

BID AND PURCHASING LAWS/BEST PRACTICES

BEFORE YOU DO ANYTHING, ASK YOURSELF THIS QUESTION.

Is this purchase or contract for goods or services exempt from the bid laws?

Exemptions:

- ✓ Piggy back off a contract for goods or services that was competitively bid by either the state of Idaho or one of its subdivisions, or an agency of the federal government
 - Must duplicate the price and substance of the contract for like goods or services
 - Can't use a bid from another state

Exemptions continued:

- ✓ Contract for purchase for less than \$25,000.
- ✓ Wages or compensation of employees or official agents of the city for the performance of personal services (i.e. employment contracts, not contracts with independent contractors)
- ✓ Contract for personal or professional services to be performed by an independent contractor (i.e. attorneys, engineers, architects, surveyors, artists, musicians) (See additional requirements for design professionals)

Exemptions continued:

- ✓ Procurement of an interest in real property
- ✓ Procurement of insurance
- ✓ Costs of participation in a joint powers agreement (i.e. payments to ICRMP)
- ✓ Federal government general services administration (GSA) schedules or federal multiple award schedules (MAS)

IF NOT EXEMPT, YOU MUST COMPLY WITH THE FOLLOWING PROCESS

**PURCHASE OF GOODS (PERSONAL PROPERTY) OR
SERVICES** (i.e. equipment, vehicles, office equipment,
software, chemicals, etc.)

**Purchases Between \$25,000 and \$50,000 (Solicit
bids/quotes)**

- Must send solicitation for bids to at least 3 vendors having a significant Idaho economic presence
- Solicitation must be in writing and delivered either electronically or physical delivery

- Solicitation must describe the goods or services to be purchased or leased in sufficient detail to allow all vendors to understand what is being sought, including any special requirements (i.e. Idaho licensed vehicle dealers)
- Solicitation must describe the electronic or physical means by which the bid may be delivered
- Solicitation must set out the date and time for the bids to be submitted and the person to whom they are to be submitted
- Solicitation must provide a reasonable time for the response to the solicitation (no less than 3 business days, unless an emergency exists)

Written objections to specifications and process must be submitted at least 1 business day before the bids are to be received

Must take the lowest responsive bid, or reject all bids

If fewer than 3 bids are received from qualified vendors, or the city finds it is impracticable or impossible to get 3 bids, must document the efforts made to obtain 3 bids and retain that documentation for at least 6 months.

Purchases over \$50,000 (Open competitive sealed bid process)

- Publish solicitation for bids by advertising in the newspaper 2 times.
 - First notice, at least 2 weeks before the date of bid opening
 - Second notice, at least 7 days before bid opening
- Solicitation must contain date, time and place for opening and a succinct description of the property or services to be procured, and where more detailed information can be obtained.
- Copies of specifications, bid forms, instructions, contract documents and general and special instructions must be made available to interested bidders upon request.

Written objections to the specifications and process must be made at least 3 business days prior to bid opening

Bid security **may** be required in the amount of at least 5% (cash, cashier's check, certified check, or bid bond)

Must award the bid to the lowest responsive bidder

Exception: The City Council declares on the record a reason why and communicates in writing that reason to all bidders. (This should be done extremely rarely and must be based on a reason that is legally supportable.)

Any bidder may object to the award, in writing, within 7 calendar days of the transmittal of the notice of the award.

City Council reviews the objection and either affirms the award, modifies the award, or re-bids, setting the reasons.

Sole Source Procurement (Goods or Services)

City Council may declare that there is only one vendor reasonably available for personal property and purchase the property without following the bid process under the following circumstances:

- ✓ Property is required for a life threatening situation or a situation that is immediately detrimental to public welfare or property
- ✓ Compatibility of equipment, components, software, parts or service is the paramount consideration

- ✓ Suppliers item is needed for trial use or testing
- ✓ Purchase of mass produced movies, videos, books or other copyrighted materials
- ✓ Property for which there is no functional equivalent
- ✓ Purchase of public utility services

- ✓ Purchase of products, merchandise or trademarked goods for resale at the city's facilities
- ✓ Where competitive solicitation is impractical, disadvantageous or unreasonable under the circumstances
- ✓ Prior to making the purchase, and after the declaration made by the council, notice of the sole source procurement must be noticed in the newspaper at least 14 calendar days prior to the award of the contract, except when it falls into the emergency category.

Emergency Expenditures

City Council may declare an emergency exists and that it is in the best interest and necessity demands the immediate expenditure if:

- ✓ Great public calamity (i.e. fire, flood, storm, epidemic or other disaster)
- ✓ Necessary to do work to prepare for national or local defense
- ✓ Necessary to do work to safeguard life, health or property

Special Requirements for vehicle purchased from dealers

Must be an Idaho licensed dealer, unless it is fire truck, urban transit bus, ambulance, street sweeper or hazardous material response vehicle being purchased. (See I.C. 49-1601)

PUBLIC WORKS CONSTRUCTION PROJECT

(Must use public works licensed contractor if the work is over \$10,000)

Public Works Contracts Between \$25,000 and \$100,000

- ✓ Must send solicitation for bids to at least 3 contractors having a valid Idaho public works license and domiciled in Idaho
- ✓ Solicitation must be in writing and delivered either electronically or physical delivery

- ✓ Solicitation must describe the work to be performed in sufficient detail to allow an experienced public works contractor to understand the project the city seeks to build and any other special requirements (i.e. payment and performance bonds)
- ✓ Solicitation must describe the electronic or physical means by which the bid may be delivered
- ✓ Solicitation must set out the date and time for the bids to be submitted and the person to whom they are to be submitted

- ✓ Solicitation must provide a reasonable time for the response to the solicitation (no less than 3 business days, unless an emergency exists)

Written objections to specifications and process must be submitted at least 1 business day before the bids are to be received

- ✓ Must take the lowest responsive bid, or reject all bids

If fewer than 3 bids are received from qualified contractors, or the city finds it is impracticable or impossible to get 3 bids, must document the efforts made to obtain 3 bids and retain that documentation for at least 6 months.

Public Works Contracts Over \$100,000 (without prequalification)

- ✓ Advertise notice in newspaper twice
 - First notice, at least 2 weeks prior to bid opening
 - Second notice, in succeeding week but no less than 7 days prior to bid opening

Notice content

Succinctly describe project

Date and time for bid opening

Where instructions, specifications and plans can be obtained and cost of plans

- ✓ Written objections must be received at least 3 business days prior to bid opening
- ✓ **May** require 5% bid surety
- ✓ **Must** require payment and performance bonds
Why? Protects suppliers and subcontractors because they can't lien city property
Failure to require can result in city liability/

- ✓ Award to lowest responsive bidder

Exception: City Council must declare on the record its reason(s) to do otherwise and shall communicate that reason to all persons submitting bids.

- Apparent but not actual low bidder
- Did not comply with administrative requirements
- Does not currently hold the requisite license

(See *Hillside Landscape Const., Inc. vs. City of Lewiston*, (264 P.3d 388, 151 Idaho 749))

Participating bidders may object in writing within 7 days of transmittal of the notice, setting forth the reason(s) the decision is in error

City Council must address the objection

- ✓ Or, reject all bids and abandon project as bid, or rebid the project

Public works Contracts Over \$100,000 (with prequalification - 2 step process)

Step 1

- ✓ Notice of prequalification stage (follow same notices as for the bid process)
- ✓ Prequalification standards may include: demonstration of technical competence, experience with similar facilities, prior experience with political subdivisions, available non financial resources, equipment and personnel related to the project, overall performance history

- ✓ Interested licensed contractors (either prime or specialty contractors) submit a written response to request for qualifications

Written objections to procedures must be received at least 3 business days before the date and time prequalification statements are due

- ✓ Review submittal and determine which submittals meet the prequalification requirements

- ✓ Send written statement to any contractor not selected, stating the reason(s) why the contractor failed to meet the standards

Decision may be appealed to City Council within 7 days of such determination.

Council decision may be appealed to public works contractors licensing board within 14 days of the council decision.

Step 2

- ✓ If prequalification was for prime contractors, send notice soliciting bids from the prequalified contractors 14 days before date of opening.
- ✓ If prequalification was for specialty contractors, notice must be advertised in the newspaper and follow the same process applicable to bidding without prequalification, but state that a prequalified specialty contractor must be used.

Naming subcontractors

Bid specifications must require that the bidder submit the name and address of the plumbing, HVAC and electrical subcontractors to perform work on the project

Open Access to Work Act (effective 7/1/12)

Contract Requirements

Public works contracts may not include, predetermined amount of wages or wage rates; or type, amount or rate of benefits

Unless required by federal or state law
(i.e. prevailing wages for federal funded projects)

Public work contract and bid specifications shall NOT:

- ✓ Require or prohibit the bidder to enter into labor or collective bargaining agreements with one or more labor organizations on the same or a related project.
- ✓ Discriminate against or treat differently bidders who voluntarily enter into such agreements.

Bid awards that violate the *Open Access to Work Act* are subject to challenge by any interested party

Interested party = bidder, offeror, contractor, subcontractor or taxpayer

Interested party shall be awarded costs and attorney fees if they prevail

DESIGN PROFESSIONALS

(architects, engineers, land surveyors, landscape architects, construction management)

Qualification based as opposed to cost based

Projects over \$25,000

- ✓ Establish criteria for which qualifications will be evaluated.
 - Categories
 - Assign weight for each category
 - Price can't be one of the criteria

- ✓ Publish notice in newspaper (follow same notice process as public works contract over \$100,000).

- ✓ Make available to prospective submitters the criteria and weight on which the qualification will be determined.
- ✓ Evaluation submittals and select most qualified.

- ✓ Once the selection is made, negotiate contract price
- ✓ If agreement cannot be reached, negotiate with next highest ranked

Projects under \$25,000

City may establish own guidelines and process to determine qualifications

Exceptions

- Work associated with a prior contract**

If project is work associated with a previously awarded contract, do not need to follow the RFQ process to award to the same company as an extension or new contract.

- **Preapproved list**

The city may establish a preapproved list of 3 qualified professionals in each category.

May contract with any of those professionals from that list

AVOIDING BID LAWS PROHIBITED

Prohibitions:

- Willfully and knowingly avoid compliance with the procurement or competitive bid laws.
- Willfully or knowingly split or separate purchase or works projects with the intent to avoid compliance with competitive bid laws.
- Civil penalty not to exceed \$5000 for each offense

FAILURE TO REQUIRE A PUBLIC WORKS LICENSE

Knowingly letting a public works contract go to a contractor without the requisite license.

Misdemeanor (maximum penalty of \$5000 fine and 1 year in jail)