

Dear Senators MCKENZIE, Stennett, Lodge, and
Representatives LOERTSCHER, Batt, Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Department of Administration - Rules of the Division of Purchasing:

IDAPA 38.05.01 - Rules of the Division of Purchasing - Temporary and Proposed Rule (Docket
No. 38-0501-1501).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 08/21/2015. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 09/21/2015.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate State Affairs Committee and the House State Affairs Committee

FROM: Principal Legislative Research Analyst - Ryan Bush

DATE: August 4, 2015

SUBJECT: Department of Administration - Rules of the Division of Purchasing

IDAPA 38.05.01 - Rules of the Division of Purchasing - Temporary and Proposed Rule (Docket No. 38-0501-1501)

The Department of Administration submits notice of temporary and proposed rulemaking at IDAPA 38.05.01 -Rules of the Division of Purchasing. The Department states that a temporary rule is necessary to clarify unintended ambiguity caused by the 2015 Legislature's partial acceptance of revisions to IDAPA 38.05.01 in 2015. The Department further states that the partial acceptance of revisions led to the use of both "purchasing activity" and "purchasing authority" in the rules. This rulemaking revises the definition of "purchasing activity" to also include "authority."

The Department states that negotiated rulemaking was not conducted because temporary rulemaking was required. There is no fiscal impact associated with this rulemaking.

The temporary and proposed rule appears to be within the statutory authority granted to the Department in Section 67-5717(11), Idaho Code.

cc: Department of Administration
Jennifer Pike

IDAPA - DEPARTMENT OF ADMINISTRATION

38.05.01 - RULES OF THE DIVISION OF PURCHASING

DOCKET NO. 38-0501-1501

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 6, 2015.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-5717(11), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The term “purchasing authority” is used in the rules revised by the 2015 legislative session. The term “purchasing activity” remains in the rules where revisions were not approved. This temporary and proposed rule provides a consistent definition for both terms and blends the revised and unrevised rules. This rulemaking establishes a definition for the terms “purchasing activity” and “purchasing authority.”

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The 2015 Legislature accepted only a few sections in a proposed global revision to IDAPA 38.05.01. The partial revision resulting from this action created an unintended ambiguity in the use of the term “purchasing authority.” This temporary and proposed rulemaking defines the term and resolves the ambiguity created by the Legislature’s partial revision of IDAPA 38.05.01.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: NA

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because a temporary rulemaking was required.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Bill Burns, Administrator, (208) 332-1610.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2015.

DATED this 29th Day of June, 2015.

Bill Burns, Administrator
Department of Administration
650 W. State St., Room 100
P. O. Box 83720
Boise, ID 83720-0003
Tel: (208) 332-1610
Fax: (208) 334-2307

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 38-0501-1501
(Only those Sections being amended are shown.)**

011. DEFINITIONS.

- 01. Acquisition.** The process of procuring or purchasing property by the state of Idaho. (3-15-02)
- 02. Administrator.** The administrator for the division of purchasing. The administrator is the chief buyer. (3-15-02)
- 03. Agency.** All offices, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding other legislative and judicial branches of government, and excluding the governor, the lieutenant-governor, the secretary of state, the state controller, the state treasurer, the attorney general, and the superintendent of public instruction. (3-15-02)
- 04. Alternate.** Property or services that are not at least a functional equal in features, performance or use of the brand, model or specification designated as the standard. (3-15-02)
- 05. Bid.** A written offer that is binding on the bidder to perform a contract to purchase or supply property or services in response to an invitation to bid. (3-15-02)
- 06. Bidder.** A vendor who has submitted a bid or quotation on specific property. (3-15-02)
- 07. Brand Name or Equal Specification.** This means a specification that uses a brand name to describe the standard of quality, performance or other characteristics being solicited and that invites the submission of equivalent products. (3-15-02)
- 08. Brand Name Specification.** This means a specification calling for one (1) or more products by manufacturers' names or catalogue numbers. (3-15-02)
- 09. 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 activity. (3-15-02)
- 10. Component.** An item of property normally assembled or incorporated with other items into a unified productive whole at the site of use, which items belong to functional classes that may be interchangeable units of similar function but differing operational or productive capabilities. (3-15-02)
- 11. Concession Services.** The granting by the purchasing activity of a right, franchise, authority, property interest or option to a contractor, regardless of whether an expenditure of state or other funds occurs. (3-15-02)

12. Consultant Services. This means work, rendered by either individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis or advice in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting and planning. The consultant's services, opinions or recommendations will be performed according to the consultant's methods without being subject to the control of the agency except as to the result of the work. (3-15-02)

13. Contract. Contract means any state written agreement, including a solicitation or specification documents and the accepted portions of the solicitation, for the acquisition of property. Generally, the term is used to describe term contracts, definite or indefinite quantity or delivery contracts or other acquisition agreements whose subject matter involves multiple payments and deliveries. A contract shall also include any amendments mutually agreed upon by both parties. (3-15-02)

14. Contractor. A bidder or offeror who has been awarded an acquisition contract. (3-15-02)

15. Director. The chief officer of the department of administration. (3-15-02)

16. Division. The division of purchasing of the department of administration as established by Section 67-5714, Idaho Code. Whenever a purchase is made by the division on behalf of another agency, the division shall be deemed to be acting as the agent for such agency. (3-15-02)

17. Document. When used in these rules, may include electronic documents. (3-15-02)

18. Equal. Property that meets or exceeds the quality, performance and use of the brand, model or specifications in the invitation to bid, request for proposals or request for quotation. (3-15-02)

19. Equipment. Items of personal property that have a normal useful life expectancy or measurable service life of two (2) or more years. (3-15-02)

20. Formal Sealed Procedure. Procedure by which the buyer solicits competitive sealed bids or competitive sealed proposals by means of an invitation to bid or request for proposals. (3-15-02)

21. Goods. Items of personal property including concession services, not qualifying as equipment, parts or supplies. (3-15-02)

22. Information Technology Property. Includes, but is not limited to, all present forms of computer hardware, computer software or services used or required for automated data processing, computer related office automation or telecommunications. (3-15-02)

23. Invitation to Bid. Means all documents, whether attached or incorporated by reference, utilized for soliciting formal sealed bids. (3-15-02)

24. Lowest Responsible Bidder. The responsible bidder whose bid conforms in all material respects to the invitation to bid or request for proposals and reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price. (3-15-02)

25. Offeror. A vendor who has submitted a proposal in response to a request for proposals for property to be acquired by the state. (3-15-02)

26. Open Contract. A contract awarded by the state of Idaho through the division of purchasing to one (1) or more vendors who have agreed to allow all agencies to procure or purchase specified property under the terms and conditions set forth in the contract. (4-7-11)

27. Person. Any business, individual, union, committee, club or other organization or group of individuals, not including a state or public agency. (3-15-02)

28. Procurement. The process of obtaining property for state use by lease, rent or any manner other than by purchase or gift. (3-15-02)

29. Professional Services. Work rendered by an independent contractor whose occupation is the rendering of such services and who has a professional knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, legal, medical, nursing, education, engineering, actuarial, architecture, veterinarian, and research. The knowledge is founded upon prolonged and specialized intellectual training that enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skills. (3-15-02)

30. Property. Goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights and interests in such property. Includes concession services and rights to access or use state property or facilities for business purposes. (3-15-02)

31. Proposal. A written response including pricing information to a request for proposals that describes the solution or means of providing the property requested and which proposal is considered an offer to perform a contract in full response to the request for proposals. Price may be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award. (3-15-02)

32. Public Agency. Has the meaning set forth in Section 67-2327, Idaho Code. (3-15-02)

33. Purchase. The act of acquiring or procuring property for state use or the result of an acquisition action. (3-15-02)

34. Purchase Order. See also definition of Contract, typically used to acquire property. It is a notification to the contractor to provide the stated property, required material, equipment, supplies or services under the terms and conditions set forth in the purchase order. It may include the form of the state's acceptance of a bidder's proposal or bid. (3-15-02)

35. Purchasing Activity or Authority. The division or an agency ~~delegated that~~ exercising authority based on a delegation of authority by the administrator ~~for~~ or as provided under these rules to an individual within the division or the agency to engage in the conduct of purchasing. (~~3-15-02~~)(6-6-15)T

36. Quotation. An offer to supply property in response to a request for quotation and generally used for small or emergency purchases. (3-15-02)

37. Request for Proposals. Includes all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals and is generally utilized in the acquisition of services or complex purchases. (3-15-02)

38. Request for Quotation. The document, form or method generally used for purchases solicited in accordance with small purchase or emergency purchase procedures. (3-15-02)

39. Requisition. A standard state or agency specific form that serves as a purchasing request and that requests that the purchasing activity acquire the stated requirements. (3-15-02)

40. Sealed. Includes bids electronically sealed and submitted in accordance with requirements or standards set by the division and bids manually sealed and submitted. (3-15-02)

41. Sealed Procedure Limit. That dollar amount, as established by these rules, above which the formal sealed bid procedure will be used. Said amount may be lowered by the administrator to maintain full disclosure or competitive purchasing or otherwise achieve overall state efficiency and economy. (3-15-02)

42. Services. Personal, general, professional or consultant services, in excess of personnel regularly employed for whatever duration and/or covered by personnel system standards, for which bidding or competition is

not prohibited or made impractical by statute, rules and regulations or generally accepted ethical practices. (3-15-02)

43. Small Purchase. An acquisition that costs less than the sealed procedure limit. (3-15-02)

44. Solicitation. Means an invitation to bid, a request for proposals or other document issued by the purchasing activity for the purpose of soliciting bids, proposals, or offers to perform a contract. (3-15-02)

45. Specifications. The explicit requirements furnished with an invitation to bid, request for proposals or request for quotations upon which a purchase order or contract is to be based. Unless specifically provided in a solicitation, specifications do not include solicitation conditions or contractual terms including, without limitation, items such as vendor qualification requirements, bid closing times, delivery time or payment terms. (3-15-02)

46. State. This means the state of Idaho including each agency unless the context implies other states of the United States. (3-15-02)

47. Supplies. Items of personal property having an expendable quality or during their normal use are consumed and that require or suggest acquisition in bulk. (3-15-02)

48. Telecommunications. Means all present and future forms of hardware, software or services used or required for transmitting voice, data, video or images. (3-15-02)

49. Vendor. A person or entity capable of supplying property to the state. (3-15-02)

50. Written. When used in these rules, may include an electronic writing. (3-15-02)