



# BLAINE COUNTY HOUSING AUTHORITY

## BOARD MEETING AGENDA MEMO

Meeting Date:  Staff Member:

Agenda Item:

### Recommended Motion:

I move to formally adopt the City of Ketchum’s Cash Management Policy, Fund Balance Policy and Procurement Policy, and adopt a Client Termination Policy.

### Reasons for Recommendation:

- BCHA received a monitoring visit from the Idaho Housing and Finance Authority (IHFA) as part of our receipt of HOME-ARP funding. IHFA recommended we adopt or modify certain policies and procedures to comply with HOME-ARP requirements.
- BCHA should formalize certain processes already in place and adopt new policies to address services provided to clients who are on the waitlist.

### Policy Analysis and Background (non-consent items only):

IHFA requested, and staff recommend, adopting standardized fiscal policies. Ketchum’s policies have been reviewed, vetted, and approved by IHFA per the HOME-ARP grant, and staff recommend adopting City of Ketchum’s fiscal policies. Any accountant or bookkeeper employed or contracted by BCHA should adhere to the City of Ketchum’s Cash Management, Fund Balance and Procurement Policies.

IHFA requested that BCHA confirm that tenant files qualify as “semi-permanent” pursuant to BCHA’s existing File Retention Policy, and will therefore be retained for 5 years after the close of the HOME-ARP grant period.

IHFA requested and staff recommend that BCHA adopt a Client Termination Policy outlining procedures for when and how BCHA will cease providing services to clients. Previously BCHA had covered termination in leases. The new proposed policy provides greater detail on when BCHA might cease providing services to clients who are receiving case management or housing search support while on BCHA’s waitlist.

### Sustainability Impact:

### Financial Impact:

None OR Adequate funds exist in account:

Attachments:

- |   |
|---|
| 1. City of Ketchum Cash Management, Fund Balance and Procurement Policies |
| 2. Supportive Services Termination Policy                                 |



Number: F-13  
Effective: 3-7-23  
Revised:

## FUND BALANCE POLICY

Fund balance is an important indicator of the City's financial position. Fund Balance is the difference between assets and liabilities in governmental funds. Maintaining reserves is considered a prudent management practice. Adequate fund balances are maintained to allow the City to continue providing services to the community in case of unexpected emergencies or requirements and/or economic downturns. The following classifications will apply to fund balance in the City's governmental funds:

- *Restricted Fund balance* - amounts constrained to specific purposes by their providers (such as grantors, bondholders, and higher levels of government), through constitutional provisions, or by enabling legislation.
- *Assigned Fund balance* - amounts a government *intends* to use for a specific purpose; intent can be expressed by the governing body or by an official or body to which the governing body delegates the authority. This authority has been delegated to the City Treasurer to assign amounts to be used for a specific purpose.
- *Unassigned Fund balance* - amounts that are available for any purpose; these amounts are reported only in the general fund.

Designated City personnel are authorized to classify available fund balance for specific purposes in accordance with Governmental Accounting Standards Board Statement #54. It is the policy of the City that expenditures for which more than one category of fund balance could be used, that the order of use is: Restricted Fund Balance, Committed Fund Balance, Assigned Fund Balance, and Unassigned Fund Balance.

This policy establishes the amounts the City will strive to maintain in its General Fund balance, the conditions under which fund balance may be spent, and the method by which fund balances will be restored. These amounts are expressed as goals, recognizing that fund balance levels can fluctuate from year to year in the normal course of operations for any local government.

Reserves shall be used only after fully exhausting all other annual contingencies.

### Unassigned Funds

The Unassigned Fund Balance is the residual classification for the City's General Fund and includes all spendable amounts not contained in the other classifications.

It is the intent of the City to limit use of Unassigned General Fund balances to address unanticipated, non-recurring needs or known and planned future obligations. Fund balances shall not normally be applied to recurring annual operating expenditures. Unassigned balances may, however, be used to allow time for the City to restructure its operations in a deliberate manner, but such use will only take place in the context of long-term financial planning.

Any use of Unassigned Funds must be approved by the City Council, upon recommendation of the City Administrator.



The Unassigned Funds include, in part, reserves as outlined below. They are reported as unassigned in accordance with GASB statement #54.

- Cash Flow Reserve

The City will maintain a General Fund “Cash Flow Reserve” of no less than seventeen percent (17%) of the estimated base General Fund revenues for the subsequent fiscal year. The Cash Flow Reserve is intended to be a reserve for unexpected events that would have a significant impact on the City’s ability to maintain sufficient working capital such as failure of the State or Ada County to remit revenues to the City, unexpected mandates, unexpected loss of State shared revenues, to offset the unexpected loss of a significant funding source for the remainder of the fiscal year.

The Cash Flow Reserve is also intended for unexpected, large-scale events where excessive damage of one million dollars or more is incurred or may incur and where immediate, remedial action must be taken to protect the health and safety of residents (e.g. floods, fires, storm damage).

Any usage of Cash Flow Reserve must be appropriated by the City Council. In the event the Cash Flow Reserve funds are used, the City shall strive to restore the General Fund Cash Flow Reserve to the seventeen percent (17%) level.

#### Reporting

Classification and fund balance of the City’s governmental funds at the end of each fiscal year will be presented to City Council in the City’s Comprehensive Financial Annual Report.



Number: F-1  
Effective: 3-7-23  
Revised:  
Legal References: N/A

### CASH MANAGEMENT POLICY

This policy is intended to provide effective internal controls for cash handling and revenue receipt of the city of Ketchum; including accounts receivable, business licenses & taxes (LOT), utilities, parking fines and any miscellaneous receipt safekeeping and effective processing of all funds received by the city.

1. Internal Control – All departments will have appropriate internal controls in place regarding all aspects of revenue recording, accounts receivable monitoring, and collecting, receipting, depositing, and reconciliation. All departments are to ensure that staff is adequately trained. Departments are to report suspicion of fraud and non-compliance to this policy immediately.
2. Receipts and Deposits – Payments should be recorded in an electronic device, such as an accounts receivable system or cashiering system, or tracked manually with pre-numbered receipts. Each department must provide adequate and proper security of funds both during business hours, non-business hours, and during transport. Departments are to make timely deposits of all funds received to a designate depository. All deposits are to be properly recorded and reconciled in a timely manner. All overages and shortages, counterfeit moneys, and returned bank items are to be appropriately and timely reported and recorded.
3. Petty Cash – City Administration may approve the establishment of petty cash funds to be used only for the designated purpose for which they were intended. Unless expressly approved by City Administration, petty cash funds are not to be used for recurring business expenses, interest charges, cashing personal checks, weapons, ammunition or other hazardous materials, services performed for the City, traffic citations or parking fines.
4. Refunds – Departments must have written refund policies readily available for citizens that align with the goods and services provided by the department. Any administrative fees to be charged for the processing of refunds should be disclosed. Refunds are to be fully documented and appropriately approved prior to processing.

## Supportive Services Termination Policy

BCHA will terminate services to recipients, and professional relationships with them, when such services and relationships are no longer required or no longer serve the recipient's needs or interests. Services may also be terminated if the recipient is no longer eligible for services, or if the recipient requests to terminate services (orally or in writing). The relationship may also be terminated if the recipient commits a program violation including:

1. Refusal to provide documentation or signature required for program eligibility (e.g. annual recertification);
2. Violent or threatening behavior, or other behavior that seriously threatens the health and safety of the recipient, family members in the household, or other tenants in BCHA-supported housing;
3. Violent or threatening behavior towards the case manager, other program staff, landlord, property manager, or other tenants; and
4. Legal eviction by a landlord constituting violation of occupancy requirements.

Termination is a last resort in the most extreme cases. BCHA will consider extenuating circumstances and exercise judgment and restraint when considering whether termination is appropriate.

BCHA will communicate details and deadlines around termination to the recipient.

Appeals to the termination policy can be made to the Director of the Ketchum Office of Housing. Once all information is gathered, appeals will be adjudicated within 10 business days.

Termination does not bar subsequent participation and assistance to the participant by BCHA and its partners.

BCHA contact information: [info@bcoha.org](mailto:info@bcoha.org) or call (208) 788-6102

Client Signature: \_\_\_\_\_

BCHA Staff Signature: \_\_\_\_\_

Date: \_\_\_\_\_

# PROCUREMENT MANUAL



ASSOCIATION OF IDAHO CITIES  
3100 S VISTA AVE #201  
BOISE, IDAHO 83705

(208) 344-8594  
IDAHO CITIES.ORG



# 2023



# Procurement

*May 2023*

**Association of Idaho Cities  
3100 S. Vista Ave. Ste. 201  
Boise, ID 83705  
Tel. (208) 344-8594 or (800) 344-8594  
Fax (208) 344-8677  
[www.idahocities.org](http://www.idahocities.org)**



# **TABLE OF CONTENTS**

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INTRODUCTION .....	1
PURCHASES EXEMPT FROM COMPETITIVE BIDDING.....	1
PURCHASING SERVICES AND PERSONAL PROPERTY .....	2
JOINT PURCHASING AGREEMENTS .....	4
PURCHASING PUBLIC WORKS CONSTRUCTION .....	5
Required Use Of Licensed Public Works Contractors .....	10
Public Works Contracts for Less than \$50,000 .....	11
Naming of Subcontractors .....	11
Payment and Performance Bonds .....	11
Use of City Employees for Public Works Construction Projects .....	12
PENALTIES FOR PUBLIC OFFICIALS VIOLATING THE LAW .....	12
EMERGENCY AND SOLE SOURCE PROCUREMENT .....	13
RECIPROCAL PURCHASING PREFERENCE LAW.....	14
UNDERSTANDING P-CARDS .....	15
SALES & USE TAX EXEMPTION .....	15
QUALIFICATIONS-BASED SELECTION OF DESIGN PROFESSIONALS.....	16

## **INTRODUCTION**

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This manual is intended to acquaint Idaho's city officials with procedures and requirements for the acquisition of goods, services and public works construction in compliance with Idaho law. Procedures vary for bidding on public works; for purchasing materials and supplies unrelated to public works; and for purchasing architectural, engineering or landscape architectural services. There are also different thresholds that determine whether a city can make purchases without going out for bid. Cities should establish sound policies and processes in the pursuit of efficient and cost-effective procurement that will result in the most beneficial outcome for the city. Purchasing personnel should be diligent in practicing good stewardship of public resources.

## **PURCHASES EXEMPT FROM COMPETITIVE BIDDING**

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Cities may participate in cooperative purchasing agreements competitively bid by the federal government, state of Idaho, or another Idaho unit of local government. Other exemptions from competitive bidding include:

- Payment of wages or compensation to city employees, officials or agents for the performance of personal services.
- Procurement of personal or professional services to be performed by an independent contractor for the political subdivision (e.g. computer programming, legal services and design services—note, qualifications-based selection is still required for selection of architects, engineers, landscape architects, land surveyors, and construction managers. See **I.C. §67-2320** for further information.)
- Procurement of an interest in real property (e.g. purchasing land or renting a building).
- Procurement of insurance (e.g. buying health insurance or becoming an ICRMP member).
- Costs of participation in a joint powers agreement with other units of government.
- Contracts or purchases for less than \$50,000, provided the contracts or purchases are in the best interest of the city making the purchases.
- Procurement of used personal property.
- Procurement from federal government general services administration (GSA) schedules or federal multiple award schedules (MAS).
- Procurement of personal property or services through contracts entered into by the division of purchasing of the department of administration of the state of Idaho.
- Procurement of goods for direct resale.
- Procurement of travel and training.
- Procurement of goods and services from Idaho correctional industries.
- Procurement of repair for heavy equipment.
- Procurement of software maintenance, support and licenses of an existing system or platform that was bid in compliance with state law.
- Procurement of public utilities.

- Procurement of food for use in jails or detention facilities.
- Procurement of used equipment at an auction. **I.C. §67-2803**

## **PURCHASING SERVICES AND PERSONAL PROPERTY**

Purchasing of services (e.g. janitorial services, landscape maintenance) and personal property (e.g., automobiles, equipment, supplies) follows the process outlined below:

### **a) For Purchases Under \$50,000**

If the price of the contract or purchase is estimated to be under \$50,000, the city has the discretion to purchase from any vendor believed to provide the best value. Internal procedures can guide conduct.

### **b) For Purchases Between \$50,000 & \$100,000**

- The city must make a written request for bids (by electronic or physical delivery) to at least three vendors. The request should describe: the personal property or services to be purchased or leased; the method(s) for vendors to submit their bids (again, by either electronic or physical delivery); the date and time by which bids must be received by the clerk or other authorized official; and a reasonable time to respond, with a minimum of at least three business days except in an emergency.
  - Written objections to specifications or bid procedures must be received by the clerk or other authorized official at least one business day before the bids are scheduled to be received.
  - When the bids are received, they are compiled and submitted to the city council (or an official authorized by the council) for approval of the lowest responsive bid or all bids are rejected, and the process starts over again.
  - If the city determines that it is impractical or impossible to obtain three bids, the city may acquire the property in any manner the city deems best from the qualified vendor quoting the lowest price. When fewer than three bids are considered, the city must document its efforts to obtain three bids and maintain this documentation, along with the written trail from solicitation to acceptance of bids, for at least six months after the purchase. If two or more vendors tie for the lowest bid, the council or its authorized official may select either vendor at its discretion.
- For Purchases Greater than \$100,000:** The purchase or lease must be made following a competitive sealed bid process from the qualified vendor submitting the lowest bid in compliance with bidding procedures and meeting the city's specifications.

The process begins when the city publishes two notices soliciting bids in the official city newspaper, with the first notice at least two weeks before bid opening and the second notice at least a week prior to bid opening. The notice must succinctly describe the personal property or services to be procured and must state that specifications, bid forms, instructions, contract documents and other information are available upon request to any interested bidder.

Written objections by bidders concerning specifications or bidding procedures must be received by the clerk or other authorized official at least three business days before the scheduled bid opening.

The city may require bid security of at least five percent of the amount of the bid. If security is required, a bid may not be considered unless security is provided in the form required by the city, including:

- Cash,
- Cashier's check payable to the city,
- Certified check payable to the city, or
- Bidder's bond executed by a qualified surety company payable to the city.

Any bid received by the city may not be withdrawn after the time set for opening of bids. The sealed bids are opened in public at the date, time and place specified in the published notices and thereafter are compiled and submitted to the city council.

The city council may award the contract to the vendor submitting the lowest responsive bid, reject all bids and go through the process again, or it may decide that the goods or services can be purchased more economically on the open market. If two or more bids are the same and are the lowest responsive bids, the city council may accept either in its discretion. The city council may also preauthorize the purchase of equipment at public auction.

If the city council chooses to award to a bidder other than the apparent low bidder, the council must declare its reasons on the record and must communicate these reasons in writing to all vendors submitting bids. Participating bidders have seven calendar days from the date of transmittal of the notice to respond in writing with their objections. If objections are received, the purchase is stayed while the city council reviews its decision and determines whether to affirm its prior award, modify the award or choose to re-bid, stating its reasons. After completion of the review process, the city may proceed as it determines is in the public interest.

If the successful bidder fails to execute the contract, the bid security may be forfeited to the city at the discretion of the council and the proceeds deposited in a designated fund out of which reasonable expenses of procuring substitute performance are paid. Upon failure or refusal of the successful bidder to execute the contract, the city may award to the next lowest qualified bidder. The lowest bidder's security may be applied by the city to the difference between the two bids. The surplus, if any, shall be returned to the lowest bidder if cash or check is used, or to the surety on the bidder's bond if a bond is used, less reasonable administrative costs not to exceed twenty-five percent of the amount of the bidder's security.

**I.C. §67-2806**

The city may utilize a request for proposal process as an alternative to the competitive bid process for procurement of goods or services for which fixed specifications might preclude discovery of a cost-effective solution, or where a problem may be amenable to several solutions, or price is not the sole determining factor.

Evaluation of vendors can be based on a variety of factors including innovative solutions, unique product features, price, experience, financial stability, the ability to perform contract requirements in a timely or efficient manner, the ability to meet product specifications, product quality or performance records, past vendor performance, future product maintenance or service requirements, and product warranties.

The request for proposal should describe the instructions of the process, the scope of work, the selection criteria, contract terms and the scoring methodology to be applied.

Notification, solicitation and consideration of contests concerning the award of procurement pursuant to a request for proposal shall be in accordance with the minimum requirements established in section 67-2806. Records compiled during the scoring process shall be made available for public inspection when the purchasing recommendation is made to the city council. **I.C. §67-2806**

## **JOINT PURCHASING AGREEMENTS**

A city may enter into joint purchasing agreements with the State of Idaho and other local governments, and local governments may also participate in such agreements established by nonprofit associations of local governments. Purchases of personal property by the joint purchasing programs must comply with the competitive bidding law. Goods and services procured by participation in such purchasing agreements and programs shall be deemed as having been acquired in accordance with the competitive bidding process.

**I.C. §67-2807**

## **PURCHASING PUBLIC WORKS CONSTRUCTION**

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Cities are granted express authority to prequalify public works contractors, thus ensuring that contractors have the requisite experience, equipment and personnel to undertake a particular project. Cities are required to use a licensed public works contractor for jobs over \$50,000. The competitive bidding thresholds for public works construction are described below:

- **For Construction Projects Under \$50,000:** The city can purchase from any public works contractor believed to provide the best value **I.C. §54-1903**
- **For Construction Projects Between \$50,000 & \$200,000:** The city must submit a written request (by electronic or physical delivery) for bids, describing the work to be done, to at least three licensed public works contractors selected by the city. The request should also specify the method for contractors to submit their bids (either by electronic or physical delivery) and the date, time and place by which bids must be received. The city must allow a reasonable time for bidders to respond: at least three business days, except in an emergency. Prospective bidders may submit objections to the bidding procedures or specifications up to one business day before bids are scheduled to be received. The city must accept the lowest responsive bid of the licensed public works contractors chosen by the city to submit bids or reject all bids and go through the process again.

If the city finds it is impractical or impossible to obtain three bids, the city may acquire the work in the manner it deems best from the qualified public works contractor quoting the lowest price. When fewer than three bids are considered, the city needs to document its efforts to obtain three bids, along with the written trail from solicitation to acceptance of bids and must keep the documentation for at least six months after the contract is awarded. If two or more contractors submit the same low bid, the city council or its authorized official may select whichever contractor it desires.

- **For Construction Projects Over \$200,000:** There are two options:

Category A: Under this category, the city must accept bids from any licensed public works contractor, and the city may only consider:

- a. The amount of the bid.
- b. The bidder's compliance with administrative requirements.
- c. Whether the bidder holds the requisite public works contractors license.

The city must publish two notices soliciting bids in the official city newspaper, the first at least two weeks before bid opening and the second at least a week before bid opening. The notices must succinctly describe the project to be constructed and inform prospective bidders that specifications, bid forms, instructions, contract documents and other materials are available upon request for a reasonable copying fee.

Written objections to specifications or bidding procedures must be received by the clerk or other authorized official at least three business days before scheduled bid opening. The clerk/authorized official or city council must respond, in writing, to the objector and all other prospective bidders, adjusting the timeframe for submission of bids if necessary.

The city may require bid security of at least five percent of the amount of the bid. If security is required, a bid may not be considered unless security is provided in the form required by the city, which may include:

- Cash,
- Cashier's check payable to the city,
- Certified check payable to the city, or
- Bidder's bond executed by a qualified surety company payable to the city.

Submitted bids must be sealed, with an indication on the outside identifying the project. Any bid received by the city may not be withdrawn after the date and time of bid opening. The sealed bids are opened in public at the date, time and place specified in the published notices and thereafter are compiled and submitted to the city council.

The city council awards the contract to the qualified bidder submitting the lowest responsive bid or may reject all bids and re-bid the project. The city council may also, after determining it to be true, declare that the project can be performed more economically by purchasing goods and services on the open market. If identical bids are submitted and are the low bid, the city council may choose the bidder it prefers. If no bids are received, the city council may procure without further competitive bidding procedures.

If the city council chooses to award to a bidder other than the apparent low bidder, the city council must declare its reasons on the record and must communicate these reasons in writing to all those submitting bids. Participating bidders have seven calendar days from the date of transmittal of the notice to respond in writing with their objections. The procurement is stayed while the city council reviews its decision and determines whether to affirm its prior award, modify the award or choose to re-bid, as it deems to be in the public interest.

If the successful bidder fails to execute the contract, the bid security may be forfeited to the city and the proceeds may be deposited in a designated fund out of which the expenses of procuring substitute performance are to be paid. If the successful bidder refuses or fails to execute the contract, the city may award the contract to the qualified bidder submitting the next lowest responsive bid. If this occurs, the original contractor's security may be applied to the difference between the two bids, and any surplus remaining must be returned to the original contractor if cash or check is used or to the surety on the bidder's bond if a bond is used (less reasonable administrative costs not to exceed twenty-five percent of the amount of the security).

Category B: Under Category B, bidding is open only to those licensed public works contractors meeting the required qualifications established by the city. This process consists of two stages: the first establishing a list of prequalified contractors, and the second where sealed bids are submitted from prequalified contractors.

To start the prequalification process, the city publishes notice of prequalification of contractors twice in the official newspaper, providing a date and time by which statements of qualifications must be received and the standards for evaluating qualifications of prospective bidders. The first publication must be at least two weeks before the deadline and the second publication at least one week before the deadline. The city may establish prequalification standards based on the following criteria:

- Demonstrated technical competence;
- Experience constructing similar facilities;
- The contractor's prior experiences with the city;
- The contractor's available non-financial resources, equipment and personnel as they relate to the particular project; and
- The contractor's overall performance history.

Licensed contractors desiring to be prequalified must submit a written response to the city's request for qualifications. Written objections to prequalification procedures must be received by the clerk or other authorized official at least three business days before statements of qualifications are due. The clerk/authorized official or city council must respond to the objections in writing, to all those seeking to prequalify, adjusting the timeframe for submission of statements of qualifications if necessary.

After reviewing statements of qualifications, the city may select the licensed contractors meeting its criteria. The city must provide a written explanation to any licensed contractor that fails to meet the prequalification standards. Any licensed contractor that fails the



prequalification stage can appeal to the city council within seven days after transmittal of the prequalification results. If the council upholds the decision, it must state its reasons on the record. Decisions of the city council may be appealed to the public works contractor licensing board no more than fourteen days following any decision on appeal made by the council. The board must decide the appeal within thirty-five days after an appeal is filed. The appealing contractor and the city can participate in the hearing by either written or oral communication. The board shall not substitute its judgment for that of the city, and the board's review is limited to determining the following:

- Was the city council's decision consistent with the announced prequalification standards?
- Do the prequalification standards meet the requirements of the law?
- Is the council's decision supported by the entirety of the record?

The board must issue its decision in writing, outlining the reasons for its decision. Any licensed contractor deemed unqualified by a decision of the board may seek judicial review of the decision within twenty-eight days after the board's decision. The prequalification process is stayed during a pending appeal to the board, but in no instance for more than forty-nine days after the council's appellate decision.

After the conclusion of the prequalification stage, the bidding stage commences by a notice of the time, date and place of the public opening of bids. If the city is seeking a prequalified prime contractor, the notice is sent to the prequalified prime contractors at least two weeks prior to bid opening. If the city is seeking a prequalified specialty or subordinate contractor, then the notice is published, with the first publication at least two weeks prior to bid opening and the second publication at least one week prior to bid opening. The notice must succinctly describe the project and indicate that copies of specifications, bid forms, instructions, contract documents and general and special instructions are available upon request and payment of a reasonable copying fee.

Sealed bids must be presented to the clerk or other authorized official, with a concise statement on the outside indicating the particular project.

Written objections to the specifications or bidding procedures must be received by the clerk or other authorized official at least three business days before the scheduled bid opening.

The city may require bid security of at least five percent of the amount of the bid. If security is required, a bid may not be considered unless security is included in the form required by the city, including:

- Cash,
- Cashier's check payable to the city,
- Certified check payable to the city, or
- Bidder's bond executed by a qualified surety company payable to the city.

Any bid received by the city may not be withdrawn after the date and time of bid opening. The sealed bids are opened in public at the date, time and place specified in the notice, and are then compiled and submitted to the city council for award. The council awards to the prequalified bidder submitting the lowest bid; rejects all bids and re-bids the project; or declares that the project can be performed more economically by purchasing goods and services on the open market. If identical low bids are received, the city council may choose the bidder it prefers. If no bids are received, the council may purchase without further competitive bidding.

If the city council chooses to award to a bidder other than the apparent low bidder, the council must declare its reasons on the record and communicate these reasons in writing to those submitting bids. Participating bidders have seven calendar days from the date of transmittal of the notice to respond in writing with their objections. The procurement must be stayed while the city council reviews its decision and determines whether to affirm its prior award, modify the award or choose to re-bid, as it deems in the public interest, stating its reasons.

If the successful bidder fails to execute the contract, the bid security may be forfeited to the city and the proceeds may be deposited in a designated fund out of which the expenses of procuring substitute performance are paid. The city may thereafter award the contract to the qualified bidder submitting the next lowest responsive bid. If this occurs, the original contractor's security may be applied to the difference between the two bids, and any surplus remaining must be returned to the original contractor if cash or check is used or to the surety on the bidder's bond if a bond is used (less reasonable administrative costs not to exceed twenty-five percent of the amount of the security). **I.C. §67-2805**

If a bidder has made a clerical or mathematical mistake on a bid, the bidder may be eligible to be released from the bid provided the city receives written notice within five calendar days of the opening of the bids. The city must be satisfied that a material mistake has actually been made. The bidder will not be allowed to rebid on that project. Any bid security will be returned by the city. Bidders failing to execute a contract and not satisfying the conditions of a mistake shall forfeit any bid security. If the city determines that a bidder is entitled to relief, it shall prepare a written report documenting the facts. The report is to be available for

inspection as a public record and filed with the city. If the second lowest responsible bidder fails or refuses to execute the contract, the city may likewise award it to the next lowest responsible bidders. On the failure or refusal of the second or next lowest responsible bidders to execute a contract, their bidder's security shall be likewise forfeited. A city may determine it is in its best interests to cancel and rebid the public works project and retain any forfeited bid security.

**I.C. §54-1904**

Cities which contract for public works construction may not require that a contractor, subcontractor, material supplier or carrier pay its employees a predetermined wage rate or specific employee benefits unless required by state or federal law. Cities shall ensure that neither they nor any agent working on their behalf require or prohibit bidders to enter into or adhere to any agreement with labor organizations. **I.C. §67-2809**

## **Required Use of Licensed Public Works Contractors**

Idaho law requires state and local governments to use licensed public works contractors for public works construction projects over \$50,000.

*“Public works construction” includes any or all of the following branches:*

*(i) Heavy construction, which is defined as constructing substantially in its entirety any fixed works and structures (not including “building construction”), without limitation, for any or all of the following divisions of subjects: irrigation, drainage, sanitation, sewage, water power, water supply, reservoirs, flood control, reclamation, inland waterways, railroads, grade separations, track elevation, elevated highways, hydroelectric developments, aqueducts, transmission lines, duct lines, pipelines, locks, dams, dikes, levees, revetments, channels, channel cutoffs, intakes, drainage, excavation and disposal of earth and rocks, foundations, piers, abutments, retaining walls, viaducts, shafts, tunnels, airports, air bases and airways, and other facilities incidental to the same;*

*(ii) Highway construction, which is defined as all work included in highway construction contracts, including, without limitation, highways, roads, streets, bridges, tunnels, sewer and street grading, street paving, curb setting, surfacing and other facilities incidental to any of the same;*

*(iii) Building construction, which is defined as all work in connection with any structure now built, being built, or hereafter built, for the support, shelter and enclosure of persons, chattels, personal and movable property of any kind, requiring in its construction the use of more than two (2) unrelated building trades or crafts.*

*(iv) Specialty construction, which is defined as any work in connection with any public works construction, requiring special skill and the use of specially skilled trades or crafts. I.C. §54-1901(c)*

## **Public Works Contracts for Less than \$50,000**

Since the state law requirement for use of a licensed public works contractor has increased from \$10,000 to \$50,000, the number of small contracts that won't require a licensed contractor will increase substantially. That gives public owners more flexibility, but it now opens up a new responsibility to be sure that everyone who contracts understands the implications. Because public property is not subject to lien laws that protect contractors from owners who won't pay, the contracting parties need to engage their city attorneys or use payment and performance bonds on small contracts (an expensive practice). Payment and performance bonds exist as a substitute for lien remedies in public construction.

For public works construction contracts with a value less than \$50,000, lien authority should be expressly disclaimed. An alternative method to resolve performance and payment disputes should be incorporated in the contracts for smaller public works projects. The types of projects we are highlighting include building remodeling, small paving jobs, landscaping, etc.

## **Naming of Subcontractors**

General contractors must include in their bids the names and addresses of the subcontractors responsible for plumbing, heating and air conditioning, and electrical work under the contract. Subcontractors named by the general contractor must possess the appropriate licenses or certificates of competency issued by the state of Idaho covering the contractor work classification in which each respective subcontractor is named. Failure of a general contractor to name subcontractors renders any bid submitted by the contractor unresponsive and void.

In the event the general contractor secures the contract and is unable to finalize the terms of agreement with a subcontractor for any reason other than cost, the general contractor names another subcontractor within 10 days of being awarded the contract. The general contractor must disclose to the city the cost of work to be performed by the substitute subcontractor, and if less than the original subcontractor's bid, the reduction in cost must be passed on to the city. **I.C. §67-2310**

## **Payment and Performance Bonds**

Idaho law requires contractors selected for public works construction projects equal to or greater than \$50,000 to provide performance and payment bonds:

- Performance bond of at least 85 percent of the contract amount, conditioned upon the faithful performance of the contract in accordance with plans, specifications and conditions, solely for the protection of the city.
- Payment bond of at least 85 percent of the contract amount, solely for the protection of persons supplying labor, materials or renting, leasing or otherwise supplying equipment to the contractor or subcontractors.
- Cities requiring performance or payment bonds in excess of 50% of total contract amount shall not withhold from the contractor or subcontractor any amount exceeding 5% of the total amount payable as retainage. The city shall release to the contractor any retainage for those portions of the project accepted by the city and the contractors as complete with 30 days after such acceptance. Bonds shall be executed by a surety company or companies authorized to do business in Idaho, or the contractor may deposit any of the type of government obligations listed in **I.C. §54-1901(2)(h)**, in lieu of furnishing a surety company performance or payment bond or bonds.
- It shall be illegal for the invitation for bids, or any person acting or purporting to act, on behalf of the city to require that such bonds be furnished by or through a particular source. **I.C. §54-1926**

Any city that fails to obtain the necessary payment bond is required to make payment, upon demand, to all persons supplying materials or labor under the contract and such persons have a right of action against the city for up to one year after the materials and/or labor were furnished. **I.C. §54-1928**

### **Use of City Employees for Public Works Construction Projects**

Idaho law does not restrict cities' ability to undertake public works construction projects with city employees (whether permanent or temporary). City employees are exempt from the requirements for public works contractor licensing. Since the local government purchasing law expressly exempts "disbursement of wages" to any city employee from the requirements for competitive bidding, the city is only required to go through the competitive bidding process for any materials or equipment purchased for the project. **I.C. §67-2803**

### **PENALTIES FOR PUBLIC OFFICIALS VIOLATING THE LAW**

Penalties for public officials who violate the law fall into two categories:

- There is a civil penalty of up to \$5,000 for public agencies who willfully or knowingly avoid compliance with the competitive bidding law by contracting with unlicensed or improperly licensed contractors (the fine is paid by the city). **I.C. §54-1914**

- A criminal penalty of up to one year in jail and a \$5,000 fine exists for officials who knowingly let a public works contract to an unlicensed contractor, unless, however, there is no qualified bidder willing to undertake the public works covered by the contract. **I.C. §54-1920**
- There is a civil penalty of up to \$5,000 for officials who willfully or knowingly avoid compliance with the competitive bidding law by willfully or knowingly splitting or separating purchases or work projects with the intent of avoiding compliance with such statutes (the fine is paid by the city). **I.C. §59-1026**

## **EMERGENCY AND SOLE SOURCE PROCUREMENT**

In the case of emergency expenditures, the city council declares that an emergency exists (reciting with some detail why that is the case) and that public interest and necessity demand the immediate expenditure of public money, as a result of:

- A great public calamity, such as an extraordinary fire, flood, storm, epidemic or other disaster.
- It is necessary to do emergency work to prepare for the national or local defense.
- It is necessary to do emergency work to safeguard life, health or property.

Once the council declares an emergency, the city may proceed to purchase without competitive bidding.

In the case of sole source procurement, the council must declare that there is only one (1) source reasonably available for the public works construction, services or personal property to be acquired, which includes:

- Where public works construction, services or personal property is required to respond to a life-threatening situation or a situation that is immediately detrimental to the public welfare or property.
- Where the compatibility of equipment, components, accessories, computer software, replacement parts or service is the paramount consideration.
- Where a sole supplier's item is needed for trial use or testing.
- The purchase of mass-produced movies, videos, books or other copyrighted materials.

- The purchase of public works construction, services or personal property for which it is determined there is no functional equivalent.
- The purchase of public utility services.
- The purchase of products, merchandise or trademarked goods for resale at a local government facility.
- Where competitive solicitation is impractical, disadvantageous or unreasonable under the circumstances.
- For sole source procurement, the city council declares that there is only one (1) vendor for the public works construction, services or personal property to be acquired, and then publishes notice of the sole source procurement in the official newspaper at least fourteen (14) days before awarding the contract (publication is not required in the case of a life-threatening situation or a situation that is immediately detrimental to public welfare or property). **I.C. §67-2808**

## **RECIPROCAL PURCHASING PREFERENCE LAW**

Several states and provinces have established “purchasing preference” laws, providing that bids from out-of-state vendors/contractors automatically have a specified percentage added to the bid for the purpose of determining the low bidder. Idaho operates under a “reciprocal preference” system that adds to the bids of out-of-state bidders the same percentage that the bidder’s home state provides as preference for in-state vendors. This applies to bids for procurement of public works, materials, supplies, services or equipment. **I.C. §67-2348, I.C. §67-2349**

For the purposes of this section, any bidder domiciled outside the boundaries of the state of Idaho may be considered as an Idaho domiciled bidder, provided that there exists for a period of one (1) year preceding the date of the bid a significant Idaho economic presence as defined herein. A significant economic presence shall consist of the following:

- (a) That the bidder maintain in Idaho fully staffed offices, or fully staffed sales offices or divisions, or fully staffed sales outlets, or manufacturing facilities, or warehouses or other necessary related property; and
- (b) If a corporation be registered and licensed to do business in the state of Idaho with the office of the secretary of state.

In the evaluation of paper product bids, those items that meet recycled content standards may be given not more than a five percent (5%) purchasing preference. As such, those qualifying paper products may be considered to cost five percent (5%) less when choosing the lowest responsible bidder. **I.C. §67-2349**

There are several important considerations to keep in mind when examining purchasing preferences:

- Purchasing preferences only apply to purchases of materials, supplies, equipment, services and public works construction that are competitively bid (anything over \$50,000 and any other purchases that the city decides to competitively bid).
- Preferences do not apply to sole source or emergency purchases.
- State of domicile means: where a corporation is chartered or incorporated, or where a sole proprietor or partnership is located or has its permanent headquarters.
- The purchasing preference is only added to the amount of the bid for the purpose of determining the low bidder, and the city does not pay that amount to the low bidder.

## **UNDERSTANDING P-CARDS**

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P-Cards (short for “purchasing cards”) are credit cards used by government agencies typically for small purchases. They function just like a credit card and may be used wherever credit cards are accepted. P-Cards help streamline the requisitioning, purchasing and payment process for small transactions. Instead of dealing with piles of purchase orders and invoices, the city gets one statement that shows the total amount due for all cardholders and each cardholder gets an individual statement that includes all their purchases for the month.

P-Cards provide a great degree of flexibility, control and accountability over purchasing activities. In setting up a P-Card system, cities determine who gets a card, and can establish specific products/services which may be purchased (and block merchant categories, such as bars, golf courses, etc.) and dollar limits for each card (including monthly, daily, and per transaction dollar limits).

## **SALES & USE TAX EXEMPTION**

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The State of Idaho and local governments are exempt from Idaho sales and use tax. Tax-exempt entities must provide merchants with a completed Sales Tax Resale or Exemption Certificate (ST-101). Merchants are required to keep a copy of this form in their records to verify the tax-exempt status of the governmental entity. Once this form is on file with the merchant, it covers all of the city’s future purchases. In addition to filling out the buyer and seller information in the boxes on the top of this form, the buyer must checkmark the “Federal/Idaho Government Entity” box in Paragraph 3, “Exempt Buyers.” Finally, the buyer must sign, indicate a title, fill in the city’s Federal EIN and date the form at the bottom. For tax-exempt cash purchases, a form ST-104G must be filled out for the vendor and must be signed by the purchasing agent as well as the buyer.



Costs of hotel rooms for city officials on city business are exempt from sales tax when the hotel is charged to a city credit card (form ST-104-HM is required)—cash payments, payments with personal credit cards and payments reimbursed to the traveler are subject to sales tax.

Purchases made by cities from out-of-state vendors that are delivered within Idaho are tax-exempt. If the out-of-state vendor is registered to collect Idaho state sales tax, the city must provide a valid, completed ST-101 to the vendor. Under no circumstances should a city pay sales tax to another state when the product is delivered in Idaho by the out-of-state vendor or a common carrier. If items are purchased in another state and possession is taken in that state, then the tax laws of that state determine what tax, if any, is owed. For example, Oregon and Montana have no sales tax, but Washington allows no tax exemptions for government agencies.

A prime or subcontractor is not exempt from sales and use tax simply because it is performing a service for a government agency. The contractor must pay sales tax to the vendor upon purchase of supplies or equipment or must pay use tax to the state if items are purchased without paying tax or materials are directly received from a governmental entity.

## **QUALIFICATIONS-BASED SELECTION OF DESIGN PROFESSIONALS**

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Idaho law requires “qualifications-based selection” (QBS) of design professionals, including architects, engineers, landscape architects, land surveyors, and construction managers. The QBS process differs from competitive bidding in that selection is based on qualifications and demonstrated competence, not merely submission of the lowest bid. For projects over \$50,000, the city is required to use the QBS process outlined below; for projects under \$50,000, the city may use the process outlined below or establish its own guidelines.

- First, the city establishes the criteria, procedures and qualifications for the services being sought.
- The city publishes a Request for Qualifications (RFQ) twice, the first publication at least two (2) weeks before the deadline for submission of statements of qualifications, the second publication at least one (1) week before the deadline, in the official newspaper. The RFQ does not include price information, since this is negotiated with the top-ranked firm once the scope of the project has been fully defined. The RFQ includes the following:
  - A brief description specifying the type, scope and location of the project, along with the projected project completion date.
  - A description of the professional services required.

- The criteria used to evaluate firms submitting statements of qualifications, specifically: prior experience in similar projects, familiarity with federal and state laws and regulations, experience with certain types of grants, etc.
- That specifications, instructions and other documents are available to interested persons.
- That interested persons should submit statements of qualifications including: a brief history of the firm; experience in similar projects; capability to undertake the project; the names and qualifications of the project team; familiarity with the city; project approach and preliminary schedule.
- The deadline for submission of statements of qualifications, the address to which statements should be sent and the name of a contact person to answer questions and provide specifications and instructions.
- The city may request information regarding a person's or firm's rates, overhead and multipliers, if any, but shall not use the information provided for the purpose of ranking in order of preference.
- The city selects the individual or firm it determines to be best qualified to provide the required services, ranked in order of preference, according to the established criteria.
- The city negotiates with the highest-ranking individual/firm to perform the services at a price determined by the city.
- If the city and the preferred individual/firm are unable to agree on contract terms, including price, the city may repeat the process with the second ranked individual/firm. If necessary, the process is repeated by continuing down the list until the city reaches an agreement.

Cities are also permitted to establish a list of prequalified individuals/firms for different types of projects. The list must have at least three prequalified individuals/firms, and the city is required to provide public notice of the prequalification process in the same manner as for the RFQ process (outlined above). When a project comes up, the city can choose the top ranked individual/firm from the prequalified list, rather than going through the public notice and RFQ process each time. **I.C. §67-2320**