

# **PURCHASING WITH PUBLIC FUNDS**

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**New State Law Requirements  
and Practical Suggestions**

May, 2017

# Summary of Changes – effective 7/1/17

- Value purchases (not just price) – up to \$50K
- Simplified competitive bids (3 vendors required - informal)
  - \$50K-\$200K for public works
  - \$50K-\$100K for personal property
- Full competitive bids
  - Over \$200 for public works
  - Over \$100K for personal property/services
- New Public Works Contractor limit - \$50K
- New RFP process – for problem solving
- Piggy-backing simplifies
- Expanded exceptions to price alone

## Under \$25K (\$50K–7/1) – Value Driven

- Not guided solely by lowest price
- Budget compliance-appropriated?
- Approval to spend?
- Key principle – seek the best value  
– Assume you will have to explain your rationale in public

# **\$25K (\$50K–7/1) and Over**

## **It's About Money**

- General rule – must buy at lowest price – not max value
- Procedures to determine price
- Defense to lowest price – specifications
- Greatest risk – procedural inconsistency
- If not taking lowest bid, or if taking lowest bid and waiving nonconformity – CYA (consult your attorney)

# Exceptions to Price-Driven Purchases

- Piggybacking – more later
- Purchase under \$25K – don't split purchase to avoid bidding
- Personal services – individual skills
- Professional services
- Interest in real property
- Procurement of insurance
- Participation in joint powers agreement

# More Exceptions (added by SB 1074)

- Goods bought for resale
- Travel and training expenses
- Purchases from Idaho Correctional Industries
- Heavy equipment repair
- Software systems
- Public utilities
- Jail food
- Auction purchases may be authorized by governing board.

# What is Public Works Construction?

- Building something (building, pipeline, roadway, park, canal, etc.) – public agency owner
- Must use licensed public works contractor and subcontractors if complete job is over \$10,000. (\$50,000 after 7/1/17) – big consequences
- Why does it matter?
  - Law requires
  - No lien authority
  - Requires payment and performance bond (alternative to lien)
- Bidding on public work without license or contracting with unlicensed contractor is a crime

# Public Works Construction – Small Projects

- Costs between \$25K to \$100K (**\$50K to \$200K after 7/1/2017**)
- Abbreviated process – minimum of 3 days or more
- Describe work in narrative – don't need detailed plans
- Agency may choose the three (3) licensed contractors to submit bids
- Must be in writing – can use email, fax, sealed bid – must keep for 6 months
- Must take lowest price if it complies with request



# Procedures - Large Projects

- Over \$100K (over \$200K after 7/1/2017)
- Full competitive bidding
- Publish notice in official newspaper
- Can use pre-qualification process
- Plans and specifications needed
- Sealed bids – open in public at noticed time
- Award to lowest qualified bidder
- Provide notice and opportunity for hearing if not to low bidder

# Buying Personal Property/Services

- Same procedures as public works bidding
- Different threshold for semi-formal bids - \$25K - \$50K (**\$50K-\$100K after 7/1/17**)
- Specifications are critical
- Often raises questions of multi-year contracts
- Be wary of “or equal” - only allow for all bidders with change before opening bids

# Newly Authorized RFP Process

- Effective 7/1/17 new **§67-2806A** will allow use of RFP process to procure **goods and services (not public works)**
- Allows purchaser to engage in problem solving
- Permits use of criteria **other than price** for selection
- Minimum request process includes:
  - Instructions
  - Scope of work
  - General contract terms
  - Scoring methodology
- Scoring of proposals is a public record

# Piggy-backing Purchase of Goods

- Rely on competitive bidding by other qualified agency – vendor must have been low bidder
- State of Idaho, Idaho local governments, GSA and other Federal competitive procurement – not local government in another state.
- Avoids need to develop specifications and costs of bidding process
- Best source is product salesman
- Should have prior governing board approval

# Miscellaneous Matters

- Can use joint purchasing programs that would be OK in Idaho – look behind curtain at offered programs – assure compliance
- Emergency purchasing can be less formal – involve governing board
- Sole source procedures if only one supplier – example of manufacturer who has only one authorized dealer in territory
- May want to spread the word about purchases to facilitate piggy-backing

# Purchasing Law Changes – SB 1074aa

- Doesn't change purchasing processes in any major way
- Establishes the new RFP process for procurement of personal property
- Revises threshold \$\$ limits for various purchases
- New \$\$ threshold for need to use public works contractor
- Eliminates the “no interested public works contractor” exception – because limits are raised
- Several specific price-driven exclusions added
- Delegation authorized for counties