

## IDAPA 38 – IDAHO DEPARTMENT OF ADMINISTRATION

### Division of Purchasing

#### 38.05.01 – Rules of the Division of Purchasing

**Who does this rule apply to?**

*This rule applies to state agencies conducting procurements and vendors who engage in the purchasing process.*

**What is the purpose of this rule?**

*This rule provides enforceable guidelines for conducting procurements, delegation of purchasing authority to state agencies and procedures for contested case hearings.*

**What is the legal authority for the agency to promulgate this rule?**

*This rule implements the following statute passed by the Idaho Legislature:*

- [Title 67, Chapter 92, et. seq., Idaho Code](#) – State Procurement Act

**Who do I contact for more information on this rule?**

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## 38.05.01 – RULES OF THE DIVISION OF PURCHASING

### 000. LEGAL AUTHORITY.

The following rules are promulgated in accordance with Section 67-9205(11), Idaho Code, by the administrator of the division of purchasing. (4-7-11)

### 001. TITLE AND SCOPE.

**01. Title.** These rules are titled IDAPA 38.05.01, “Rules of the Division of Purchasing,” Department of Administration, IDAPA 38, Title 05, Chapter 01. (3-15-02)

**02. Scope.** These rules shall be utilized by any other state agency acquiring property under these rules or through delegated authority. These rules also govern the contested case hearing process. (3-20-20)

### 002. -- 010. (RESERVED)

### 011. DEFINITIONS.

Unless defined otherwise in these rules, the definitions set forth in Section 67-9203, Idaho Code, apply to this chapter. (3-29-17)

**01. Alternate.** Property or services that are not at least a functional equal in features, performance or use of the brand, model or specification designated as the standard. (3-15-02)

**02. Brand Name or Equal Specification.** A specification that uses a brand name to describe the standard of quality, performance or other characteristics being solicited and that invites the submission of equivalent products. (3-29-17)

**03. Brand Name Specification.** A specification calling for one (1) or more products by manufacturers’ names or catalogue numbers. (3-29-17)

**04. Buyer.** An employee of the division of purchasing designated as a buyer, 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 authority. (3-29-17)

**05. Competitive Negotiation.** Procedure by which the buyer negotiates with one (1) or more responsive offerors in accordance with the provisions of an invitation to negotiate. (3-20-19)

**06. Concession Services.** The granting by the purchasing authority of a right, franchise, authority, property interest or option to a contractor, regardless of whether an expenditure of state or other funds occurs. (3-29-17)

**07. Consultant Services.** Work, rendered by either 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 advice 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 and planning. 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. (3-29-17)

**08. Contract Administration.** Actions taken related to changes to contracts, including amendments, renewals and extensions; as well as receipt, review and retaining of the contract and contract-related documents; and exercise of remedies. (3-29-17)

**09. Contract Management.** Actions taken to ensure that both the agency and contractor comply with the requirements of the contract. Includes some functions related to solicitation development and contract development and close-out; also includes, but is not limited to regular monitoring of the contractor’s day-to-day performance, evaluation of deliverables, invoice review, payment approval, progress tracking, regular status meetings, and management of state-owned property and other resources used in contract performance management. (3-29-17)

**10. Division.** The division of purchasing of the department of administration as established by Section 67-9204, Idaho Code. Whenever a purchase is made by the division on behalf of another agency, the division shall be deemed to be acting as the agent for such agency. (3-15-02)

11. **Document.** When used in these rules, may include electronic documents. (3-15-02)
12. **Equal.** Property that meets or exceeds the quality, performance and use of the brand, model or specifications in the invitation to bid, request for proposals or request for quote. (3-20-19)
13. **Formal Sealed Procedure.** Procedure by which the buyer solicits competitive sealed bids or competitive sealed proposals by means of an invitation to bid or request for proposals. (3-15-02)
14. **Informal Solicitation.** Procedure by which the buyer solicits informal competitive quotes by means of a request for quote. (3-29-17)
15. **Invitation to Bid.** All documents, whether attached or incorporated by reference, utilized for soliciting formal sealed bids. (3-29-17)
16. **Invitation to Negotiate.** All documents, whether attached or incorporated by reference, utilized for soliciting proposals for a competitive negotiation. (3-20-19)
17. **Offeror.** A vendor who has submitted a response to a request for proposals or invitation to negotiate for property to be acquired by the state. (3-20-19)
18. **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, actuarial, veterinarian, information technology and research. The knowledge is founded upon prolonged and specialized intellectual training that enables a particular service to be rendered. The word “professional” implies professed attainments in special knowledge as distinguished from mere skills. (3-29-17)
19. **Proposal.** A written response including pricing information to a request for proposals that describes the solution or means of providing the property requested and which 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. When used in conjunction with an invitation to negotiate, a proposal may or may not initially include pricing information, as provided in the solicitation. (3-20-19)
20. **Public Agency.** Has the meaning set forth in Section 67-2327, Idaho Code. (3-15-02)
21. **Purchase.** The act of acquiring or procuring property for state use or the result of an acquisition action. (3-15-02)
22. **Purchase Order.** Notification to the contractor to provide the stated property under the terms and conditions set forth in the purchase order. It may include the form of the state’s acceptance of a vendor’s quote, proposal or bid. See also definition of contract. (3-29-17)
23. **Purchasing Authority.** The division or an agency exercising authority based on a delegation of authority by the administrator to an individual or an agency; or as otherwise provided under these rules to engage in the conduct of purchasing. (3-29-17)
24. **Quote.** An offer to supply property in response to a request for quote and generally used for informal solicitation procedures. (3-29-17)
25. **Request for Proposals.** Includes all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals as a component of the formal sealed procedure and is generally utilized in the acquisition of services or other complex purchases. (3-29-17)
26. **Request for Quote.** The document, form or method generally used for purchases solicited in accordance with informal solicitation procedures. (3-29-17)

27. **Requisition.** A standard state or agency specific form that serves as a purchasing request and that requests that the purchasing authority acquire the property. (3-29-17)
28. **Sealed.** Includes invitations to bid and requests for proposals electronically sealed and submitted in accordance with requirements or standards set by the division and bids and proposals manually sealed and submitted. (3-29-17)
29. **Sealed Procedure Limit.** That dollar amount, as established by these rules, above which the formal sealed procedure will be used. The amount may be lowered by the administrator to maintain full disclosure or competitive purchasing or otherwise achieve overall state efficiency and economy. (3-29-17)
30. **Small Purchase.** An acquisition that costs less than the sealed procedure limit. (3-15-02)
31. **State.** The state of Idaho including each agency unless the context implies other states of the United States. (3-29-17)
32. **Telecommunications.** All present and future forms of hardware, software or services used or required for transmitting voice, data, video or images. (3-29-17)
33. **Written.** When used in these rules, may include an electronic writing. (3-15-02)

#### **SUBCHAPTER A – RULES GOVERNING PURCHASING**

##### **012. PRESERVATION OF RECORDS.**

Records of a purchasing authority, which are created or held pursuant to these rules, may be kept in such format as prescribed by the purchasing authority responsible for record retention; and otherwise in accordance with record preservation and retention policies established by the agency designated by the legislature for such purpose. (3-20-19)

##### **013. FORM OF COMMUNICATION.**

Any written communication authorized or required by these rules may be provided electronically, or in another format as designated by the administrator. (3-20-19)

##### **014. -- 020. (RESERVED)**

##### **021. DELEGATION OF AUTHORITY OF ADMINISTRATOR.**

Whenever a purchase is made by the division of purchasing on behalf of another agency, the division shall be deemed to be acting as the agent for such agency. The division shall administer the acquisition of all property for agencies except those for which the agencies have separate statutory purchasing authority. The administrator may delegate in writing such authority as deemed appropriate to employees of the division, an agency or employees of an agency. 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 under delegated authority must be made according to these purchasing rules, the policies developed by the division, and the conditions established by the administrator in the delegation. Delegations shall be subject to periodic reporting and review as directed by the administrator. (3-29-17)

01. **Manner of Submission.** Request for delegated purchasing authority must be submitted in writing, on a form and in a manner established by the administrator. (3-29-17)

02. **Accompaniments to Application.** Application for authority must be accompanied by the following: (3-29-17)

a. Documentation that the proposed designee demonstrates sufficient purchasing knowledge and ability to accommodate the agency's particular needs; (3-29-17)

b. A demonstrated need for the dollar limit of authority requested; (3-29-17)

c. An agency purchasing manual outlining internal operational processes and procedures related to the conduct of purchasing within the agency; and (3-29-17)

d. A written plan for continual training for staff which includes routine participation in training sessions, workshops and conferences offered by the division. (3-29-17)

**03. Policy.** The administrator will establish a delegated purchasing authority policy applicable to all designees; and may place additional conditions on individual delegated authority, in order to ensure consistency in the procurement process as well as proper oversight and compliance with state purchasing code, rules and applicable policy. (3-29-17)

**04. Designee Responsibility.** Agency designee(s) are responsible for all procurement-related activities conducted for designee's agency under authority delegated by the administrator. (3-29-17)

**05. Sub-delegation.** Designees may sub-delegate purchasing authority within their respective agencies consistent with the designee's capacity to monitor and oversee such activity. (3-29-17)

**06. Authority Not Transferable.** Authority is not transferable and will automatically terminate when the designee leaves the employment of the requesting agency; however, an agency may apply to the administrator for the immediate designation of an interim designee to exercise delegated purchasing authority for a time period not exceeding ninety (90) days, subject to conditions outlined by the administrator, relative to the purchasing competency of the interim designee. (3-29-17)

**07. Quarterly Review.** The administrator will review the activities of a designee with delegated purchasing authority on no less than a quarterly basis. (3-29-17)

**08. Failure to Comply.** Failure to comply with the conditions included in the written authorization provided by the administrator may result in immediate rescission of authority, increased monitoring, reduction in authority level, additional training, or other action deemed appropriate by the administrator to ensure compliance with purchasing code, rules and applicable policy. (3-29-17)

**022. -- 030. (RESERVED)**

**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 entered into by the state. A public agency may use open contracts as authorized by statute and the terms of the open contract; and the state may otherwise cooperate with political subdivisions in the acquisition of property. (3-29-17)

**032. 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 contracts, advertising contracts, broadcast rights to sporting events or other similar types of property, may be conducted by each purchasing authority as it determines to be in its best interest; provided, however, concessions within the definition of a food service facility set forth in Section 67-6902, Idaho Code, shall comply with the provisions of Title 67, Chapter 69, Idaho Code. The purchasing authority is encouraged to utilize a competitive process if determined to be in its best interest. (3-29-17)

**033. PURCHASE OF TELECOMMUNICATIONS OR INFORMATION TECHNOLOGY PROPERTY.**

Unless otherwise exempted by statute or these rules, all agency requests exceeding the sealed procedure limit for telecommunications or information technology property must be reviewed and approved by the office of information technology services within the office of the governor before submission to the division. It is the requesting agency's responsibility to attach any approvals to any requisitions submitted to the division. Acquisitions of these types of property are subject to these rules and so agencies should plan in advance to allow for review by the office of information technology services. All acquisitions of telecommunications and information technology property will conform to the guidelines and policies established or adopted by the governing or policy board or council created by

statute or directive for the purpose of information technology oversight or review. (3-29-17)

**034. PUBLIC NOTICE.**

Public notice of all solicitations shall be made in accordance with Section 67-9208, Idaho Code. Notice of solicitations shall be posted electronically unless the administrator exempts the solicitation from the requirement to post to the state's electronic procurement (e-procurement) system, as provided in Section 044 of these rules. Notice of sole source acquisitions shall be posted electronically, and otherwise in accordance with Section 67-9221, Idaho Code. (3-29-17)

**035. -- 040. (RESERVED)**

**041. PROCEDURE FOLLOWED IN THE SOLICITATION OF BIDS AND PROPOSALS.**

Except as otherwise provided, the acquisition of property exceeding one hundred thousand dollars (\$100,000) (the sealed procedure limit) shall be by the formal sealed procedure. All vendors submitting responses to solicitations issued by the state must be qualified. All vendors are qualified unless disqualified as defined by Section 67-9217, Idaho Code. (4-7-11)

**042. EXCEPTIONS TO COMPETITION.**

Purchases meeting the following criteria need not be purchased by competitive solicitation, unless otherwise directed by the administrator: (3-29-17)

**01. Emergency Purchases.** Emergency purchases as authorized by Section 67-9221, Idaho Code, and Section 043 of these rules. (3-29-17)

**02. Sole Source Purchases.** Sole source purchases made through direct solicitation with documented source selection, in accordance with Section 67-9221, Idaho Code, and Section 045. (3-15-02)

**03. Reverse Auctions.** Purchases through reverse public auctions as authorized by Section 67-9221, Idaho Code. (3-15-02)

**04. Federal Government Acquisitions.** Acquisitions from the United States of America or any agency thereof. (3-15-02)

**05. Contracts with Other Public Agencies.** Contracts with other public agencies as defined in Section 67-2327, Idaho Code, and authorized by Section 67-2332, Idaho Code. (3-20-19)

**06. Rehabilitation Agency Acquisitions.** Acquisitions of property that is provided by non-profit corporations and public agencies operating rehabilitation facilities serving the handicapped and disadvantaged and that is offered for sale at fair market price as determined by the administrator in accordance with these rules. (3-15-02)

**07. Correctional Industries.** Purchases of property marketed directly by Correctional Industries in accordance with Section 20-245, Idaho Code. (3-29-17)

**08. Purchases from General Services Administration Federal Supply Contractors.** Acquisitions of property may be made from General Services Administration federal supply contractors without the use of competitive bid upon written approval of the administrator. The administrator shall determine whether such property meets the requesting agency's requirements and whether the price of acquisition is advantageous to the state. The administrator shall commemorate the determination in a written statement that shall be incorporated in the applicable file. If the administrator determines that the acquisition of property from General Services Administration contractors is not advantageous to the state, the acquisition shall be in accordance with competitive solicitation procedures and requirements. (3-29-17)

**09. Existing Open Contracts.** Except as provided in these rules, property available under these contracts shall be purchased under such contracts in accordance with the provisions or requirements for use thereof. (3-29-17)



**10. Exempt Purchases.** By written policy the administrator may exempt from the formal sealed procedure or the requirement for competitive solicitation that property for which bidding is impractical, disadvantageous or unreasonable under the circumstances. (3-29-17)

- a.** Examples include, but are not limited to: (3-15-02)
  - i.** Special market conditions; (3-15-02)
  - ii.** Property requiring special contracting procedures due to uniqueness; (3-15-02)
  - iii.** Legal advertising, publication or placement of advertisements by state agency personnel directly with media sources; (3-29-17)
  - iv.** Property for which competitive solicitation procedures are impractical; (3-20-19)
  - v.** Used property; (3-20-19)
  - vi.** Ongoing maintenance, upgrades, support or additional licenses for software or other information technology solutions, including a change in the manner of solution delivery; which software or solution was originally acquired in compliance with the purchasing laws in effect at the time of acquisition; or (3-20-19)
  - vii.** Acquisition of property for direct resale. (3-20-19)
- b.** Such policy shall describe the property exempted, the duration of the exemption, and any other requirements or circumstances appropriate to the situation. (3-15-02)

**043. EMERGENCY PURCHASES.**

**01. Definition of Emergency Conditions.** An emergency condition is a situation that creates a threat to public health, welfare or safety such as may arise by reason of floods, epidemics, riots, equipment failures or other similar circumstances. The existence of such condition must create an immediate and serious need for property that cannot be met through normal acquisition methods. The buyer 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. (3-15-02)

**02. Conditions.** Emergency purchases shall be limited to only that property necessary to meet the emergency. The director or administrator may delegate authority in writing to an agency or purchasing authority to make emergency purchases of up to an amount set forth in the delegation of authority. (3-29-17)

**044. SMALL PURCHASES.**

- 01. Small Purchase Categories.** (3-29-17)
  - a.** Exempt. Property expected to cost less than ten thousand dollars (\$10,000). (3-29-17)
  - b.** Informal. Purchase of any property expected to cost at least ten thousand dollars (\$10,000) and less than the sealed procedure limit. (3-29-17)
  - c.** Professional and consultant services. The acquisition of professional or consultant services expected to cost less than the sealed procedure limit, for projects limited to one (1) year in duration. (3-29-17)

**02. Procedure.** Agencies acquiring property under this rule are encouraged to work with legal counsel to develop solicitation and contract terms that serve the best interests of the state. The terms of procurements under this rule are subject to the provisions of Section 112 of these rules. (3-29-17)

- a.** Professional and consultant small purchases and exempt small purchases may be acquired as each

agency sees fit, in accordance with good business practice and agency-established policy, in the best interest of the state, subject to the limitations in Subsection 044.03 of this rule. (3-29-17)

**b.** Informal small purchases may be made using informal solicitation procedures, subject to the limitations in Subsection 044.03 of this rule. Unless exempted by the administrator, informal solicitations shall be issued through the division's electronic procurement (e-procurement) system. The purchasing authority will establish the quoting time based on factors such as complexity, urgency, and the number and location of vendors, in an effort to allow vendors sufficient time to prepare and return a quote. Agencies procuring property under this rule shall maintain a purchasing file containing the following: (3-29-17)

**i.** The solicitation document posted and quotes received. If the acquisition was not publicly posted, the agency shall include a statement in the purchasing file describing the basis for determining posting was impractical or impossible, along with the administrator's authorization. (3-29-17)

**ii.** If not posted on the division's e-procurement system, the agency shall document the quotes received (or its attempt to obtain quotes) from at least three (3) vendors having a significant Idaho economic presence as defined in Section 67-2349, Idaho Code. (3-29-17)

**03. Limitations.** The following limitations apply to all small purchases: (3-29-17)

**a.** Property available under single agency or open contracts shall be purchased under such contracts and not as a small purchase under this rule unless otherwise authorized by the administrator. (3-29-17)

**b.** Acquisition requirements shall not be artificially divided to avoid bid statutes, rules or policies. (3-29-17)

**c.** Small purchases not issued for a fixed price shall include a not to exceed price of no more than the applicable sealed procedure limit. (3-29-17)

#### **045. SOLE SOURCE PURCHASES.**

**01. Only a Single Supplier.** Sole source purchase shall be used only if the required property 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 (1) potential supplier that can provide the required property. (3-29-17)

**02. Examples of Sole Source.** Examples of circumstances that could necessitate a sole source purchase are: (3-15-02)

**a.** Where the compatibility of equipment, components, accessories, computer software, replacement parts or service is the paramount consideration. (3-15-02)

**b.** Where a single supplier's property is needed for trial use or testing. (3-29-17)

**c.** Purchase of mass produced movie or video films or written publications distributed or sold primarily by the publisher. (3-15-02)

**d.** Purchase of property for which it is determined there is no functional equivalent. (3-15-02)

**03. Administrator Makes Determination.** The determination as to whether an acquisition shall be made as a sole source will be made by the administrator. Each request must be submitted in writing by the requesting agency. The administrator may specify the application of such determination and its duration, and may apply additional conditions to an approval. In cases of reasonable doubt, competition should be solicited. Any request by an agency that an acquisition be restricted to a single supplier shall include a justification for the property, as well as an explanation as to why no other supplier is acceptable. (3-29-17)

**04. Negotiation in Sole Source Purchase.** After receipt of authorization from the administrator for a sole source purchase, the agency shall conduct negotiations, as appropriate, as to price, delivery and terms, in

accordance with the authorization and in the best interest of the state. (3-29-17)

**046. 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 appropriate for the property being sought. The fair market price of a rehabilitation agency shall not be greater than one hundred twenty-five percent (125%) 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. (3-29-17)

**047. -- 050. (RESERVED)**

**051. CONTENT OF SOLICITATIONS ISSUED UNDER A FORMAL SEALED PROCEDURE.**

The following shall be included in an invitation to bid or a request for proposals: (3-29-17)

- 01. Submission Information.** Information regarding the applicable closing date, time and location. (3-20-19)
- 02. Specifications.** Specifications developed in accordance with Section 111 of these rules. (3-29-17)
- 03. Contract Terms.** Terms and conditions applicable to the contract, subject to the provisions of Section 112 of these rules. (3-29-17)
- 04. Evaluation Criteria.** Any evaluation criteria to be used in determining property acceptability. (3-15-02)
- 05. Trade-In Property.** If trade-in property is to be included, a description of the property and location where it may be inspected. (3-15-02)
- 06. Incorporation by Reference.** A brief description of any documents incorporated by reference that specifies where such documents can be obtained. (3-15-02)
- 07. Pre-Proposal or Pre-Bid Conference.** The date, time and location of the conference must be included in the solicitation. (3-29-17)

**052. CHANGES TO INVITATION TO BID OR REQUEST FOR PROPOSALS.**

A solicitation issued under a formal sealed procedure may be changed by the buyer through issuance of an amendment, provided the change is issued in writing prior to the solicitation closing date and is made available to all vendors receiving the original solicitation. Any material information given or provided to a prospective vendor with regard to a solicitation shall be made available in writing by the buyer to all vendors receiving the original solicitation. Oral interpretations of specifications or contract terms and conditions shall not be binding on the state unless confirmed in writing by the buyer and acknowledged by the purchasing authority prior to the date of the closing. Changes to the solicitation shall be identified as such and shall require that the vendor acknowledge receipt of all amendments issued. The right is reserved to waive any informality. (3-29-17)

**053. -- 060. (RESERVED)**

**061. FORM OF SUBMISSION FOR SOLICITATIONS ISSUED UNDER A FORMAL SEALED PROCEDURE.**

**01. Manual Submissions.** Unless otherwise provided in these rules, to receive consideration, in addition to any specific requirements set forth in the invitation to bid or request for proposals, bids or proposals submitted manually must be made on the form provided, which form must be properly completed and signed in ink or contain an electronic signature as defined in Section 28-50-102, Idaho Code. All changes or erasures on manual submissions shall be initialed in ink. Unsigned or improperly submitted bids or proposals will be rejected. The purchasing authority assumes no responsibility for failure of the United States Postal Service, any private or public delivery service, or any computer or other equipment to deliver all or a portion of the bid or proposal at the time or to

the location required by the solicitation.

(4-6-15)

**02. Electronic Submissions.** To receive consideration, in addition to any specific requirements set forth in the invitation to bid or request for proposals, bids or proposals submitted electronically must be submitted in accordance with and meet all applicable requirements of these rules and contain an electronic signature as defined in Section 28-50-102, Idaho Code. The purchasing authority assumes no responsibility for failure of any electronic submission process, including any computer or other equipment to deliver all or a portion of the bid or proposal at the time or to the location required by the solicitation.

(4-6-15)

**062. -- 069. (RESERVED)**

**070. PRE-PROPOSAL CONFERENCE.**

All request for proposals will have a pre-proposal conference for vendors and will be conducted by the procurement team and project personnel. The conference will consist of a general overview of the procurement process as well as the scope of work and requirements of the solicitation. The procurement team will allow attendees to submit written questions and may provide an opportunity for a verbal question and answer period, provided, however, that only questions submitted and answered in written form and posted to the state's e-procurement system as an amendment to the solicitation, will have any force or effect.

(3-29-17)

**071. PRE-OPENING WITHDRAWAL OR MODIFICATION.**

Manual submissions may be withdrawn or modified only as follows: Bids or proposals may be withdrawn or modified prior to the closing by written communication signed in ink by the submitting vendor. Bids or proposals may be withdrawn prior to closing in person upon presentation of satisfactory evidence establishing the individual's authority to act on behalf of the submitting vendor. Bids or proposals may be withdrawn or modified by electronic communication provided the communication is received prior to the closing. The withdrawal or modification, if done via electronic communication, must be confirmed in a writing signed in ink or containing an electronic signature as defined in Section 28-50-102, Idaho Code. Any withdrawing or modifying communication, including an electronic communication, must clearly identify the solicitation. A modifying communication should be worded so as not to reveal the amount of the original bid or proposal.

(4-6-15)

**072. LATE BIDS/PROPOSALS, LATE WITHDRAWALS AND LATE MODIFICATIONS.**

Any bid or proposal, withdrawal, or modification received after the time and date set for closing at the place designated in the solicitation is late. No late bid or proposal, late modification or late withdrawal will be considered. All late bids and proposals, other than clearly marked "no bids", will be returned to the submitting vendor. Time of receipt will be determined by the official time stamp or receipt mechanism located at the designated place for receipt of responses. The purchasing authority assumes no responsibility for failure of the United Postal Service, any private or public delivery service, or any computer or other equipment to deliver all or a portion of the bid or proposal at the time or to the location required by the solicitation.

(3-29-17)

**073. RECEIPT, OPENING, AND RECORDING OF BIDS AND PROPOSALS.**

Upon receipt, all bids, proposals and modifications properly marked and identified will be time stamped, but not opened. They shall be stored in a secure place until the time specified for opening. Time stamping and storage may be through electronic means. Bids shall be opened publicly at the date and time specified in the invitation to bid. Proposals shall be opened publicly, identifying only the names of the offerors unless otherwise stated in the request for proposals. Bid and proposal openings may be electronic virtual openings.

(3-29-17)

**074. MISTAKES.**

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

(3-15-02)

**01. Mistakes in Submission.** If a mistake is attributable to an error in judgment, the submission may not be corrected. Correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible, but at the discretion of the administrator and to the extent it is not contrary to the interest of the state or the fair treatment of other submitting vendors.

(3-29-17)

**02. Mistakes Discovered Before Opening.** Mistakes discovered by a vendor prior to closing may be corrected by the submitting vendor by submitting a timely modification or withdrawing the original submission and submitting a corrected submission to the purchasing authority before the closing. Vendors who discover a mistake

after closing but prior to opening may withdraw the submission by written notification to the purchasing authority and signed by an individual authorized to bind the vendor if such notification is received by the purchasing authority prior to opening. (4-6-15)

**03. Mistakes Discovered After Opening But Before Award.** This subsection sets forth procedures to be applied in three (3) situations described below in which mistakes are discovered after opening but before award. (3-15-02)

**a. Minor Informalities.** Minor informalities are matters of form rather than substance evident from the bid or proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other submitting vendors, that is, the effect of the mistake on price, quantity, quality, delivery or contractual conditions is not significant. The buyer may waive such informalities. Examples include the failure of a submitting vendor to: (3-15-02)

i. Return the required number of signed submissions. (3-15-02)

ii. Sign in ink or provide an electronic signature, but only if it is clear from the submission that the submitting vendor intended to be bound by its terms. (3-20-19)

iii. Acknowledge the receipt of an amendment, but only if: (3-29-17)

(1) It is clear from the submission that the submitting vendor received the amendment and intended to be bound by its terms; or (3-29-17)

(2) The amendment involved had a negligible effect on price, quantity, quality or delivery. (3-29-17)

**b. Mistakes Where Intended Submission is Evident.** If the mistake and the intended submission are clearly evident on the face of the document, the submission shall be corrected to the intended submission and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the 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. (3-15-02)

**c. Mistakes Where Intended Submission is not Evident.** A vendor may be permitted to withdraw a low bid if: (3-15-02)

i. A mistake is clearly evident on the face of the submission document but the intended submission is not similarly evident; or (3-15-02)

ii. The vendor submits timely proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made. (3-15-02)

**04. Mistakes Discovered After Award.** Mistakes shall not be corrected after award of the contract. (3-15-02)

**05. Written Approval or Denial Required.** In the event of a mistake discovered after the opening date, the administrator shall approve or deny, in writing, a request to correct or withdraw a submission. (3-15-02)

**075. -- 080. (RESERVED)**

**081. EVALUATION AND AWARD.** Any contract award shall comply with these provisions. (3-15-02)

**01. General.** The contract is to be awarded to the lowest responsible and responsive bidder or offeror (or for requests for quotes, vendor submitting a quote). The solicitation shall set forth the requirements and criteria that will be used to make the lowest responsive and responsible determination. (3-29-17)

**02. Standards of Responsibility.** Nothing herein shall prevent the buyer from establishing additional

responsibility standards for a particular purchase. Factors to be considered in determining whether a vendor is responsible include, but are not limited to, whether the vendor has: (3-29-17)

- 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; (3-15-02)
- b. A satisfactory record of integrity; (3-15-02)
- c. Qualified legally to contract with the purchasing authority and qualified to do business in the state of Idaho; (3-29-17)
- d. Unreasonably failed to supply any necessary information in connection with the inquiry concerning responsibility; (3-15-02)
- e. Requisite experience; or (3-29-17)
- f. A satisfactory prior performance record, if applicable. (3-29-17)

**03. Information Pertaining to Responsibility.** A submitting vendor shall supply information requested by the buyer concerning its responsibility. If such submitting vendor fails to supply the requested information, the buyer shall base the determination of responsibility upon any available information or may find the submitting vendor nonresponsible if such failure is unreasonable. (3-15-02)

**04. Written Determination of Nonresponsibility Required.** If a submitting vendor that otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the buyer. (3-15-02)

**05. Extension of Time for Acceptance.** After opening, the buyer may request submitting vendors to extend the time during which their bids or proposals may be accepted. The reasons for requesting such extension shall be documented. (3-29-17)

**06. Partial Award.** A buyer shall have the discretion to award on an all or nothing basis or to accept any portion of a response to a solicitation, excluding other portions of a response and other offers, unless the vendor stipulates all or nothing in its response to the solicitation. (3-29-17)

**07. Only One Submission Received.** If only one (1) responsive submission is received in response to a solicitation, an award may be made to the single submitting vendor. In addition, the buyer may pursue negotiations in accordance with applicable conditions and restrictions of these rules. Otherwise, the solicitation may be canceled, and a new solicitation issued, as the purchasing authority determines to be in its best interest. (3-29-17)

## **082. TIE RESPONSES.**

**01. Tie Responses -- Definition.** Tie responses are low responsive bids, proposals or quotes from responsible bidders or offerors (or for requests for quotes, from vendors submitting a quote) that are identical in price or score. Responsibility is determined based upon the standards of responsibility set forth in Section 081 of these rules. (3-29-17)

**02. Award.** Award shall not be made by drawing lots, except as set forth below, or by dividing business among tie responses. In the discretion of the buyer, award shall be made in any permissible manner that will resolve tie responses. Procedures that may be used to resolve tie responses include: (3-29-17)

- a. If price is considered excessive or for another reason such responses are unsatisfactory, reject all responses, resolicit and seek a more favorable contract in the open market or enter into negotiations pursuant to Section 084 of these rules; (3-29-17)
- b. Award to an Idaho resident or an Idaho domiciled vendor or for Idaho produced property where

other tie response(s) are from out of state or to a vendor submitting a domestic property where other tie responses are for foreign (external to Idaho) manufactured or supplied property; (3-29-17)

**c.** Where identical low responses include the cost of delivery, award the contract to the vendor located (or shipping from a point) farthest from the point of delivery; (3-29-17)

**d.** Award to the vendor with the earliest delivery date. (3-29-17)

**03. Drawing Lots.** If no permissible method will be effective in resolving tie responses and a written determination is made so stating, award may be made by drawing lots or tossing a coin in the presence of witnesses if there are only two (2) tie responses. (3-29-17)

**083. PROPOSAL DISCUSSION WITH INDIVIDUAL OFFERORS.**

**01. Classifying Proposals.** For the purpose of conducting proposal discussions under this rule, proposals shall be initially classified as: (3-15-02)

**a.** Acceptable; (3-15-02)

**b.** Potentially acceptable, that is reasonably susceptible of being made acceptable; or (3-15-02)

**c.** Unacceptable. (3-15-02)

**02. "Offerors" Defined.** For the purposes of this rule, the term "offerors" includes only those vendors submitting proposals that are acceptable or potentially acceptable. The term shall not include vendors that submitted unacceptable proposals. (3-29-17)

**03. Classification of Proposals.** For the purposes of this rule, the purchasing authority may establish criteria within the solicitation to classify proposals. (3-20-19)

**04. 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. (3-15-02)

**05. Conduct of Discussions.** The solicitation document must provide for the possibility 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. (3-15-02)

**06. Best and Final Offer.** The buyer shall establish a common time and date for submission of best and final offers. Best and final offers shall be submitted only once unless the buyer makes a written determination before each subsequent round of best and final offers demonstrating another round is in the purchasing authority's interest, and additional discussions will be conducted or the 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. (3-29-17)

**07. Application to Other Solicitation Types.** The provisions of this Section 083 may be utilized in other types of solicitations, in addition to requests for proposals, so long as the solicitation document provides for the possibility of discussions and includes a reference to this section. (3-29-17)

**084. NEGOTIATIONS.**

In accordance with Section 67-9205(12), Idaho Code, the administrator may negotiate acquisitions as follows: (3-15-02)

**01. Use of Negotiations.** Negotiations may be used under these rules when the administrator determines in writing that negotiations may be in the best interest of the state including but not limited to the following circumstances: (3-20-19)

**a.** Negotiations undertaken pursuant to a solicitation for competitive negotiation, in accordance with the provisions of Section 094 of these rules. (3-20-19)

**b.** A competitive solicitation has been unsuccessful because, without limiting other possible reasons, all offers are unreasonable, noncompetitive or all offers exceed available funds and the available time and circumstances do not permit the delay required for resolicitation; (3-15-02)

**c.** There has been inadequate competition; (3-29-17)

**d.** During the evaluation process it is determined that more than one (1) vendor has submitted an acceptable proposal or bid and negotiations could secure advantageous terms or a reduced cost for the state; or (3-29-17)

**e.** During the evaluation process it is determined that all responsive offers exceed available funds and negotiations could modify the requirements of the solicitation to reduce the cost to available funds and avoid the extended time and expenditure of resources for a resolicitation. (3-29-17)

**02. Examples.** Examples of situations in which negotiations may be appropriate include but are not limited to: (3-29-17)

**a.** Ensuring that the offering vendor has a clear understanding of the scope of work required and the requirements that must be met; (3-15-02)

**b.** Ensuring that the offering vendor will make available the required personnel and facilities to satisfactorily perform the contract; or (3-15-02)

**c.** Agreeing to any clarifications regarding specifications or contract terms. (3-29-17)

**03. Conditions of Use.** Negotiations, as permitted by Paragraph 084.01.d. of this rule, are subject to the following: (3-20-19)

**a.** The solicitation must specifically allow for the possibility of negotiation and describe, with as much specificity as possible, how negotiations may be conducted; (3-15-02)

**b.** Submissions shall be evaluated and ranked based on the evaluation criteria in the solicitation; (3-15-02)

**c.** Only those vendors whose proposals or bids are determined to be acceptable, in accordance with criteria for negotiations set forth in the solicitation, shall be candidates for negotiations; (3-15-02)

**d.** Negotiations shall be conducted first with the vendor that is the apparent low responsive and responsible bidder, unless concurrent negotiations are permissible, in accordance with the terms of the solicitation; (3-20-19)

**e.** If one (1) or more responsive offers does not exceed available funds, negotiations shall be against the requirements of and criteria contained in the solicitation and shall not materially alter those criteria or the specifications; (3-29-17)

**f.** Auction techniques (revealing one vendor's price to another) and disclosure of information derived from competing proposals is prohibited; (3-15-02)

**g.** Any clarifications or changes resulting from negotiations shall be documented in writing; (3-15-02)



**h.** If the parties to negotiations are unable to agree, the administrator shall formally terminate negotiations and may undertake negotiations with the next ranked vendor; and (3-15-02)

**i.** If negotiations as provided for in this rule fail to result in a contract, as determined by the administrator, the solicitation may be canceled and the administrator may negotiate in the best interest of the state with any qualified vendor. (3-15-02)

**04. Timing of Use.** If conducted as part of a small purchase or under the formal sealed procedure, negotiations are the last step in the procurement process. Use of oral interviews or best and final procedures, as provided for in a solicitation, must precede negotiations as provided for in this rule, unless the administrator makes a written determination that it is in the state's best interest to proceed directly to negotiations in lieu of first conducting oral interviews and the best and final procedures. (3-20-19)

**05. Termination of Negotiations.** The purchasing authority may terminate negotiations at any time, in the best interest of the state. (3-20-19)

**085. PRICE AGREEMENTS.**

The administrator may authorize and negotiate price agreements with vendors when such agreements are deemed in the best interest of the state. Price agreements shall provide for termination for any reason upon not more than thirty (30) days' written notice. Price agreements may be in the best interest of the state when: (3-29-17)

**01. Dollar Value.** The dollar value of individual procurements of property is less than the maximum dollar value of an exempt small purchase under Section 044 of these rules and multiple individual procurements are anticipated within a state of Idaho fiscal year; (3-29-17)

**02. Property.** The property may not be conducive to standard competitive bidding procedures; (3-29-17)

**03. Multiple Agreements.** 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 or needed in multiple locations; or (3-29-17)

**04. Non-exclusive Agreements.** Non-exclusive agreements for periods not exceeding two (2) years are deemed necessary to establish consistent general business terms, including without limitation, price, use of catalogs, delivery or credit terms. (3-29-17)

**086. -- 090. (RESERVED)**

**091. ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS.**

Prior to the issuance of a contract, the administrator shall have the right to accept or reject all or any part of a bid or proposal or any and all bids or proposals when: (3-29-17)

**01. Best Interest.** It is in the best interests of the state of Idaho; (3-15-02)

**02. Does Not Meet Specifications.** The submission does not meet the minimum specifications; (3-15-02)

**03. Not Lowest Responsible Bid.** The submission is not the lowest responsible submission; (3-15-02)

**04. Bidder Is Not Responsible.** A finding is made based upon available evidence that a submitting vendor is not responsible or otherwise capable of currently meeting specifications or assurance of ability to fulfill contract performance; or (3-15-02)

**05. Deviations.** The item offered deviates to a major degree from the specifications, as determined by the administrator (minor deviations, as determined by the administrator, may be accepted as substantially meeting the requirements of the state of Idaho). Deviations will be considered major when such deviations appear to frustrate the competitive process or provides a submitting vendor an unfair advantage. (3-15-02)

**092. CANCELLATION OF SOLICITATION.**

Prior to the issuance of a contract, the purchasing authority reserves the right to reject all bids, proposals or quotes or to cancel a solicitation. In the event of the cancellation of an invitation to bid or request for proposals, all submitting vendors will be notified. Examples of reasons for cancellation are: (3-29-17)

- 01. Inadequate or Ambiguous Specifications.** (3-15-02)
- 02. Specifications Have Been Revised.** (3-15-02)
- 03. Cancellation Is in the Best Interest of the State.** (3-29-17)

**093. NOTICE OF REJECTION.**

Bidders or offerors whose bids or proposals are rejected as non-responsive will be notified in writing of the reasons for such rejection. (3-15-02)

**094. COMPETITIVE NEGOTIATIONS.**

Notwithstanding the provisions of Section 041 of these rules applicable to the formal sealed procedure, the administrator may authorize the use of competitive negotiations when it is determined that the use of negotiations may enable the state to more effectively identify and refine potential solutions, especially where the business need is complex or requires innovation. (3-20-19)

**01. Written Authorization.** The administrator shall establish guidelines on how and when agencies may request to use competitive negotiations. Requests for authorization to utilize competitive negotiations must be provided in writing, in a format designated by the administrator. The request must provide the reasons that a formal sealed procedure is not practicable; as well as support for the use of competitive negotiations in order to meet a complex business need, solicit innovative solutions, enable the state to keep within approved program budgets, or to otherwise facilitate the receipt of the most cost-effective solution. Written authorization must be provided by the administrator in order for a purchasing authority to use competitive negotiations under this rule. (3-20-19)

**02. Form of Solicitation.** Proposals under this rule shall be solicited pursuant to an invitation to negotiate. (3-20-19)

**03. Applicability of Other Rules.** An invitation to negotiate shall be subject to the rules applicable to a request for proposals, except as otherwise provided. Modifications under Section 072 of these rules will be allowed after closing to the extent authorized within the invitation to negotiate. Section 083 of these rules, proposal discussion with individual offerors, shall not apply to an invitation to negotiate. (3-20-19)

**04. Content of Solicitation for Competitive Negotiation.** Notwithstanding Section 051 of these rules, the following shall be included in an invitation to negotiate: (3-20-19)

- a. Submission Information.** Information regarding the applicable closing date, time and location. (3-20-19)
- b. Solicitation Procedure.** An outline of the invitation to negotiate process. (3-20-19)
- c. Specifications.** Specifications developed in accordance with Section 111 of these rules, to the extent the purchasing authority determines adequate to inform interested vendors of the desired result. (3-20-19)
- d. Contract Terms.** Terms and conditions applicable to the contract, subject to the provisions of Section 112 of these rules. (3-20-19)
- e. Trade-In Property.** If trade-in property is to be included, a description of the property and location where it may be inspected. (3-20-19)
- f. Incorporation by Reference.** A brief description of any documents incorporated by reference that specifies where such documents can be obtained. (3-20-19)

**g.** Pre-Proposal or Pre-Bid Conference. The date, time and location of the conference must be included in the solicitation. (3-20-19)

**h.** Evaluation and Award Criteria. A summary of evaluation criteria to be used in determining property acceptability; evaluation criteria to classify proposals and determine the competitive threshold for negotiations; as well as the criteria that will be used to make the lowest responsive and responsible determination. (3-20-19)

**05. Cost.** The buyer may request cost proposals at any time during the invitation to negotiate process; and may elect to request cost proposals only from those offerors determined to be in the competitive range for award (“finalists”), in accordance with the instructions contained within the solicitation. (3-20-19)

**06. Conduct of Negotiations.** Negotiations shall be conducted in accordance with the procedure outlined in the invitation to negotiate, which may include multiple iterations of submissions and discussions in order to classify proposals; allow for revisions to the solicitation proposal(s), including any requirements, terms, conditions or specifications; and to determine finalists. The negotiation process ends upon submission of the best and final offer(s) from the finalists, after which time vendors shall not be allowed to make further modifications to their proposal(s). (3-20-19)

**095. -- 100. (RESERVED)**

**101. LEASES.**

**01. Lease for Personal Property.** A lease for personal property may be entered into provided the lease is subject to the same requirements of competition that govern the purchase of property. Leases for periods exceeding one (1) year specifically require the approval of the administrator. (3-15-02)

**02. Lease Purchase Option.** Unless a specific exemption is granted by the administrator or unless otherwise exempt by these rules, a lease purchase option may be exercised only if the lease containing the purchase option was awarded using the competitive process. Before exercising such an option, the buyer shall meet all applicable requirements of Section 67-9222, Idaho Code, including providing notice of the exercise of option as a sole source or competitively bidding the property by soliciting bids for new or used property. (3-15-02)

**102. -- 110. (RESERVED)**

**111. SPECIFICATIONS -- POLICIES AND DEVELOPMENT.**

**01. Purpose.** Unless exempted by these rules or by the administrator, all solicitations require specifications. Specifications set forth the characteristics of the property to be acquired. Specifications serve as the basis for obtaining property adequate and suitable for the using agency’s needs in a cost effective manner, taking into account the costs of ownership and operation as well as initial acquisition costs. Specifications shall be drafted clearly to describe the agency’s needs and to enable the vendors to determine and understand the agency’s requirements. Specifications shall, as much as practical, be nonrestrictive to provide an equal basis for participation by an optimum number of vendors and to encourage competition. This information may be in the form of a description of the physical, functional or performance characteristics, a reference brand name or both. It may include a description of any required inspection, testing or preparation or delivery. Specifications may be incorporated by reference or contained in an attachment. (3-29-17)

**02. 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 purchase requisitions their principal functional or performance needs. (3-15-02)

**03. Preference for Commercially Available Products.** Requirements shall be satisfied by standard commercial products whenever practicable. (3-15-02)

**04. Brand Name or Equal Specification. (3-15-02)**

**a.** A brand name or equal specifications may be used when the buyer determines that such a specification is in the agency's best interest. (3-15-02)

**b.** A brand name or equal specification shall seek to designate as many different brands as are practicable as "or equal" and shall state that products substantially equivalent to those designated will be considered for award. (3-15-02)

**c.** 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 required. (3-15-02)

**d.** Where a brand name or equal specification is used, the document shall contain explanatory language that the use of a brand name is for the purpose of designating the standard of quality, performance, and characteristics desired and is not intended to restrict competition. (3-15-02)

**05. Brand Name Specification. (3-15-02)**

**a.** Since use of a brand name specification is restrictive, such a specification may only 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. (3-15-02)

**b.** 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 (1) source can supply the requirement, the acquisition shall be made under Section 67-9221, Idaho Code. (3-15-02)

**06. Specification of Alternates May Be Included.** A specification may provide alternate descriptions of property where two (2) or more design, functional or performance criteria will satisfactorily meet the agency's requirements. (3-15-02)

**112. CONTRACT TERMS - POLICIES AND LIMITATIONS.**

**01. Prohibited Terms.** Purchasing authorities do not have the authority to bind the state of Idaho or an agency to the following terms. If a contract contains such a term, the term shall be void pursuant to Section 67-9213, Idaho Code. (4-6-15)

**a.** Terms waiving the sovereign immunity of the state of Idaho. (4-6-15)

**b.** Terms subjecting the state of Idaho or its agencies to the jurisdiction of the courts of other states. (4-6-15)

**c.** Terms limiting the time in which the state of Idaho or its agencies may bring a legal claim under the contract to a period shorter than that provided in Idaho law. (4-6-15)

**d.** Terms imposing a payment obligation, including a rate of interest for late payments, less favorable than the obligations set forth in Section 67-2302, Idaho Code. (4-6-15)

**02. Terms Requiring Special Consideration. (4-6-15)**

**a.** Unless specifically authorized by the Idaho legislature, terms requiring an agency or the state of Idaho indemnify a vendor shall be subject to the provisions of Section 59-1015, Idaho Code, and require an appropriation by the Idaho legislature. Indemnification terms not specifically authorized by the Idaho legislature or subject to appropriation shall be void pursuant to Section 67-9213, Idaho Code, and Section 59-1016, Idaho Code. (4-6-15)

b. Purchasing authorities shall consult with legal counsel prior to accepting terms submitting the contract to arbitration or waiving the state of Idaho's right to a jury trial. (4-6-15)

**113. CONTRACT OVERSIGHT.**

**01. Contract Management and Contract Administration. (3-29-17)**

a. Agencies which issue their own contracts pursuant to their delegated authority (or as otherwise exempt from the requirements of these rules) will be responsible for all aspects of contract management and contract administration, as those terms are defined in Section 011 of these rules. (3-29-17)

b. When the division of purchasing issues a contract on behalf of an agency, in its role as the state's contracting agent, the division of purchasing is responsible for contract administration and the agency is responsible for contract management. (3-29-17)

**02. Contract Management.** Each state agency which manages one (1) or more contracts, whether entered into directly by the agency or by the division of purchasing acting as the statutory purchasing agency for the agency, will perform the following minimum contract management functions at a level consistent with the dollar value, complexity, and risk associated with each contract (3-29-17)

a. Designate a competent contract manager as the single point of contact for each agency contract; (3-29-17)

b. Document the contract manager's responsibilities and reporting requirements relative to the contract, including activities such as management of the invoice and payment process, budget tracking, and invoice review and reconciliation with contract requirements and deliverables, to ensure compliance; (3-29-17)

c. Document a communication and escalation plan, as between the contract manager, identified agency personnel and the contract administrator, designed to ensure timely and effective contract monitoring and issue resolution (the communication and escalation plan must include the division of purchasing for contracts for which the division of purchasing is acting as the statutory purchasing agent for the agency); (3-29-17)

d. Develop and implement internal contract monitoring tools, including a reporting structure, based on the dollar value and/or potential risk associated with contract failure; and (3-29-17)

e. Close out each contract, including, but not limited to documenting receipt of goods or services in compliance with contract requirements as well as a review of vendor performance and lessons learned. (3-29-17)

**03. Service Contracts Exceeding \$1,500,000 in Total Value.** For each contract which is valued at more than one million five hundred thousand dollars (\$1,500,000) over the duration of the contract and which consists primarily of the purchases of services, the agency responsible for contract management must develop and implement contract reporting requirements that capture, at a minimum, information on compliance with financial provisions and delivery schedules; the status of any corrective action plans; as well as any liquidated damages assessed or collected under the contract during the current reporting period. Reports will be submitted to the designated agency purchasing representative as well as the division of purchasing on no less than a biannual basis, with a schedule for each contract determined by the contract manager in consultation with the agency purchasing representative and the division of purchasing. (3-29-17)

**114. INFORMATION TECHNOLOGY RESALE.**

**01. Purpose.** The use of resellers is common in the acquisition of information technology; however, the use of a reseller to acquire information technology attempts to separate the application of the State Procurement Act from the contract terms required by the information technology owner for use of the information technology. The requirements of this rule are in place to apply Idaho law to the contract terms required by the information technology owner, when information technology is acquired through a reseller. (3-20-19)

**02. Terms.** All license, sale, or use terms imposed by the information technology owner shall be subject to the following: (3-20-19)

**a.** Licensing, sale, or use terms required by a third party owner of information technology sold through a reseller shall be subject to these rules, specifically including Subsection 112.01 and Paragraph 112.02.a. of these rules. If a contract contains a term prohibited by Section 112 of these rules, the term shall be void pursuant to Section 67-9213, Idaho Code. (3-20-19)

**115. -- 199. (RESERVED)**

**SUBCHAPTER B – RULES GOVERNING CONTESTED CASE HEARINGS ON BID APPEALS  
AT THE DIVISION OF PURCHASING**

**200. FILING OF APPEAL.**  
The notice of appeal must be filed in accordance with Section 67-9232(3)(a)(iii), Idaho Code. (3-20-20)

**201. NOTICE OF CONTESTED CASE HEARING.**  
A notice of a contested case hearing shall be provided to the bidder, giving at least ten (10) days' advance notice of the contested case hearing. The contested case hearing will be held in Ada County, at such place as may be designated in the hearing notice. Upon concurrence of the parties and the determinations officer, contested case hearings may be conducted telephonically. (3-20-20)

**202. BRIEFS AND MEMORANDA.**  
Any party may make a request in writing to the determinations officer to file briefs, memoranda, proposed orders or statements of position and the determinations officer shall grant or deny such request as the determinations officer deems appropriate under the circumstances of a particular case. The determinations officer may request briefs, memoranda, proposed orders, or statements of position. (3-20-20)

**203. RULES OF EVIDENCE.**  
The determinations officer shall control the hearing and direct the order or presentation. A party shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceedings. (3-20-20)

**204. ADMISSION OF EVIDENCE.**  
The admission of evidence at contested case hearings shall be governed by IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 600 through 609. (3-20-20)

**205. TESTIMONY.**  
Testimony to be considered by the determinations officer in the hearing shall be by sworn testimony, except for matters noticed or entered by stipulation. (3-20-20)

**206. DISCOVERY.**  
Discovery may be conducted in the manner and to the extent allowed by the Idaho Rules of Civil Procedure only if first formally agreed to by the parties, or by order of the determinations officer after an application has been filed and a showing that discovery is required to clarify issues, identify witnesses, or preserve testimony. The order may limit the scope of discovery and the method of discovery as the determinations officer deems appropriate under the circumstances of a particular case. (3-20-20)

**207. RECORDING AND TRANSCRIPTION.**  
The hearing will be recorded by electrical device. A written transcript will be produced by the department upon request of either party. A bidder requesting such transcript shall be responsible for the cost of the transcript. Any party wishing to have the hearing recorded by a qualified court reporter must request such no less than five (5) business days in advance of the date set for hearing. The requesting party shall pay the cost of the reporter's fees and shall provide a copy to the determinations officer. The non-requesting party may pay for an additional copy for its own use. (3-20-20)

**208. WITNESSES AND EVIDENCE.**

The determination officer, on his own or upon application of the bidder or the Department of Administration, may issue subpoenas for the attendance of witnesses and production of documents. (3-20-20)

**209. FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

Once the matter is fully submitted, the determination officer shall issue findings of fact, conclusions of law and preliminary order. Copies shall be provided to all parties. (3-20-20)

**210. FINAL ORDER.**

Upon receipt of the determination officer's preliminary order, the director shall issue a final order affirming, modifying, or reversing the original selection determination. Copies shall be provided to all parties. (3-20-20)

**211. MOTIONS FOR RECONSIDERATION.**

Motions for reconsideration of the determination officer's preliminary order or of the Director's final order are not allowed. (3-20-20)

**212. APPEALS.**

Appeals from the final order shall be taken in accordance with Section 67-5270, Idaho Code. (3-20-20)

**213. -- 999. (RESERVED)**

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