. The written confirmation must be mailed and postmarked no later than the closing date of the bid. The letter or telegram should be so worded as not to reveal the amount of the original bid. If the written confirmation of a modification is not received within two (2) working days from the bid closing date, no consideration will be given to the telegraphic modification. Any telegraphic communication relative to a bid must state the bid closing date, time and the bid number. On written communications, the bid closing date, time and the bid number, should appear on the outside of the envelope to prevent premature disclosure of the information. (3-20-97)

02. Disposition of Bid Security. Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted. (3-20-97)

03. Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate purchasing file. (3-20-97)

097. LATE BIDS, LATE WITHDRAWALS, AND LATE MODIFICATIONS.

The following procedures are established relative to late bids, late withdrawals and late modifications to bids. (3-20-97)

01. Definition. Any bid, withdrawal, or modification received at the address designated in the Invitation to Bid after the time and date set for opening of bids at the place designated for opening is late. (3-20-97)

02. Treatment. No late bid, late modification, or late withdrawal will be considered. (3-20-97)

03. Records. Documentation relating to any late bid, late modification, or late withdrawal shall be kept and maintained by the Division. (3-20-97)

098. RECEIPT, OPENING, AND RECORDING OF BIDS.

The following establishes a process for the receipt, opening and recording of bids. (3-20-97)

01. Receipt. Upon receipt, all bids and modifications properly marked and identified will be time stamped, but not opened. They shall be stored in a secure place until bid opening time. (3-20-97)

02. Opening and Recording. Bids and modifications shall be opened publicly at the time and place designated in the Invitation to Bid. The names of the bidders, the bid price (unless otherwise stated in the solicitation), and such other information as is deemed appropriate by the buyer, shall be read aloud or otherwise be made available. The opened bids shall be available for public inspection except to the extent the bidder designates which portion of the bid contains trade secrets or other proprietary data. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the remaining portion of the bid. Make, model, or catalogue numbers of the items offered, deliveries, prices, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary. The buyer shall decide when the time set for bid opening has arrived and shall so declare to those present. The bid form may not be completed, signed, amended or clarified after official opening time. Bids must remain under the control of the buyer or authorized staff. (3-20-97)

03. Public Inspection of Bids. The Idaho Public Records Act will control the extent of public inspection of bids received by the Purchasing Activity. (3-20-97)

099. MISTAKES IN BIDS.

The following procedures are established relative to claims of a bid mistake. (3-20-97)

01. Mistakes in Bids. If a mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible, but at the discretion of the Administrator and to the extent it is not contrary to the interest of the Division or the fair treatment of other bidders. (3-20-97)

02. Mistakes Discovered Before Opening. Mistakes in bids detected prior to bid opening may be corrected by the bidder by submitting a timely bid modification or withdrawing the original bid and submitting a corrected bid to the Purchasing Activity before the bid opening. (3-20-97)

03. Mistakes Discovered After Opening But Before Award. This subsection sets forth procedures to be applied in three situations described in Subsections 099.03.a., 099.03.b. and 099.03.c. below in which mistakes in bids are discovered after opening but before award. (3-20-97)

a. Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; 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 the failure of a bidder to: (3-20-97)

i. Return the number of signed bids required by the Invitation to Bid; (3-20-97)

ii. Acknowledge the receipt of an amendment or addendum to the Invitation to Bid, but only if: (3-20-97)

(1) It is clear from the bid that the bidder received the amendment/addendum and intended to be bound by its terms; or (3-20-97)

(2) The amendment/addendum involved had a negligible effect on price, quantity, quality, or delivery. (3-20-97)

b. Mistakes Where Intended Bid is Evident. If the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit

prices (unit prices will always govern in event of conflict with extension), transposition errors, and arithmetical errors. (3-20-97)

- c. Mistakes Where Intended Bid is not Evident. A bidder may be permitted to withdraw a low bid if: (3-20-97)
 - i. A mistake is clearly evident on the face of the bid document but the intended bid is not similarly evident; or (3-20-97)
 - ii. The bidder submits timely proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made. (3-20-97)
- 04. Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract. (3-20-97)
- 05. Written Approval or Denial Required. In the event of a bid mistake discovered after the opening date, the Administrator shall approve or deny, in writing, a bidder's request to correct or withdraw a bid. Such approval or denial may be so indicated on the bidder's written request for correction or withdrawal. (3-20-97)

100. BID EVALUATION AND AWARD.

The Purchasing Activity conducting the bid shall determine the low responsible bidder after evaluating the bids. Any contract award shall comply with these provisions. (3-20-97)

- 01. General. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid. The Invitation to Bid shall set forth the requirements and criteria which will be used to determine the lowest responsive and responsible bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the Invitation to Bid. (3-20-97)
- 02. Bid Responsiveness. Responsiveness is defined as that bid which conforms in all material respects to the Invitation to Bid. (3-20-97)
- 03. Standards of Bidder Responsibility. Nothing herein shall prevent the buyer from establishing additional responsibility standards for a particular purchase, provided that these additional standards are set forth in the solicitation. Among factors to be considered in determining whether the standard of responsibility has been met are whether a bidder has: (3-20-97)
 - a. Available 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; (3-20-97)
 - b. A satisfactory record of integrity; (3-20-97)
 - c. Qualified legally to contract with the purchasing activity and qualified to do business in the state of Idaho; (3-20-97)
 - d. Unreasonably failed to supply any necessary information in connection with the inquiry concerning responsibility; (3-20-97)
 - e. Experience; or (3-20-97)
 - f. Prior performance record, if any. (3-20-97)
- 04. Information Pertaining to Responsibility. A bidder shall supply information requested by the buyer concerning the responsibility of such bidder. If such bidder fails to supply the requested information, the buyer shall base the determination of responsibility upon any available information or may find the bidder nonresponsible if such failure is unreasonable. (3-20-97)

05. Ability to Meet Bidder Responsibility Standards. The bidder may demonstrate the availability of necessary financing, equipment, facilities, expertise, personnel and other necessary information by submitting upon request: (3-20-97)

- a. Evidence that such bidder possesses such necessary items; (3-20-97)
- b. Acceptable plans to subcontract for such necessary items; or (3-20-97)
- c. A documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items. (3-20-97)

06. Written Determination of Nonresponsibility Required. If a bidder or offeror who 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. The determination shall be made part of the purchase file. (3-20-97)

07. Determination of Lowest Responsible Bidder. Bids will be evaluated to determine overall economy for the intended use, in accordance with the evaluation criteria set forth in the Invitation to Bid. Examples of such criteria include but are not limited to, transportation cost, energy cost, ownership and other identifiable costs or life-cycle cost formulae. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall: (3-20-97)

- a. Be reasonable estimates based upon information the Purchasing Activity has available concerning future use; (3-20-97)
- b. Treat all bids equitably; (3-20-97)
- c. Review the ability, capacity and skill of the bidder to perform the contract or provide the services required; (3-20-97)
- d. Review the character, integrity, reputation, judgment, experience and efficiency of the bidder; (3-20-97)
- e. Review whether the bidder can perform the contract within the time specified; (3-20-97)
- f. Review the quality of performance on previous contracts for purchased property or services; (3-20-97)
- g. Review the previous and existing compliance by the bidder with the laws relating to the contract for property and/or services; (3-20-97)
- h. Review servicing resources, capability and capacity; (3-20-97)
- i. Review lack of uniformity or interchangeability, if such factors are important; (3-20-97)
- j. Review the energy efficiency of the product as projected throughout the anticipated useful life of the product; (3-20-97)
- k. Review such other information as may be secured having a bearing on the decision to award the contract. (3-20-97)

08. Extension of Time for Bid Acceptance. After opening bids, the buyer may request bidders to extend the time during which their bids may be accepted, provided that, with regard to bids, no other change is permitted. The reasons for requesting such extension shall be documented. (3-20-97)

09. Only One Bid Received. If only one responsive bid is received in response to an Invitation to Bid (including multi-step bidding), an award may be made to the single bidder if the buyer finds that the price submitted

is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise, the bid may be rejected and: (3-20-97)

- a. New bids or offers may be solicited; (3-20-97)
- b. The proposed acquisition may be canceled; or (3-20-97)
- c. If the buyer determines in writing that the need for the property or service continues but that the price of the one (1) bid is not fair and reasonable and there is no time for resolicitation or that resolicitation would likely be futile, the purchase may then be conducted as a sole source or emergency purchase as appropriate. (3-20-97)

10. Multiple or Alternate Bids. Unless multiple or alternate bids are specifically provided for, the solicitation shall state they will not be accepted. When prohibited, the multiple or alternate bids shall be rejected although a clearly indicated base bid shall be considered for award as though it were the only bid submitted by the bidder. (3-20-97)

101. ACCEPTANCE OR REJECTION OF BIDS.

Prior to the issuance of a purchase order or contract, the Administrator shall have the right to accept or reject all or any part of a bid or any and all bids when: (3-20-97)

01. Best Interest. It is in the best interests of the state of Idaho; (3-20-97)
02. Does Not Meet Specifications. The bid does not meet the minimum bid specifications; (3-20-97)
03. Not Lowest Responsible Bid. The bid is not the lowest responsible bid; (3-20-97)
04. Bidder is Not Responsible. A finding is made based upon available evidence that a bidder is not responsible or otherwise capable of currently meeting specifications or assurance of ability to fulfill contract performance; or (3-20-97)
05. Deviations. The item offered deviates to a major degree from the bid specifications, as determined by the Administrator (minor deviations, as determined by the Administrator, may be accepted as substantially meeting the bid requirements of the state of Idaho). Deviations will be considered major when such deviations appear to frustrate the competitive bidding process or provides a bidder an unfair advantage. (3-20-97)

102. CANCELLATION OF INVITATION TO BID OR REJECTION OF ALL BIDS.

Prior to the issuance of a purchase order or contract, the Purchasing Activity reserves the right to reject all bids or to cancel an Invitation to Bid. In the event of a cancellation of an Invitation to Bid or in the event all bids are rejected, all bidders will be notified by mail. Examples of reasons for cancellation of an Invitation to Bid or rejection of all bids are: (3-20-97)

01. Inadequate or Ambiguous Specifications. (3-20-97)
02. Specifications Have Been Revised. (3-20-97)
03. Property or Services Being Purchased Are No Longer Required. (3-20-97)
04. Change in Agency Requirements. (3-20-97)
05. All Bids Deemed Unreasonable. All bids are deemed unreasonable or sufficient funds are not available. (3-20-97)
06. Bids Submitted in Bad Faith. Bids were not independently arrived at, or were submitted in bad faith. (3-20-97)
07. Bid Requirements Have Not Been Met. A determination is made that all the necessary requirements

of the bid process have not been met. (3-20-97)

08. Insufficient Competition. (3-20-97)

09. Cancellation or Rejection is in Best Interest of State. For reasons which indicate that cancellation or rejection of all bids is clearly in the best interest of the state. (3-20-97)

103. -- 105. (RESERVED).

106. IN STATE PREFERENCES.

In accordance with Idaho Code Sections 67-2349, 67-5718, 60-101 and 60-103, the Administrator shall compile a list of each state, relating to state purchasing, which statutes or regulations the Administrator believes grant a preference to vendors domiciled within that state. This list shall be updated on a periodic basis. The list shall include only those states with currently active in-state preference provisions for acquiring property and services and shall contain the percentage of preference allowed. States with only reciprocity legislation will not be included on the list. The Division will be responsible for the official compilation of the list and notification to impacted state agency, college and university purchasing offices. (3-20-97)

01. Domicile of Bidder. For the purposes of determining whether to assess a percentage penalty against a bidder's bid, and the amount of that penalty, the buyer in charge of the bid will consider only the address of domicile stated in the bid proposal document. (3-20-97)

02. Penalty Application Procedure. Buyers will add the appropriate percentage penalty to each bid bearing the address from a state with in-state preference rather than subtracting a like amount from Idaho domiciled bidders. (3-20-97)

03. Bid Analysis Procedure. The action of adding a percentage penalty will be used only for bid analysis and award purposes. In no instance shall the increase be paid to a bidder whose bid is accepted. (3-20-97)

107. PARTIAL AWARD.

A buyer shall have the discretion to award on an "all or nothing" basis or to accept any portion of the items bid, excluding others unless the bidder stipulates all or nothing on their bid. (3-20-97)

108. TIE BIDS.

The following provisions shall apply to tie bids as defined herein. (3-20-97)

01. Definition. Tie bids are low responsive bids from responsible bidders that are identical in price or score. (3-20-97)

02. Award. Award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders. In the discretion of the buyer, award shall be made in any permissible manner that will discourage tie bids. Procedures which may be used to discourage tie bids include: (3-20-97)

a. If price is considered excessive or for other reason such bids are unsatisfactory, reject all bids, rebid and seek a more favorable contract in the open market; (3-20-97)

b. Award to Idaho resident or Idaho domiciled bidder or for an Idaho produced product where other tie bid(s) are from out of state or to a bidder submitting a domestic product where other tie bid is for foreign (external to Idaho) manufactured or supplied property; (3-20-97)

c. Where identical low bids include the cost of delivery, award the contract to the bidder farthest from the point of delivery; (3-20-97)

d. Award the contract to the identical bidder who received the previous award and continue to award succeeding contracts to the same bidder so long as all low bids are identical; (3-20-97)

e. Award to the identical bidder with the earliest delivery date. (3-20-97)

03. Drawing Lots. If no permissible method will be effective in discouraging tie bids 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 only two (2) tie bids. (3-20-97)

04. Record. Records shall be made of all Invitations to Bid on which tie bids are received showing at least the following information: (3-20-97)

- a. The Invitation to Bid identification number; (3-20-97)
- b. The property to be acquired; (3-20-97)
- c. All the bidders and the prices submitted; and (3-20-97)
- d. Procedure for resolving tie bids. (3-20-97)

109. STANDARD NOTICE FOR AWARD.

A standard notice of contract award, or in the case of a single acquisition, a purchase order or field purchase order, will normally be mailed to the successful bidder. (3-20-97)

110. NOTICE OF REJECTION.

No rejection notice need be sent to unsuccessful bidders (including potentially non-responsive bidders) submitting higher bid pricing than the awarded low bidder. Bidders whose bids are rejected as non-responsive will be notified in writing of the reasons for such rejection. (3-20-97)

111. -- 115. (RESERVED).

116. ACCEPTANCE OF TERMS.

Acceptance of bids shall be expressly limited to the terms and conditions of the Invitation to Bid issued by the Purchasing Activity. All material alterations, additional or different terms proposed by the bidder shall be and are rejected unless otherwise provided for in writing by the Administrator or designee. (3-20-97)

117. -- 119. (RESERVED).

120. VIOLATION OF CONTRACT TERMS.

01. Delivery on Time. If a contractor fails to deliver, or deliver on time, or there is discrepancy in the quality and/or quantity of services or property received, or there is a default in any other contract provision on a state contract or purchase order, the agency shall promptly notify the contractor in writing. In the event of an unsatisfactory response from the contractor, the agency shall file a fully documented complaint with the Division. (3-20-97)

02. Verification of Complaint. The Division shall verify the complaint, note the same in the contract file and take appropriate action. Where a complaint is justified, the contractor shall be notified that an unsatisfactory condition exists and that the unsatisfactory condition must be cured within a stated time. If the condition is not timely cured, the Division shall have the discretion to do any or all of the following: (3-20-97)

- a. To remove the contractor from the relevant registered vendor list; (3-20-97)
- b. Demand performance of the contract; (3-20-97)
- c. Modify or cancel the contract and purchase elsewhere; and (3-20-97)
- d. Pursue any other legal remedies available. (3-20-97)

121. OFFSET AGAINST CONTRACTOR PAYMENTS.

In addition to other methods of collection available, the Purchasing Activity may offset any damages for which the contractor is responsible against payments owing to the contractor from any agency which may be indebted to the

contractor. (3-20-97)

122. -- 124. (RESERVED).

125. DELIVERY DATE.

Whenever a specific delivery date has been stated, that date shall be an essential condition of the contract. If a contractor is unable to meet the delivery date, the contractor shall notify the buyer at the earliest possible time. The contractor shall include in such notification the projected revised delivery date. The buyer shall then have the option to accept such revised dates, or provide notice in accordance with IDAPA 38.05.01, Subsection 120. (10-1-98)T

126. PRICE ESCALATION.

Contractors shall not be entitled to price escalation except where specifically provided for in writing in the contract or purchase order. (3-20-97)

127. CHANGE IN PROPERTY OFFERED.

A contractor shall not be allowed to substitute property and services from that offered: Provided, however, if the property or services offered are no longer available to the bidder or contractor for reasons beyond its control, the buyer may consider a request by the bidder or contractor for substitution. All such requests must be in writing, must set forth the reasons the product or service is no longer available, and must be accompanied by samples, record of performance, certified copies of tests by impartial and recognized laboratories, and such additional data as the buyer may request. Samples and data shall be furnished sufficiently in advance to allow for investigation before a decision is made. The contractor shall warrant that the contracted article is equal or better in quality than the specified article. If the change results in any cost savings to the contractor, the cost savings shall be reflected in full in a reduction in price to the using agency. State contracts (or relevant release orders) or purchase orders may only be so amended by the Division. (3-20-97)

128. EXTENSION OR RENEWAL OF CONTRACTS.

01. Extension of Contract. If contract provisions allow, a contractor and the Purchasing Activity may covenant and agree that the contract in question may be extended for predetermined periods by the Purchasing Activity under the same terms and conditions as comprise the original contract. (3-20-97)

02. Justification for Extension of Contract. The buyer shall have discretion to extend a contract with the justification for extension being documented. The buyer should attempt to ascertain whether a new competitive acquisition is practical, in terms of pertinent competitive and costs factors, and would be more advantageous to the agency than extension of the existing contract. The contractor shall be notified in writing of the intent to extend prior to the termination date of the existing or extended contract. If the contractor does not wish to have the contract extended, the contractor shall so notify the Purchasing Activity in writing. Extensions, to be effective, must be in writing and signed by authorized representatives of both the contractor and Purchasing Activity. (3-20-97)

129. ADDITIONS OR DELETIONS TO THE CONTRACT.

Within reason, the Division may increase or decrease the items, quantities, or locations specified in a state or statewide contract or purchase order. (3-20-97)

130. -- 165. (RESERVED).

166. USE OF COMPETITIVE SEALED PROPOSALS.

01. Appropriateness. Competitive sealed proposals may be a more appropriate method for a particular acquisition or type of acquisition than competitive sealed bidding, after consideration of factors such as: (3-20-97)

a. Whether the relative skills, expertise, or technical capability of the offerors will have to be evaluated; (3-20-97)

b. Whether cost is secondary to the characteristics of the property or service sought, as in a work of art; (3-20-97)

c. Whether the conditions of the service, property or delivery conditions are unable to be sufficiently described in the Invitation to Bid; and (3-20-97)

d. Whether the acquisition is for highly complex or technical property or services and evaluation of the offeror's approach, management capabilities, innovation, or other technical factors are secondary to cost. (3-20-97)

02. Determinations. (3-20-97)

a. Before a solicitation (Request for Proposal) may be issued for competitive sealed proposals, the buyer shall determine in writing that competitive sealed proposals represents a more appropriate method for contracting than competitive sealed bidding. (3-20-97)

b. The buyer may make such determinations by commodity code or service, rather than by individual acquisition. Acquisitions utilizing the types of commodity codes so designated may then be made by competitive sealed proposals without making the determination that competitive sealed bidding is either not practicable or not advantageous. The buyer who made such determination may modify or revoke it at any time and such determination should be reviewed for current applicability from time to time. (3-20-97)

03. Professional and Consultant Services. For acquisition of professional or consultant services, agencies shall, whenever practicable, bid for such services by means of a Request for Proposal. Examples of professional or consulting services difficult to use the Invitation to Bid process include, but are not limited to, accounting and auditing, court reporters, legal, medical, nursing, education, engineering, technical consulting, actuarial, architecture, and management audits and research. The buyer will make the determination. (3-20-97)

167. CONTENT OF THE REQUEST FOR PROPOSALS.

01. Content. The content of a Request for Proposals (RFP) shall be similar with that of an Invitation to Bid. (3-20-97)

02. Proposal Preparation Time. Proposal preparation time shall be set to provide offerors a reasonable time to prepare their proposals. A minimum of ten (10) days shall be provided unless a shorter time is deemed necessary due to an emergency for a particular acquisition as determined in writing by the buyer. (3-20-97)

03. Form of Proposal. The manner in which proposals are to be submitted, including any forms for that purpose, may be designated as a part of the Request for Proposals. (3-20-97)

168. PUBLIC NOTICE.

Public notice shall be given by distributing the Request for Proposals in the same manner provided for distributing an Invitation to Bid. (3-20-97)

169. PRE-PROPOSAL CONFERENCES.

Pre-proposal conferences may be conducted in accordance in the same manner provided for Invitations to Bid. Any such conference should be held prior to submission of initial proposals. (3-20-97)

170. AMENDMENT, MODIFICATION, OR WITHDRAWAL OF PROPOSALS.

Proposals may be amended, modified, or withdrawn prior to the established due date and time in accordance with the rules pertaining to Invitations to Bid. (3-20-97)

171. LATE PROPOSALS, LATE WITHDRAWALS, AND LATE MODIFICATIONS.

Any proposal, withdrawal, or modification received after the established due date and time at the place designated for receipt of proposals is late. Such late documents may only be considered in documenting a mistake and used to withdraw a proposal due to the mistake. (3-20-97)

172. RECEIPT AND RECORD OF PROPOSALS.

Proposals shall be opened publicly, identifying only the names of the offerors unless otherwise stated in the Request for Proposals. Proposals and any amendments or modifications shall be date and time stamped upon receipt and held

in a secure place until the established due date. After the date and time established for receipt of proposals, a record of all proposals received shall be prepared to include the name of each offeror, the number of amendments or modifications received, if any, and a description sufficient to identify the supply, service, or property offered. The record of proposals shall be open to public inspection in accordance with the provisions of the Idaho Public Records Act. Proposals and modifications shall be shown only to purchasing agency personnel having a legitimate interest in them. (3-20-97)

173. EVALUATION OF PROPOSALS.

01. Evaluation Factors in the Request for Proposals. The Request for Proposals shall state in general terms all of the evaluation factors and their relative importance, including price. (3-20-97)

02. Evaluation. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Numerical rating systems may be used but are not required. Factors not specified in the Request for Proposals shall not be considered in evaluating offers or determining award of contract. (3-20-97)

03. Classifying Proposals. For the purpose of conducting proposal discussions under these rules (Proposal Discussions with Individual Offerors), proposals shall be initially classified as: (3-20-97)

- a. Acceptable; (3-20-97)
- b. Potentially acceptable, that is reasonably susceptible of being made acceptable; or (3-20-97)
- c. Unacceptable. (3-20-97)

174. PROPOSAL DISCUSSION WITH INDIVIDUAL OFFERORS.

01. "Offerors" Defined. For the purposes of this rule, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses which submitted unacceptable proposals. (3-20-97)

02. 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. (3-20-97)

03. 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. (3-20-97)

04. Best and Final Offers. 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 purchasing agency's interest, and additional discussions will be conducted or the agency'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. (3-20-97)

175. (RESERVED).

176. MISTAKES IN PROPOSALS.

01. Mistakes Discovered Before the Established Due Date and Time. An offeror may correct mistakes discovered before the time and date established for receipt of proposals by withdrawal or modification of the proposal as provided in these rules. (3-20-97)

02. Mistakes Discovered After Receipt But Before Award. This subsection sets forth procedures to be applied in four (4) situations in which mistakes in proposals are discovered after receipt of proposals but before award. (3-20-97)

a. Minor Informalities. Minor informalities shall be treated as they are under competitive sealed bidding (Invitation to Bid). (3-20-97)

b. Correction of Mistakes. Mistakes may be corrected and the correct offer considered only if. (3-20-97)

i. The mistake and the correct offer are clearly evident on the face of the proposal in which event the proposal may not be withdrawn; or (3-20-97)

ii. The mistake is not clearly evident on the face of the proposal, but the offeror submits proof of evidentiary value which clearly and convincingly demonstrates both the existence of a mistake and the correct offer and such correction would not be contrary to the fair and equal treatment of other offerors. (3-20-97)

c. Withdrawal of Proposals. The offeror may be permitted to withdraw the proposal if: (3-20-97)

i. The mistake is clearly evident on the face of the proposal and the correct offer is not; or (3-20-97)

ii. The offeror submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made but does not demonstrate the correct offer or, if the correct offer is also demonstrated, to allow correction on the basis of such proof would be contrary to the fair and equal treatment of other offerors. (3-20-97)

03. Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract. (3-20-97)

177. AWARD.

01. Award Documentation. A written determination shall be made showing the basis on which the award was found to be most advantageous for the agency based on the evaluation criterion set forth in the Request for Proposals. Final approval for the award will be made by the Division. (3-20-97)

02. Public Inspection of Proposals. After issuance of notice of intent to award, the Idaho Public Records Act will control the extent of public inspection of proposals received by the Purchasing Activity. (3-20-97)

03. One (1) Proposal Received. If only one (1) proposal is received in response to a Request for Proposals, the buyer may, as such buyer deems appropriate, either make an award, reject the proposal, or if time permits, resolicit for the purpose of obtaining additional competitive sealed proposals. (3-20-97)

178. PUBLICIZING AWARDS.

01. Notice. After a contract is entered into, notice of award shall be available in the Purchasing Activity's office. (3-20-97)

02. Appeals. Any appeals concerning the award shall be made according to these rules. (3-20-97)

179. ACCEPTANCE OR REJECTION OF PROPOSALS.

The Administrator or Purchasing Activity shall have the right to accept or reject all or any part of a proposal in accordance with the rules pertaining to Invitations to Bid. (3-20-97)

180. CANCELLATION OF REQUEST FOR PROPOSALS OR REJECTION OF ALL PROPOSALS.

The Administrator or Purchasing Activity reserves the right to reject all proposals or to cancel a Request for Proposals in accordance with the rules pertaining to Invitations to Bid. (3-20-97)

181. -- 183. (RESERVED).

184. SMALL PURCHASE PROCEDURES, GENERAL.

01. General. Small purchase procedures may be used by purchasing activities for those purchases or procurements that are less than the amounts established by Idaho Code Section 67-5718. Excluding the Division, absent a general or specific delegation by the Administrator, no Purchasing Activity, using the small purchase authority and/or small purchase procedures of these rules, shall procure (i.e. lease, rent, etc.) property or services or enter into contracts for periods exceeding one year (including renewal or extension periods). Purchasing Activity purchases of property and services will be limited to single purchase transactions unless other contract types are specifically authorized by the Administrator. (3-20-97)

02. Solicitation Terms. For small purchase procedures, the following terms shall have the meaning as indicated: (3-20-97)

a. Request for Quotation. The document or form, including any attachments, whether physically attached or incorporated by reference, specifications, and terms and conditions used by the Purchasing Activity for small purchases. (3-20-97)

b. Quotation or Quote. An offer from a registered vendor to supply property or services under a contract or purchase order in response to a Request for Quotations. (3-20-97)

03. Form of Request for Quotation and/or Quote. Unless otherwise prohibited by the Purchasing Activity buyer, the Request for Quotation and/or Quote may be written, oral, telephonic, or facsimile. (3-20-97)

04. 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 information, and number and location of vendors. (3-20-97)

05. Public Notice. To the extent practicable and time allows, the Purchasing Activity shall publicly post or make available in a public area at its primary purchasing location a copy of any written Requests for Quotation. (3-20-97)

06. Receipt of Quotations. Quotations must be received by close of the normal business day on the date indicated unless a specific time is indicated. If facsimile quotations are authorized by the Purchasing Activity or the Request for Quotations, the Purchasing Activity does not assume any responsibility for the failure or unavailability of facsimile transmission or equipment. Late quotations will not be considered. Time of receipt will be determined by the official time stamp or receipt mechanism located at the Purchasing Activity. (3-20-97)

185. AUTHORITY TO MAKE SMALL PURCHASES.

01. Amount. The Division or a Purchasing Activity shall use these procedures if the acquisition is estimated to be less than the amounts established in Idaho Code Section 67-5718 or unless the Division determines it advantageous to use the formal sealed bid procedures set forth in these rules. (3-20-97)

02. Existing State or Statewide Contracts. Supplies, services, or other property available under single agency or statewide contracts or similar agreements shall be purchased under such agreements in accordance with the provisions or requirements for use thereof and not under this subpart unless otherwise authorized by the Administrator. (3-20-97)

03. Available From One (1) Source Only. If the property or service is available only from one (1) source, the sole source purchase method set forth in these rules shall be used. (3-20-97)

04. Splitting of Requirements. Acquisition requirements shall not be artificially divided to avoid bid statutes, rules or policies. (3-20-97)

186. SMALL PURCHASES OF PROPERTY OR SERVICES BETWEEN ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) AND TWENTY-FIVE THOUSAND DOLLARS (\$25,000).

01. Procedure. Insofar as it is practical and possible for small purchases of property or general services (excluding professional or consultant services) between one thousand five hundred dollars (\$1,500) and twenty-five thousand dollars (\$25,000), no less than three (3) registered vendors having a significant Idaho presence as defined by Idaho Code shall be solicited to submit telephone, facsimile, or written quotations. Award shall be made to the responsible and responsive bidder offering the lowest acceptable quotation. The purchasing file will be fully documented for unacceptable quotations. Should it be impractical or impossible to solicit three (3) registered vendors, the file shall be fully documented and every effort should still be made to obtain the most favorable terms, conditions and price possible for the state. (3-20-97)

02. Records. The names of the registered vendors offering quotations and the date and amount of each quotation shall be recorded and maintained as a public record. (3-20-97)

187. SMALL PURCHASES OF LESS THAN ONE THOUSAND FIVE HUNDRED DOLLARS.

To facilitate the purchase of minor items of property in the open market, if the property to be acquired can be expected to cost less than one thousand five hundred dollars (\$1,500), such property may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state. (10-1-98)T

188. SMALL PURCHASES OF SERVICES OF PROFESSIONALS AND CONSULTANTS.

If it is expected that the services of professionals and consultants can be acquired for twenty-five thousand dollars (\$25,000) or less, the services may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state. (10-1-98)T

189. SMALL PURCHASES OF REPAIR SERVICES.

This rule applies to unscheduled repairs to equipment (such as but not limited to vehicles, scientific instruments, broadcasting equipment, or heating and cooling (HVAC) equipment with labor and/or installation of repair parts being performed by state personnel) where the total cost may not be ascertainable until the equipment is disassembled, the equipment cannot be reasonably moved or transported due to its being disabled, or the unscheduled repairs may require original equipment manufacturer (OEM) parts. If the estimated cost of the unscheduled repair is less than five thousand dollars (\$5,000), the agency may acquire the necessary property as the agency best sees fit in accordance with good business practice and in the best interest of the state. If the repairs are to items of equipment that are incorporated into or affixed to real property (fixtures) and the labor or repairs are not performed by state personnel, and the cost exceeds two thousand five hundred dollars (\$2,500), the agency must comply with the provisions of Idaho Code Section 67-5711B (if an emergency) or Idaho Code Section 67-5711C. (3-20-97)

190. DISCOUNTS.

Every reasonable effort is to be made by state employees to obtain the most favorable discount rates possible for the state of Idaho. Should discounts for prompt payments be offered, while they cannot be used in the evaluation of bids, it shall be the agency's responsibility to process the claims for payment in an expeditious manner so as to allow the discount for prompt payment to be taken by the state. (3-20-97)

191. ACQUISITION OF CONCESSION SERVICES.

If there is no expenditure of State Funds, the acquisition of concession services including, but not limited to, exclusive-rights contracts, franchises, vending services, options, pouring contracts, service agreements, advertising agreements, broadcast rights to sporting events or other similar types of goods, may be conducted by each Purchasing Activity as it determines to be in its best interest. While there is no statutory requirement for competitive bidding for concession services or the applicability of purchasing statutes to the award of contracts for concession services, the Purchasing Activity is encouraged to utilize a competitive process if determined to be in its best interest. (3-20-97)

192. -- 194. (RESERVED).

195. CONDITIONS FOR USE OF SOLE SOURCE PURCHASES.

01. Only a Single Supplier. Sole source purchase shall be used only if a requirement is 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 potential bidder or offeror for that property item. (3-20-97)

02. Examples of Sole Source. Examples of circumstances which could necessitate a sole source purchase are: (3-20-97)

a. Property is required for a life-threatening situation or a situation is immediately detrimental to the public welfare or property; (3-20-97)

b. Where the compatibility of equipment, components, accessories, computer software, replacement parts, or service is the paramount consideration; (3-20-97)

c. Where a sole supplier's item is needed for trial use or testing; (3-20-97)

d. Purchase of mass produced movie or video films or written publications distributed or sold primarily by the publisher; (3-20-97)

e. Purchase of property for which it is determined there is no functional equivalent; (3-20-97)

f. Purchase of public utility services; (3-20-97)

03. Administrator Makes Determination. The determination as to whether an acquisition shall be made as a sole source shall be made by the Administrator. Each request shall be submitted in writing by the using agency. The Administrator may specify the application of such determination and its duration. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that an acquisition be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need. (3-20-97)

04. Appeal. The appeal of a sole source determination may be made in accordance with applicable law. (3-20-97)

196. NEGOTIATION IN SOLE SOURCE PURCHASE.

The buyer shall conduct negotiations, as appropriate, as to price, delivery, and terms. (3-20-97)

197. NOTICE OF SOLE SOURCE PURCHASE.

Unless the property is required for a life-threatening situation, a situation that is immediately detrimental to the public welfare or property, or if the proposed acquisition amount exceeds the sealed bid limitation, the Administrator shall publish notice in a public publication statewide of the sole source acquisition at least ten (10) working days prior to the award of the contract. (3-20-97)

198. -- 200. (RESERVED).

201. DEFINITION OF EMERGENCY CONDITIONS.

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or such other similar circumstances as may be determined by the Director, Administrator or designee. The existence of such condition must create an immediate and serious need for supplies, property, or services, that cannot be met through normal acquisition methods. An emergency declaration shall also include a finding as to whether a particular savings to the state may be had through use of educational discounts, sole source purchases, or other circumstances as approved by the Director or designee. (3-20-97)

202. SCOPE OF EMERGENCY PURCHASES.

Emergency purchases shall be limited to only those supplies, services, or property necessary to meet the emergency. Any payments made for emergency purchases must state upon their faces the justification for the purchase. (3-20-97)

203. AUTHORITY TO MAKE EMERGENCY PURCHASES.

The Director or Administrator may delegate authority in writing to an agency or Purchasing Activity to make emergency purchases of up to an amount set forth in the delegation of authority. (3-20-97)

204. SOURCE SELECTION METHODS.

01. General. The source selection method used shall be selected with a view to the end of assuring that the required supplies, services, or property are purchased in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained. (3-20-97)

02. After Unsuccessful Competitive Sealed Bidding. If emergency conditions exist after or are brought about by an unsuccessful attempt to use competitive sealed bidding, an emergency purchase may be made. Competitive sealed bidding is unsuccessful when bids received pursuant to an Invitation to Bid are unreasonable, noncompetitive, no bids are received, or when the low bid exceeds available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids, or when the entity awarded the bid is unable to perform the contract and the criterion for emergency purchase is satisfied by the circumstances. (3-20-97)

205. DETERMINATION OF EMERGENCY PURCHASE.

The buyer or the agency official 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 Administrator for review and written approval that the purchase be undertaken as an emergency purchase. (3-20-97)

206. -- 221. (RESERVED).

222. PRICE AGREEMENTS.

01. Use. In addition to other methods of contracting, the Administrator may authorize the establishment with vendors of price agreements. Such agreements are appropriate when: (3-20-97)

- a. The dollar value of items or transactions are relatively small; (3-20-97)
- b. The property may not be conducive to standard competitive bidding procedures, such as automobile, truck, or other equipment parts having individual low unit costs; (3-20-97)
- c. There exists a need to establish multiple agreements with vendors supplying property that is similar in nature or function but is represented by different manufacturers and/or needed in multiple locations; and (3-20-97)
- d. Non-exclusive agreements for periods not exceeding two (2) years are deemed necessary to establish consistent general business terms such as price, use of catalogs, delivery terms, credit terms, etc. (3-20-97)

02. Establishment. Any price agreements shall be established and approved by the Division. (3-20-97)

03. Termination. Price agreements shall provide for termination for any reason upon not more than thirty (30) days written notice. (3-20-97)

223. LEASES.

01. Use. A lease for personal property may be entered into provided: (3-20-97)

- a. It is in the best interest of the agency; (3-20-97)
- b. All conditions for renewal and costs of termination are set forth in the lease; and (3-20-97)
- c. The lease is not used to avoid a competitive bid situation. (3-20-97)

02. Lack of Fund Contract Language Required. A contract providing for lease payments shall include appropriate language stating the agency is not obligated to make any payments beyond the term of any particular appropriation of state or federal funds which may exist from time to time. The contract shall be terminated without any penalty of whatsoever nature or kind or future liability. (3-20-97)

03. Competition. Lease contracts are subject to the same requirements of competition which govern the purchase of property, if the lease exceeds the amount established by Section 67-5718, Idaho Code. Leases for periods exceeding one (1) year specifically require the approval of the Division. (3-20-97)

04. Lease with Purchase Option. A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive bidding or competitive proposals, unless the requirement can be met only by the property being leased as determined in writing by the buyer. Before exercising such an option, the buyer shall: (3-20-97)

a. Investigate alternative means of acquiring comparable property; and (3-20-97)

b. Compare estimated costs and benefits associated with the alternative means and the exercise of the option; for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option; and (3-20-97)

c. Provide notice and advertisement of the exercise of option in accordance with these rules pertaining to sole source or competitively bid the property by soliciting bids for new or used property. (3-20-97)

224. INSTALLMENT PAYMENT OR TIME PURCHASE CONTRACTS.

01. Use. A contract may be entered into which extends beyond the current fiscal period provided any obligation for payment in a succeeding fiscal period is subject to the appropriation and/or availability of funds therefor. (3-20-97)

02. Termination. An installment or time purchase contract may be terminated without cost to the agency by reason of unavailability of funds for the purpose, or for lack of performance by the contractor. Termination for other reason or reasons shall be as provided by the contract or by law. (3-20-97)

03. Installment Payments. Time purchase contracts may provide for installment purchase payments or time purchase payments, including interest charges, over a period of time. Installment payments, however, should be used judiciously in order to achieve economy and not to avoid budgetary restraints. Using agencies shall be responsible for ensuring that statutory or other prohibitions are not violated by use of installment provisions and that all budgetary or other required prior approvals are obtained. Documentation or other evidence of any required approvals shall accompany the requisition submitted to the Division. No such agreement shall be used unless provision for installment payments is included in the solicitation document. (3-20-97)

04. Lack of Fund Contract Language Required. A contract providing for installment payments shall include appropriate language stating the agency is not obligated to make any payments beyond the term of any particular appropriation of state or federal funds which may exist from time to time. The contract shall be terminated without any penalty of whatsoever nature or kind or future liability and the property shall be returned to the contractor. (3-20-97)

225. -- 249. (RESERVED).

250. STANDARD SPECIFICATIONS.

Specifications contained in the Invitation to Bid will, where practical, be nonrestrictive so as to provide an equal basis for competition and participation by an optimum number of qualified bidders. (3-20-97)

251. SPECIFICATIONS, GENERAL PURPOSE AND POLICIES.

01. Written Specifications. Written specifications shall accompany any requisition submitted to the Division for acquisitions that exceed the sealed bid limit established by Idaho Code, Section 67-5718. To the extent practicable, written specifications shall also be used for small purchases. (3-20-97)

02. Purpose. Specifications shall be drafted with the objective of clearly describing the agency's requirements and of encouraging competition. The purpose of a specification is to serve as a basis for obtaining a

supply, service, or property adequate and suitable for the agency's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs. (3-20-97)

03. 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 agency. To facilitate the use of such criteria, using agencies shall endeavor to include as a part of their purchase requisitions the principal functional or performance needs to be met. (3-20-97)

04. Preference for Commercially Available Products. It is the general policy that requirements be satisfied by standard commercial products whenever practicable. (3-20-97)

252. AVAILABILITY OF DOCUMENTS.

In accordance with the Idaho Public Records Act, specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection. (3-20-97)

253. EMERGENCY AUTHORITY.

In the event of an emergency, as determined by the Director or the Administrator, the agency may purchase property or services by any reasonable means, with any available specifications, without regard to the provision of these rules. (3-20-97)

254. PROCEDURES FOR THE DEVELOPMENT OF SPECIFICATIONS.

- 01. Provisions of General Application. (3-20-97)
 - a. Application of section. These provisions apply to all persons who may prepare a specification. (3-20-97)
 - b. Specification of alternates may be included. A specification may provide alternate descriptions of supplies, services, or property where two (2) or more design, functional, or performance criteria will satisfactorily meet the agency's requirements. (3-20-97)
 - c. Contractual requirements not to be included. To the extent feasible, a specification shall not include any solicitation or contract term or condition such as a requirement for time or place of bid opening, time of delivery, payment, liquidated damages, or qualification of bidders. (3-20-97)
 - d. Use of existing specifications. If a specification for a common or general use item has been developed or a qualified products list has been developed for a particular supply, service, property, or need, it shall be used unless the Administrator makes a written determination that its use is not in the agency's best interest and that another specification shall be used. (3-20-97)
 - e. Review of specifications. The Administrator should provide for the periodic review of specifications to determine whether any existing specification needs revision, or a new specification is needed to reflect changes in: (3-20-97)
 - i. The state of the art; (3-20-97)
 - ii. The characteristics of the available supplies, services, or property; or (3-20-97)
 - iii. Needs of the agency. (3-20-97)
 - f. Others may prepare specifications. The Administrator may allow others to prepare specifications for the agency's use in making purchases when there will be no substantial conflict of interest involved and it is otherwise in the best interests of the agency as determined by the buyer. (3-20-97)
- 02. Special Additional Procedures. (3-20-97)
 - a. Specifications for common or general use items. (3-20-97)

- i. Preparation and utilization. A standard specification for common or general use shall, to the extent practicable, be prepared and utilized when a supply, service, or property is used in common by several using agencies or used repeatedly by one (1) using agency, and the characteristics of the supply or service item as commercially produced or provided remain relatively stable while the frequency or volume of acquisitions is significant, or where the agency's recurring needs require uniquely designed or specially produced items. (3-20-97)
- ii. Final approval. Final approval of a proposed specification for a common or general use item shall be given only by the Division. (3-20-97)
- iii. Revisions and cancellations. All revisions to or cancellations of specifications for common or general use items may be made upon approval of the Division. (3-20-97)
- b. Brand name or equal specification. (3-20-97)
 - i. Brand name or equal specifications may be used when the buyer determines that such a specification is in the agency's best interest. (3-20-97)
 - ii. Designation of several brands. Brand name or equal specification shall seek to designate as many different brands as are practicable as "or equal" references and shall state that products substantially equivalent to those designated will be considered for award. (3-20-97)
 - iii. Required characteristics. Unless the buyer authorized to finally 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 which are required. (3-20-97)
 - iv. Nonrestrictive use of brand name or equal specifications. Where a brand name or equal specification is used in a solicitation, the solicitation 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 limit or restrict competition. (3-20-97)
- c. Brand name specification. (3-20-97)
 - i. Use. Since use of a brand name specification is restrictive, such a specification may be used when the Administrator 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. (3-20-97)
 - ii. Competition. The Administrator 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. If only one source can supply the requirement, the acquisition shall be made under Section 67-5720 of the Idaho Code. (3-20-97)
- d. Qualified products list. (3-20-97)
 - i. Use. A qualified products list may be developed with the approval of the Administrator when testing or examination of the property prior to issuance of the solicitation is desirable or necessary in order to satisfy agency requirements. (3-20-97)
 - ii. Solicitation. When developing a qualified products list, all registered vendors in the commodity listing shall be solicited to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer products for consideration in accordance with any schedule or procedure established for this purpose. (3-20-97)
 - iii. Public inspection of testing. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior established requirements. Public inspection of written testing

data will be allowed in accordance with the Idaho Public Records Act. However, qualified products lists' test results shall be made public, but in a manner so as to protect the confidentiality of the identity of the competitors by, for example, using numerical designations. (3-20-97)

255. INTERPRETATION OF SPECIFICATIONS.

In the event of discrepancies or omissions in the bid specifications, or doubt as to their meaning, the vendor shall immediately notify the Purchasing Activity in writing. In response, written instructions and/or addenda as required shall be sent to vendors known by the buyer to have received the initial bid document. The Purchasing Activity will not be responsible for oral interpretations not confirmed in writing by the Purchasing Activity prior to the time stipulated in the bid opening. (3-20-97)

256. -- 259. (RESERVED).

260. PURCHASE OF TELECOMMUNICATIONS OR INFORMATION TECHNOLOGY PROPERTY.

Other than property purchased from existing state contracts, all agency requests exceeding the sealed bid limits of Section 67-5718 Idaho Code for telecommunications or information technology property must be reviewed and approved by the Division of Information Technology within the Department of Administration before submission to the Division. It is the requesting agency's responsibility to subsequently attach any approvals to any requisitions submitted to the Division for bidding action. Acquisitions of these types of property are subject to state bid requirements, so agencies should plan long enough in advance to allow for this review. The department's review and any subsequent acquisition will conform to the guidelines and policies established or adopted by the Information Technology Resource Management Council or other governing or policy board or council that may be created by statute or directive for the purpose of information technology oversight or review. (3-20-97)

261. INFORMATION TECHNOLOGY ACQUISITION PROCEDURES.

01. Definition. For purposes of these rules, "Information Technology Property" includes, but is not limited to, all present and future forms of computer hardware, computer software, or services used or required for automated data processing, computer related office automation or telecommunications. "Telecommunications" means all present and future forms of hardware, software or services used or required for transmitting voice, data, video or images over a distance. (3-20-97)

02. Purpose. Specialized procedures for the purchase of Information Technology are necessary for several reasons, including: (3-20-97)

a. Information Technology changes so rapidly that product life cycles range from twelve (12) to thirty-six (36) months. (3-20-97)

b. Purchase of Information Technology requires significant technical understanding from both the agency and Purchasing Activity staff. (3-20-97)

c. Information Technology purchases in many cases requires a specialty process due to unique technologies or applications. (3-20-97)

03. Applicability. Unless otherwise indicated, the definitions in Section 67-5716, Idaho Code and these rules apply to these Information Technology acquisition procedures. In particular, these procedures apply to all agencies as the term "agency" is defined by these rules. (3-20-97)

04. Procedures. (3-20-97)

a. To facilitate the timely processing of Information Technology purchases and minimize delays, the requisitioning agency shall have completed the following actions PRIOR to submission of a requisition to the Division: (3-20-97)

i. Financially justified its requirements (including cost/benefit analysis, multi-year financial approvals, and identification of funding sources). (3-20-97)

ii. Ensured that the proposed acquisition meets applicable Information Technology standards, guidelines, conventions, and systems plans as adopted by the Information Technology Resource Management Council. (3-20-97)

iii. Adequately reviewed available functionally equal requirement options and be prepared to provide a justification to defend the specifications in the event of a vendor appeal. The agency will be responsible for hearing officer costs incurred by the Division in the event of any Administrative Procedures Act (APA) actions or appeals. (3-20-97)

iv. Submit with the requisition evidence of approval of the acquisition by the appropriate approving authority within the Department of Administration. (3-20-97)

b. For all Information Technology requirements regardless of dollar value, the Division will attempt to aggregate Information Technology purchases as much as possible. When appropriate it will establish statewide contracts to fulfill multiple agency needs and make these contracts available to local units of government. (3-20-97)

c. For Information Technology property not available through statewide contracts, if the property to be acquired may be reasonably expected to cost less than two thousand five hundred dollars (\$2,500), such property may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state. For purchases of property (excluding services) exceeding two thousand five hundred dollars (\$2,500), but less than the limit established by Idaho Code for sealed bidding, the statutory provisions of Section 67-5718, Idaho Code will apply. (3-20-97)

d. For Information Technology services, if the services to be acquired may be reasonably expected to cost twenty-five thousand dollars (\$25,000) or less total through a "fixed, not to exceed price" contract not exceeding one (1) year in duration (including renewal or extension options), such services may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state. Information Technology services exceeding the previous parameters or exceeding twenty-five thousand dollars (\$25,000) will be acquired in accordance with the statutory provisions of Section 67-5718, Idaho Code. (10-1-98)T

e. A team approach is recommended for all major acquisitions. This team will be composed of employees from different agencies and/or disciplines appropriate to the acquisition and will be convened by the Administrator or authorized designee. At a minimum it will include a representative from the Division and an Information Technology specialist. It will meet as needed to ensure that the most expedient and cost-effective method of purchasing is deployed, not to evaluate the need for, or judge the value of, the property or services requested. (3-20-97)

f. To encourage reductions in processes and administrative costs, solicitation documents, the specifications, and terms and conditions may provide options (e.g. bid expiration time frames, acceptance criteria, dollar thresholds, etc.) that allow other agencies to utilize the Information Technology bids of the original requesting agency without the necessity of issuing additional bids. Adequate notification to potential vendors of these extended use purchases will be included in the solicitation documents. (3-20-97)

g. Upon adequate notice to vendors and development of justifiable conditions, vendor pre-qualification procedures may be utilized. Only vendors passing the pre-qualification process will be allowed to participate in the individual acquisition. (3-20-97)

05. Multiple Award for Information Technology Property. A multiple award is an award of an indefinite quantity contract for one or more similar items of Information Technology property or services to more than one (1) bidder or offeror, and agencies shall be obligated to order all of their actual, normal requirements for the specified property or services from those contractors. A multiple award contract shall be appropriate if more than one (1) contractor is necessary to furnish the types and quantities of property required by state agencies, to provide expeditious and cost-efficient acquisition of property or to enable state agencies to acquire property which is compatible with previously acquired property. No award of a contract to multiple bidders shall be made unless the Administrator makes a written determination that the multiple award satisfies one (1) or more of the statutory criteria. In making a multiple award, care shall be exercised to protect and promote the principles of competitive solicitation. Multiple awards shall not be made when a single award will meet the agency's needs without sacrifice of economy or

service. Awards shall not be made for the purpose of dividing the business, making available property or supplier selection to allow for use preference, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of bidders or offerors necessary to meet the valid requirements of using agencies. If a multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation. (3-20-97)

262. -- 399. (RESERVED).

400. REGISTRATION OF VENDORS REQUIRED.

No vendor shall be allowed to submit a bid, proposal, or quotation unless such vendor is currently registered with the Division. (3-20-97)

401. REGISTRATION REQUIREMENTS.

01. Registration Required. Vendors shall register with the Division for all classes of property which the vendors will sell or supply to the state. Vendor registration forms are included in the Division's Vendor Information and Registration Packet and may be obtained by contacting the Division. A vendor may register by mail or in person. (3-20-97)

02. Registration Form. The registration form shall contain, at a minimum the following information : (3-20-97)

a. Name of the vendor, including any fictitious or "doing business as" (d.b.a.) designations; (3-20-97)

b. An official office address where bid notices or solicitations are to be mailed; (3-20-97)

c. A telephone number at which the vendor may be reached by purchasing staff; (3-20-97)

d. A statement of how the business is organized, i.e., limited liability company, joint venture, association, partnership, sole proprietorship or corporation, if a corporation the state of incorporation and whether it has offices in Idaho; (3-20-97)

e. List the class or classes of property the vendor desires to sell or supply to the state; (3-20-97)

f. State of Idaho sales tax identification number; (3-20-97)

g. Geographic zones within the state in which the vendor wants to bid; (3-20-97)

h. The nature of the business (manufacturer, distributor, jobber, retailer, grower, etc.); (3-20-97)

i. Business address, which is not a post office box, in Idaho, or if located elsewhere the state of domicile and the business address of the vendor; (3-20-97)

j. How long the vendor has been in business; and other similar information as may be required in the Vendor Information and Registration Packet as it may be edited from time to time by the Administrator. (3-20-97)

03. Registration Fees. Bids submitted to the state will only be considered if the vendors have registered and supplied the ten dollar (\$10) biennial registration fee prior to the time of the bid opening. At the time of the bid opening, all bids received by vendors who have failed to become registered vendors shall be rejected. (3-20-97)

402. CHANGES TO VENDOR REGISTRATION.

At any time, by simple written communications to the Division, a registered vendor may add or delete general classes of property which the vendor would sell or supply to the state. (3-20-97)

403. VERIFICATION OF REGISTRATION.

The internal procedure to be followed in verification of registered vendors at the bid opening time is as follows: Check the vendor's name against the alphabetical listing of registered vendors and verify that the vendor's name appears. (3-20-97)

404. AVAILABILITY OF VENDOR REGISTRATION LIST.

The vendor registration system shall be automated and will be updated no less frequently than once per month. The system will be accessible both by vendor name and commodity category. System data shall be available to various state agencies electronically. All agencies under the jurisdiction of the Division are required to use the official centralized vendor registration system data. (10-1-98)T

405. MULTIPLE REGISTRATION LISTINGS.

Vendors wishing to be registered vendors, using identical names, but different address and telephone numbers, shall be allowed to register the different addresses and telephone numbers. A separate ten dollar (\$10) biennial fee and vendor registration form will be required for each additional location. (3-20-97)

406. INCOMPLETE REGISTRATION.

Vendor Registration Packets that are received in an incomplete manner shall be returned to the vendor. An incomplete vendor registration application shall be interpreted as not meeting the registration requirements, and the company submitting it shall not be a registered vendor. (3-20-97)

407. REGISTRATION FEE REQUIRED.

The ten dollar (\$10) biennial registration fee shall be required, together with the vendor registration form, before the vendor's registration is complete. (3-20-97)

408. REGISTRATION RENEWAL.

A notice of renewal shall be mailed to the registered vendor at least sixty (60) days prior to the expiration date of the vendor's registration. Failure to renew the registration and pay the biennial registration fee shall result in the removal of the vendor from the list of qualified vendors. (3-20-97)

409. REMOVAL OR SUSPENSION.

01. Removal of Vendors. The Administrator may remove or suspend a vendor from the list of registered vendors for cause. Examples of reasons for removal or suspension include, but are not limited to the following: (3-20-97)

- a. Violation of the Division's statutes or rules; (3-20-97)
- b. Unreasonable number of "no bid" responses; (3-20-97)
- c. Any material failure to perform, e.g., delivery, quality; (3-20-97)
- d. Any significant detrimental change in supplier status, e.g., financial condition, lines carried, service ability; (3-20-97)
- e. Unauthorized product substitution, or representation of an alternate as an equal which is not; or (3-20-97)
- f. Other illegal acts. (3-20-97)

02. Removal or Suspension Notification. Any vendor so removed or suspended in accordance with these rules shall be notified in writing of the reason(s) therefore, the conditions of any removal or suspension, and/or corrective action required for reinstatement. A vendor shall be notified by registered mail within ten (10) days of removal or suspension and may, within thirty (30) days of the receipt of such notice, request of the Director of the Department of Administration a hearing before a determination officer. Any hearings shall be held in accordance with Chapter 52, Title 67, Idaho Code and these rules. (3-20-97)

410. REAPPLICATION OR REINSTATEMENT.

If a vendor's application to be placed on the registered vendor list has been refused, or if a vendor has been removed or suspended from such list, that vendor may reapply to be placed on such list, or apply for reinstatement when the

conditions for reinstatement have been met. After qualifying again as a registered vendor, the vendor shall be required to submit both a new vendor registration form and a ten (\$10) dollar biennial registration fee. (3-20-97)

411. -- 699. (RESERVED).

700. ADMINISTRATIVE APPEALS.

01. Authority. Administrative appeals are authorized by Idaho Code Section 67-5733. Section 67-5733 authorizes the challenge to specifications, the appeal of a rejected bid, the appeal of a finding of the lowest responsible bidder, and an appeal of a sole source purchase determination. Only purchase appeals conducted pursuant to Idaho Code Section 67-5733(1)(c)(iii) shall be conducted as a contested case in accordance with the APA. To be effective all appeals shall be made in writing and directed to the appropriate state official. The Administrator also has been granted discretion to request the appointment of a determinations officer. (3-20-97)

02. Exemption from the Idaho Rules of Administrative Procedure of the Attorney General. Proceedings conducted pursuant to Section 67-5733(1)(c)(ii) are not subject to the Idaho Rules for Administrative Procedure of the Attorney General for contested case proceedings. (3-20-97)

03. Agencies Exercising Delegated Authority. Any agency which exercises delegated authority from the Administrator of the Division to engage in purchasing activities shall be responsible to provide administrative appeals under the circumstances and to the extent as set forth in Idaho Code Section 67-5733 and these rules. (3-20-97)

701. -- 900. (RESERVED).

901. DEFINITIONS.

For purposes of IDAPA 38.05.01, Sections 901 through 907, and unless the context expressly indicates otherwise, the following terms shall have the definitions ascribed to them: (10-1-98)T

01. Electronically Signed Communication. A message that has been processed by a computer in such a manner that ties the message to the individual that signed the message. (10-1-98)T

02. Message. An electronic representation of information intended to serve as a written communication with the Division. (10-1-98)T

03. Person. A human being or any organization capable of signing a document, either legally or as a matter of fact. (10-1-98)T

04. Signer. The person who signs an electronically signed communication with the use of an acceptable technology to uniquely link the message with the person sending it. (10-1-98)T

05. Technology. The computer hardware or software-based method or process used to create electronic signatures. (10-1-98)T

902. ELECTRONIC SIGNATURES MUST BE CREATED BY AN ACCEPTABLE TECHNOLOGY.

For an electronic signature to be valid for use by the Division, it must be created by a technology that is accepted for use by the Division. (10-1-98)T

903. CRITERIA TO DETERMINE IF AN ELECTRONIC SIGNATURE TECHNOLOGY WILL BE ACCEPTED FOR USE BY THE DIVISION.

01. Criteria of Section 67-2354, Idaho Code. For a technology to be accepted for use by the Division, it must be capable of creating signatures that conform to requirements set forth in Section 67-2354, Idaho Code: (10-1-98)T

a. It is unique to the person using it; (10-1-98)T

- b. It is capable of verification; and (10-1-98)T
- c. It conforms to IDAPA 38.05.01, Sections 901 through 903. (10-1-98)T
- 02. Additional Criteria. To be accepted, a technology must also be capable of creating a signature that:
(10-1-98)T
 - a. Is under the sole control of the person using it; (10-1-98)T
 - b. Is linked to the data in such a manner that if the data are changed, the electronic signature is invalidated; and (10-1-98)T
 - c. Meets ISO X.509 standards. (10-1-98)T

904. PUBLIC KEY CRYPTOGRAPHY.

The technology known as Public Key Cryptography is an accepted technology for use by the Division, provided that the electronic signature is created consistent with the provisions in this Section. (10-1-98)T

- 01. Definitions. For purposes of this Section 904, and unless the context expressly indicates otherwise, the following terms shall have the definitions ascribed to them. (10-1-98)T
 - a. Approved Certification Authority. The Certification Authority authorized and accepted by the State to issue certificates for electronic signature transactions involving the State. (10-1-98)T
 - b. Asymmetric Cryptosystem. A computer algorithm or series of algorithms that utilize(s) two (2) different keys with the following characteristics: (10-1-98)T
 - i. One (1) key signs a given message; (10-1-98)T
 - ii. One (1) key verifies a given message; and (10-1-98)T
 - iii. The keys have the property that, knowing one (1) key, it is computationally infeasible to discover the other key. (10-1-98)T
 - c. Certificate. A computer-based record which: (10-1-98)T
 - i. Identifies the certification authority issuing it; (10-1-98)T
 - ii. Names or identifies its subscriber; (10-1-98)T
 - iii. Contains the subscriber's public key; (10-1-98)T
 - iv. Is electronically signed by the Certification Authority issuing or amending it; and (10-1-98)T
 - v. Conforms to widely-used industry standards. (10-1-98)T
 - d. Certification Authority. A person or entity that issues a certificate, or in the case of certain certification processes, certifies amendments to an existing certificate. (10-1-98)T
 - e. Key Pair. A private key and its corresponding public key in an asymmetric cryptosystem. The keys have the property that the public key can verify an electronic signature that the private key creates. (10-1-98)T
 - f. Private Key. The key of a key pair used to create an electronic signature. (10-1-98)T
 - g. Proof of Identification. The document or documents presented to a Certification Authority to establish the identify of a subscriber. (10-1-98)T

- h. Public Key. The key of a key pair used to verify an electronic signature. (10-1-98)T
- i. Subscriber. A person who: (10-1-98)T
- i. Is the subject listed in a certificate; (10-1-98)T
- ii. Accepts the certificate; and (10-1-98)T
- iii. Holds a private key which corresponds to a public key listed in that certificate. (10-1-98)T
02. Electronic Signature to Be "Unique". Section 67-2354, Idaho Code, requires that an electronic signature be "unique to the person using it". A public key-based electronic signature may be considered unique to the person using it, if: (10-1-98)T
- a. The private key used to create the signature on the document is known only to the signer; (10-1-98)T
- b. The electronic signature is created when a person runs a message through a one-way function, creating a message digest, then encrypting the resulting message digest using an asymmetrical cryptosystem and the signer's private key; (10-1-98)T
- c. Although not all electronically signed communications will require the signer to obtain a certificate, the signer is capable of being issued a certificate to certify that he or she controls the key pair used to create the signature; and (10-1-98)T
- d. It is computationally infeasible to derive the private key from knowledge of the public key. (10-1-98)T
03. Signature is Capable of Verification. Section 67-2354, Idaho Code, requires that an electronic signature be "capable of verification". A public-key based electronic signature is capable of verification if: (10-1-98)T
- a. The acceptor of the electronically signed document can verify the document was electronically signed by using the signer's public key; (10-1-98)T
- b. If a certificate is a required component of a transaction, that the certificate was valid; and (10-1-98)T
- c. If a certificate is a required component of a transaction, the issuing Certification Authority identifies which, if any, form(s) of proof of identification it required of the signer prior to issuing the certificate. (10-1-98)T
04. Control of Electronic Signature. Subsection 903.02.a. requires that the electronic signature remain "under the sole control of the person using it". Whether a signature is accompanied by a certificate or not, the person who holds the key pair, or the subscriber identified in the certificate, assumes a duty to retain control of the private key and prevent its disclosure to any person not authorized to create the subscriber's electronic signature. (10-1-98)T
05. Electronic Signature Linked to the Message. The electronic signature must be linked to the message of the document in such a way that if the data are changed, the electronic signature is invalidated. (10-1-98)T
06. Electronic Signature Must Meet ISO X.509 Standards. The electronic signature must meet ISO X.509 standards. (10-1-98)T
07. Approved Certification Authority. The Division shall only accept certificates from an Approved Certification Authority. (10-1-98)T

905. CRITERIA FOR THE DIVISION TO USE IN ACCEPTING ELECTRONIC SIGNATURES.

01. Level of Security Used to Identify the Signer. Prior to accepting an electronic signature, the Division shall ensure that the level of security used to identify the signer of a document is sufficient for the transaction being conducted. (10-1-98)T

02. Level of Security Used to Transmit the Signature. Prior to accepting an electronic signature, the Division shall ensure that the level of security used to transmit the signature is sufficient for the transaction being conducted. (10-1-98)T

03. Certificate Format Used By the Signer. If a certificate is a required component of an electronic signature transaction, the Division shall ensure that the certificate format used by the signer is sufficient for the security and interoperability needs of the Division. (10-1-98)T

906. RETENTION OF CERTIFICATES.

All electronically signed messages received by the Division in accordance with this rule, as well as any information resources necessary to permit access to the message and to verify the electronic signature, shall be retained by the Division as necessary to comply with applicable law pertaining to records retention requirements for that message. (10-1-98)T

907. ELECTRONIC SIGNATURE REPUDIATION.

It is the responsibility of the rightful holder of the private key to maintain the private key's security. Repudiation of an electronically signed and transmitted message may only occur by the determination of a court of competent jurisdiction that the private key of the rightful holder was compromised through no fault of the rightful holder and without knowledge on the part of the rightful holder. It is the legal prerequisite for a claim of repudiation that the repudiator have filed a notice of revocation with the Certification Authority prior to making the claim of repudiation. (10-1-98)T

908. -- 999. (RESERVED).