

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?

Idaho Department of Administration
650 West State, Room 100
Boise, ID 83706
Phone: (208) 332-1812
Fax: (208) 334-2307
Email: Steven.bailey@adm.idaho.gov
<https://adm.idaho.gov/>

This rule chapter will be reviewed in compliance with Section [67-5292](#), Idaho Code, and in accordance with the 8-year rule review schedule linked [here](#).

Table of Contents

38.05.01 – Rules of the Division of Purchasing

SUBCHAPTER A – GENERAL PROVISIONS

000. Legal Authority.	3
001. Scope.	3
002. -- 010. (Reserved)	3
011. Definitions.	3
012. Preservation Of Records.	5
013. -- 020. (Reserved)	5
021. Delegation Of Authority Of Administrator.	5
022. -- 033. (Reserved)	5
034. Public Notice.	5
035. -- 040. (Reserved)	5
041. Acquisition Procedures.	5
042. Exceptions Requiring Written Administrator Approval.	6
043. Exceptions Not Requiring Approval.	7
044. -- 051. (Reserved)	8
052. Changes To Solicitations.	8
053. -- 060. (Reserved)	8
061. Form Of Submission For Solicitations.	8
062. -- 069. (Reserved)	8
070. Pre-Proposal Conference.	8
071. Withdrawal And Modification.	8
072. Late Quotes, Bids, And proposals.	9
073. Receipt, Opening, And Recording Of Bids And Proposals.	9
074. Mistakes.	9
075. -- 080. (Reserved)	10
081. Evaluation And Award.	10
082. (Reserved)	10
083. Proposal Discussion With Individual Offerors.	11
084. Negotiations.	11
085. -- 091. (Reserved)	12
092. Cancellation Of Solicitation.	12
093. -- 100. (Reserved)	12
101. Leases.	12
102. -- 110. (Reserved)	12
111. Specifications -- Policies And Development.	12
112. Contract Terms - Policies And Limitations.	13
113. Contract Oversight.	13
114. Information Technology Resale.	14
115. -- 999. (Reserved)	14

38.05.01 – RULES OF THE DIVISION OF PURCHASING

SUBCHAPTER A – GENERAL PROVISIONS

000. LEGAL AUTHORITY.

Section 67-9205(11), Idaho Code.

(7-1-25)

001. SCOPE.

These rules govern any other state agency acquiring property under these rules or through delegated authority.

(7-1-25)

002. -- 010. (RESERVED)

011. DEFINITIONS.

The definitions set forth in Section 67-9203, Idaho Code, apply to this chapter. In addition, the following apply:

(7-1-25)

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.

(4-6-23)

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 property.

(4-6-23)

03. Brand Name Specification. A specification calling for property by manufacturers' names or catalogue numbers.

(4-6-23)

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.

(4-6-23)

05. 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 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.

(4-6-23)

06. Contract Administration. Actions taken related to changes to contracts, including amendments, renewals, and extensions; receipt, review and retaining of the contract and contract-related documents; and exercise of remedies.

(4-6-23)

07. Contract Management. Actions taken to ensure that both the agency and contractor comply with the requirements of the contract. Includes regular monitoring of the contractor's 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.

(4-6-23)

08. Division. The division of purchasing of the department of administration as established by Section 67-9204, Idaho Code.

(4-6-23)

09. Document. When used in these rules, may include electronic documents.

(4-6-23)

10. E-procurement. Use of the division's electronic procurement system.

(4-6-23)

11. Equal. Property that meets or exceeds the quality, performance and use of the brand, model or specifications in the informal or formal solicitation.

(4-6-23)

12. Formal Sealed Procedure. Procedure by which the buyer solicits sealed bids or competitive sealed proposals by means of a formal solicitation.

(4-6-23)

13. Formal Solicitation. An invitation to bid or request for proposal.

(7-1-25)

- 14. Informal Solicitation.** Procedure by which the buyer solicits informal competitive quotes by means of a request for quote. (4-6-23)
- 15. Invitation to Bid or ITB.** All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids. (4-6-23)
- 16. Offeror.** A vendor who has submitted a response to a request for proposals for property to be acquired by the state. (7-1-25)
- 17. Professional Services.** Work rendered by a 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 extensive 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. (4-6-23)
- 18. 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. (4-6-23)
- 19. Purchase.** The act of acquiring or procuring property for state use or the result of an acquisition. (4-6-23)
- 20. 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. (4-6-23)
- 21. 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. (4-6-23)
- 22. Quote.** An offer to supply property in response to a request for quote and generally used for informal solicitation procedures. (4-6-23)
- 23. Request for Proposals or RFP.** Includes all documents, whether attached or incorporated by reference, utilized for soliciting proposals as a component of the formal sealed procedure and is generally utilized in the acquisition of services or other complex purchases. (7-1-25)
- 24. Request for Quote.** The document, form or method generally used for purchases solicited in accordance with informal solicitation procedures. (4-6-23)
- 25. Requisition.** A standard state or agency specific form that serves as a purchasing request and that requests that the purchasing authority acquire the property. (4-6-23)
- 26. Sealed.** A bid or proposal physically or electronically sealed and submitted in accordance with requirements of a formal solicitation. (4-6-23)
- 27. 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. (4-6-23)
- 28. Small Purchase.** An acquisition that costs less than the sealed procedure limit. (4-6-23)
- 29. Signature.** A manual signature or an electronic signature, as defined in Section 28-50-102, Idaho Code, of an individual authorized to bind a person or entity. (4-6-23)

30. Telecommunications. All present and future forms of hardware, software or services used or required for transmitting voice, data, video or images. (4-6-23)

31. Tie Responses. Tie responses are low responsive bids, proposals or quotes from responsible vendors that are identical in price or score. (7-1-25)

32. Total Cost. The acquisition cost of property, including all components, options, and add-ons available under the contract, related services, and, in the case of ongoing services, the cost of the full term of the contract, including all authorized renewals. Unless a different total term is provided in the contract, the term used for purposes of total cost is five (5) years. (4-6-23)

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. (4-6-23)

013. -- 020. (RESERVED)

021. DELEGATION OF AUTHORITY OF ADMINISTRATOR.

Delegations made pursuant to Section 67-9206, Idaho Code, remain in effect unless modified or until revoked in writing. All delegations must be given in writing prior to the acquisition of the property. Designees shall make purchases according to these purchasing rules, the policies developed by the division, and the conditions established by the administrator in the delegation. Delegations are subject to periodic reporting and review as directed by the administrator. (7-1-25)

01. Manner of Submission. Request for delegated purchasing authority must be submitted in writing, on a form established by the administrator. The request must generally demonstrate that agency personnel have the knowledge and experience to administer solicitations and contracts in compliance with the State Procurement Act, these rules, and policies of the division of purchasing, and must specifically address any qualification criteria established by the administrator. (7-1-25)

02. Policy. The administrator's delegated purchasing authority policy is applicable to all designees; and may place additional conditions on the agency or individual delegated authority. (4-6-23)

03. Failure to Comply. A designee's failure to comply with the policy, the conditions included in the written authorization provided by the administrator, or the instructions of the administrator regarding activities delegated pursuant to this rule may result in immediate rescission of delegated authority, increased monitoring, reduced authority level, additional training, or other action deemed appropriate by the administrator. (4-6-23)

022. -- 033. (RESERVED)

034. PUBLIC NOTICE.

Notice of informal and formal solicitations are posted electronically unless the administrator exempts the acquisition from e-procurement. Notice of sole source acquisitions are posted electronically. (7-1-25)

035. -- 040. (RESERVED)

041. ACQUISITION PROCEDURES.

Acquisition requirements shall not be artificially divided to avoid bid statutes, rules, or policies. The procedure followed for acquisitions shall be as follows: (7-1-25)

01. Small Purchases. (4-6-23)

a. Acquisitions of the following property are small purchases: (4-6-23)

i. Services with a total cost less than twenty-five thousand dollars (\$25,000) (4-6-23)

ii. Software, regardless of the delivery method (e.g. on-premise, cloud, software as a service, etc.), with a total cost less than fifteen thousand dollars (\$15,000); (4-6-23)

iii. Property, excluding services, with a total cost less than fifteen thousand dollars (\$15,000); (4-6-23)

iv. A mix of property including services and other property, with a total cost less than fifteen thousand dollars (\$15,000). (4-6-23)

b. Small purchases do not require acquisition through competitive solicitation. Agencies must comply with the division's small purchase policy. Property available under single agency or open contracts shall be purchased under such contracts and are not a small purchase under this rule unless otherwise authorized by the administrator. (4-6-23)

02. Informal Purchases. (4-6-23)

a. Acquisition of property with a total cost exceeding the dollar limits established in this rule for a small purchase and less than the formal sealed procedure limit are informal purchases. (4-6-23)

b. Informal purchases may be made using: (4-6-23)

i. An informal solicitation issued through e-procurement, unless exempted by the administrator; or (4-6-23)

ii. The formal sealed procedure, when the purchasing authority makes a written determination that using a formal solicitation is in the best interest of the state, including where selection based solely on cost is not appropriate. (4-6-23)

c. Agencies procuring property under this rule shall maintain a purchasing file containing: (4-6-23)

i. The solicitation document posted and quotes received. If the acquisition was not publicly posted, the agency shall include a statement describing the justification for determining that posting was impractical or impossible, along with the administrator's authorization. (7-1-25)

ii. If not using e-procurement, 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. (4-6-23)

03. Formal Sealed Procedure. (4-6-23)

a. The sealed procedure limit is one hundred fifty thousand dollars (\$150,000). (4-6-23)

b. Purchases of property in excess of the sealed procedure limit are made using the formal sealed procedure, unless exempted by these rules or the administrator. (4-6-23)

042. EXCEPTIONS REQUIRING WRITTEN ADMINISTRATOR APPROVAL.

The administrator may exempt the following purchases from the requirement for competitive solicitation by issuing a written determination to the purchasing authority. (7-1-25)

01. Emergency Purchases. An emergency purchase is a purchase required to address an emergency condition, which is a situation that creates a threat to public health, welfare, or safety, such as may arise from floods, epidemics, riots, equipment failure, or 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 must send a written explanation stating the emergency condition and the basis for the supplier selection, if applicable, to the administrator for review and written approval that the purchase be undertaken as an emergency purchase. Emergency purchases are limited to only that property required to address the emergency. The director or administrator may delegate authority in writing to an agency or purchasing authority to make emergency purchases and may impose conditions in the delegation. (4-6-23)

02. Sole Source Purchases. The buyer must request authorization from the administrator to complete a sole source purchase, providing a written justification of the purchase and the basis to conclude that no other supplier is reasonably available. The administrator may condition any approval. (7-1-25)

03. 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. The buyer must submit a written request to the administrator to purchase from a rehabilitation agency and a written approval from the administrator. The purchase must comply with the division's policy for rehabilitation agency acquisitions. (4-6-23)

04. 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 the price and terms and conditions 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. (4-6-23)

05. Exempt Purchases. The administrator may, by written policy, exempt property from the formal sealed procedure or the requirement for competitive solicitation under the following circumstances: (7-1-25)

- a.** The property is required to meet a legal requirement or important business need; (7-1-25)
- b.** Competition would be impractical or unreasonable under the circumstances, for reasons such as special market conditions or unique property requirements; (7-1-25)
- c.** The justification for the exemption is not based on inconvenience or the agency's failure to plan for the procurement process; and (7-1-25)
- d.** The exemption is as limited as possible to still meet the business needs. (7-1-25)

06. Open Contracts. Except as provided in these rules or exempted by the administrator, property available under existing open contracts shall be purchased under such contracts in accordance with the provisions or requirements for use thereof. (7-1-25)

07. Price Agreements. The administrator may authorize entering into non-mutual price agreements when the state has a need to contract with all qualified and available vendors for the purchase of certain property. Price agreements shall be limited to two (2) years in duration. (7-1-25)

043. EXCEPTIONS NOT REQUIRING APPROVAL.

Unless the administrator makes a written determination to the contrary, property meeting the following criteria need not be purchased by competitive solicitation. (7-1-25)

01. Reverse Auction. Purchases through reverse public auctions. (7-1-25)

02. Federal Government Acquisitions. Acquisitions from the United State of America or any agency thereof. (4-6-23)

03. Public Agency Acquisitions. Acquisitions from other public agencies as defined in Section 67-2327, Idaho Code. (7-1-25)

04. Idaho Correctional Industries. Purchases of property marketed directly by Idaho Correctional Industries in accordance with Section 20-245, Idaho Code. (4-6-23)

05. Professional or Consultant Services. The acquisition of professional or consultant services for one-time projects costing less than the sealed procedure limit and lasting less than one (1) year in duration. (4-6-23)

044. -- 051. (RESERVED)

052. CHANGES TO SOLICITATIONS.

A formal solicitation 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 formal solicitation. Oral interpretations of specifications or contract terms and conditions shall not be binding on the state unless confirmed in writing by the buyer prior to the closing date of the solicitation. 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. (7-1-25)

053. -- 060. (RESERVED)

061. FORM OF SUBMISSION FOR SOLICITATIONS.

Unless otherwise provided in these rules and in addition to any specific requirements set forth in the solicitation: (7-1-25)

01. Manual Submission: Bids or proposals submitted manually must be made, completed and signed on the form provided to receive consideration. 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 formal solicitation. (7-1-25)

02. Electronic Submissions. Bids or proposals submitted electronically must be submitted in accordance with and meet all applicable requirements of these rules and contain a signature. Submission of a bid or proposal through e-procurement shall constitute a signature. 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 formal solicitation. (7-1-25)

062. -- 069. (RESERVED)

070. PRE-PROPOSAL CONFERENCE.

A pre-proposal conference for vendors must be conducted by the purchasing authority for all RFPs. The purchasing authority may provide an opportunity for a verbal question and answer period, however, only written questions and answers posted through e-procurement as an amendment to the formal solicitation, have force or effect in the procurement. (7-1-25)

071. WITHDRAWAL AND MODIFICATION.

01. Prior to Closing. Quotes, bids and proposals may be withdrawn or modified prior to the closing date of the solicitation, as follows: (7-1-25)

a. Withdrawal. Quotes, bids and proposals submitted via eProcurement may be withdrawn via eProcurement or by submitting a written withdrawal, sent on letterhead and signed by an individual with authority to bind the vendor, to the purchasing authority. Quotes, bids and proposals submitted in a manner other than eProcurement may be withdrawn by submitting a written withdrawal, sent on letterhead and signed by an individual with authority to bind the vendor, to the purchasing authority to the same location where the quote, bid or proposal was submitted. (7-1-25)

b. Modification. Quotes, bids and proposals submitted via eProcurement may be modified by resubmitting via eProcurement or by submitting a written request detailing the modification if the solicitation allows for submission outside of eProcurement. Quotes, bids and proposals submitted in a manner other than eProcurement may be withdrawn by submitting a written withdrawal to the same location where the quote, bid or proposal was submitted. Any request for modification submitted in a manner other than eProcurement must be submitted to the purchasing authority on letterhead and must be signed by an individual with authority to bind the vendor, (7-1-25)

02. After Closing. (7-1-25)

a. Withdrawal. Vendors submitting a quote, bid or proposal are not entitled to withdraw their submission after the solicitation closing date and time. Vendors must submit a written withdrawal request to the purchasing administrator explaining why the vendor should be permitted to withdraw their quote, bid or proposal. Withdrawal of a quote, bid or proposal after the closing date of the solicitation may be grounds for the vendor being deemed non-responsible in future solicitations depending on the circumstances, including the resources expended on evaluating the submission prior to withdrawal and a history of multiple withdrawals. (7-1-25)

b. Modification. Any modification received or requested after the time and date set for closing of the solicitation is late. No late modification will be considered. (7-1-25)

072. LATE QUOTES, BIDS, AND PROPOSALS.

Any quote, bid or proposal received after the time and date set for closing at the place designated in the solicitation is late, will not be considered, and 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. (7-1-25)

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

Upon receipt, all bids, proposals, and modifications properly marked and identified are 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. Opening of proposals shall identify only the names of the offerors unless otherwise stated in the formal solicitation. Bid and proposal openings may be electronic virtual openings. (7-1-25)

074. MISTAKES.

01. Mistakes Discovered Before Closing. Mistakes discovered by a vendor prior to solicitation closing may be corrected by such vendor through withdrawal or modification as detailed in these rules. (7-1-25)

02. Mistakes Discovered After Closing But Before Award. (7-1-25)

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 minor informalities discovered after the closing date and time of the solicitation and before award of a contract. Examples include the failure of a submitting vendor to: (7-1-25)

i. Return the required number of signed submissions. (4-6-23)

ii. Provide a signature, but only if it is clear from the submission that the submitting vendor intended to be bound by its terms. (4-6-23)

iii. Acknowledge the receipt of an amendment, but only if: (4-6-23)

(1) It is clear from the submission that the submitting vendor received the amendment and intended to be bound by its terms; or (4-6-23)

(2) The amendment involved had a negligible effect on price, quantity, quality or delivery. (4-6-23)

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. Examples of mistakes that may be clearly evident are typographical errors, errors in extending unit prices (unit prices will always govern in event of conflict with extension), transposition errors and arithmetical errors. (7-1-25)

c. Mistakes Where Intended Submission is not Evident. A mistake where the intended submission is not clearly evident on the face of the document may not be corrected after the closing date of the solicitation. (7-1-25)

d. Mistakes in Submission. If a mistake is attributable to an error in judgment, the submission may not be corrected. (7-1-25)

03. **Mistakes Discovered After Award.** Mistakes shall not be corrected after award of the contract. (4-6-23)

04. **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. (4-6-23)

075. -- 080. (RESERVED)

081. EVALUATION AND AWARD.

01. **General.** The solicitation shall set forth the requirements and criteria that will be used to determine the lowest responsible bidder. (7-1-25)

02. **Responsibility.** (4-6-23)

a. Factors to be considered in determining vendor responsibility include: (7-1-25)

i. Whether the vendor has appropriate financial, material, equipment, facility and personnel resources, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements; (7-1-25)

ii. Whether the vendor is legally qualified to contract with the purchasing authority and qualified to do business in the state of Idaho; (7-1-25)

iii. Whether the vendor has the requisite experience, licensing, and certification to meet the contractual obligations; (7-1-25)

iv. Whether the vendor has a satisfactory prior performance record, if applicable or; (7-1-25)

v. Other criteria identified in the solicitation. (7-1-25)

b. **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. (4-6-23)

c. **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. (4-6-23)

03. **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. (4-6-23)

04. **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 submission. (7-1-25)

05. **Tie Responses.** If tie responses cannot be resolved in accordance with section 67-9210(2), Idaho Code, award shall be made in any permissible manner that will resolve the tie, including awarding to the vendor with the earliest delivery date. If no permissible method will effectively resolve tie responses, award may be made by drawing lots or tossing a coin in the presence of at least one (1) witness. (7-1-25)

082. (RESERVED)

083. PROPOSAL DISCUSSION WITH INDIVIDUAL OFFERORS.

01. Use of Discussions. Discussions may be used in any type of formal solicitation when the buyer determines that clarifications or revisions are required to achieve adequate competition. (7-1-25)

02. Conduct of Discussions. (4-6-23)

a. The buyer may clarify any portion of a bid or proposal with a bidder where the clarification does not materially alter the proposal. (7-1-25)

b. The buyer may conduct discussions with offerors to determine potential revisions to proposals or the formal solicitation. Offerors shall be accorded faith and equal treatment with respect to any opportunity for discussions and revisions of proposals. 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 and signed by the offeror. (4-6-23)

c. If the buyer determines material changes to a formal solicitation or a proposal are necessary, the buyer shall establish a common time and date for submission of best and final offers. The buyer may conduct multiple rounds of best and final offers. If an offeror does not submit a notice of withdrawal or a best and final offer, the offeror's immediate previous offer is the offeror's best and final offer. (4-6-23)

084. NEGOTIATIONS.

In accordance with Section 67-9205(12), Idaho Code, the administrator may negotiate acquisitions as follows: (4-6-23)

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 the following circumstances: (4-6-23)

a. A competitive solicitation has been unsuccessful for reasons including that all offers are unreasonable, noncompetitive, or exceed available funds and the available time and circumstances do not permit the delay required for resolicitation; (4-6-23)

b. There has been inadequate competition; (4-6-23)

c. During the evaluation process it is determined that negotiations could help the state achieve better outcomes; or (7-1-25)

d. During the evaluation process it is determined that all responsive offers exceed available funds and negotiations could modify the requirements of the formal solicitation to reduce the cost to available funds and avoid the extended time and expenditure of resources for a resolicitation. (4-6-23)

02. Conditions of Use. Negotiations, as permitted by Subsection 084.01.d., are subject to the following: (4-6-23)

a. The solicitation must specifically allow for the possibility of negotiation; (7-1-25)

b. Submissions shall be evaluated and ranked based on the evaluation criteria in the solicitation; (7-1-25)

c. 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; (4-6-23)

d. If one (1) or more responsive offers does not exceed available funds, negotiations shall be against the requirements of and criteria contained in the formal solicitation and shall not materially alter those criteria or the

specifications; (4-6-23)

e. Auction techniques (revealing one vendor's price to another) and disclosure of information derived from competing proposals is prohibited; (4-6-23)

f. Any clarifications or changes resulting from negotiations shall be documented in writing; (4-6-23)

g. 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 (4-6-23)

h. If negotiations as provided for in this rule fail to result in a contract, as determined by the administrator, the formal solicitation may be canceled and the administrator may negotiate in the best interest of the state with any qualified vendor. (4-6-23)

03. 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 formal 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. (7-1-25)

04. Termination of Negotiations. The purchasing authority may terminate negotiations at any time, in the best interest of the state. (4-6-23)

085. -- 091. (RESERVED)

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 a solicitation is cancelled, all submitting vendors will be notified. Examples of reasons for cancellation are identification of inadequate or ambiguous specifications, unexpected circumstances that require revised specifications, or determination that cancellation is in the best interest of the state. (7-1-25)

093. -- 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. (4-6-23)

02. Lease Purchase Option. 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 competitively bid the property by soliciting bids for new or used property or obtain approval from the administrator for an exemption. (7-1-25)

102. -- 110. (RESERVED)

111. SPECIFICATIONS -- POLICIES AND DEVELOPMENT.

01. Purpose. 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 left sufficiently open to allow for variations in the proposed property or manner of delivery, provided that they put vendors on notice as to what is required for vendor's quote, bid, or proposal to be considered. (7-1-25)

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. (4-6-23)

03. Preference for Commercially Available Property. Requirements shall be satisfied by standard commercial property whenever practicable. (4-6-23)

04. Brand Name Specification. (4-6-23)

a. Brand name specification which does not allow for acceptance of alternate equivalent property may only be used when the administrator or designee makes a written determination. Such determination may be in any form and must state specific reasons for use of the brand name specification. (7-1-25)

b. Use of a brand name to identify a standard or example specification, when alternative equivalent property is acceptable, will not require approval from the administrator, if there are known alternatives that can meet the specification as equivalent property. (7-1-25)

c. The administrator shall seek to identify sources from which the designated brand name property can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. (7-1-25)

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. (4-6-23)

a. Terms waiving the sovereign immunity of the state of Idaho. (4-6-23)

b. Terms subjecting the state of Idaho or its agencies to the jurisdiction of the courts of other states. (4-6-23)

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. (4-6-23)

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. (4-6-23)

02. Terms Requiring Special Consideration. (4-6-23)

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. (4-6-23)

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. (4-6-23)

113. CONTRACT OVERSIGHT.

01. Contract Management and Contract Administration. (4-6-23)

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. (4-6-23)

b. When the division issues a contract on behalf of an agency, in its role as the state's contracting

agent, the division is responsible for contract administration and the agency is responsible for contract management.
(4-6-23)

02. Contract Management. Each state agency which manages one (1) or more contracts, whether entered into directly by the agency or by the division 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
(4-6-23)

- a.** Designate a competent contract manager as the single point of contact for each agency contract;
(4-6-23)
- 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;
(4-6-23)
- 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);
(4-6-23)
- 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
(4-6-23)
- e.** Close out each contract, including, documenting receipt of goods or services in compliance with contract requirements and reviewing vendor performance and lessons learned.
(4-6-23)

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 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.
(4-6-23)

114. INFORMATION TECHNOLOGY RESALE.

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.
(4-6-23)

115. -- 999. (RESERVED)