

IN THE SENATE

SENATE BILL NO. 1427

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO PUBLIC WORKS; AMENDING SECTION 54-1903, IDAHO CODE, TO REVISE
2 AN EXEMPTION; AMENDING SECTION 67-2803, IDAHO CODE, TO REVISE AN EX-
3 CLUSION; AMENDING SECTION 67-2805, IDAHO CODE, TO REVISE PROVISIONS
4 REGARDING PROCUREMENT OF PUBLIC WORKS CONSTRUCTION; AMENDING SECTION
5 67-2806, IDAHO CODE, TO REVISE PROVISIONS REGARDING PROCURING SERVICES
6 OR PERSONAL PROPERTY; AND DECLARING AN EMERGENCY AND PROVIDING AN EF-
7 FECTIVE DATE.
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Section 54-1903, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 54-1903. EXEMPTIONS. This chapter shall not apply to:

13 (1) An authorized representative of the United States government, the
14 state of Idaho, or any incorporated town, city, county, irrigation district,
15 reclamation district or other municipal or political corporation or subdi-
16 vision of this state.

17 (2) Officers of a court when they are acting within the scope of their
18 office.

19 (3) Public utilities operating under the jurisdiction of the public
20 utilities commission of the state of Idaho on construction, maintenance and
21 development work incidental to their own business.

22 (4) The sale or installation of any finished products, materials or ar-
23 ticles of merchandise, which are not actually fabricated into and do not be-
24 come a permanent fixed part of the structure.

25 (5) Any construction, alteration, improvement or repair of personal
26 property.

27 (6) Any construction, alteration, improvement or repair carried on
28 within the limits and boundaries of any site or reservation, the title of
29 which rests in the federal government.

30 (7) Any construction or operation incidental to the construction and
31 repair of irrigation and drainage ditches of regularly constituted irriga-
32 tion districts, drainage districts or reclamation districts, except when
33 performed by a person required to be licensed under this chapter.

34 (8) Duly licensed architects, licensed engineers, and land surveyors
35 when acting solely in their professional capacity.

36 (9) Any construction, alteration, improvement or repair involving any
37 single project involving any number of trades or crafts with an estimated
38 cost of less than ~~fifty thousand dollars (\$50,000)~~ one hundred thousand dol-
39 lars (\$100,000).

40 (10) Any construction, operation, alteration or maintenance of a solid
41 waste disposal site including those operated by, for, or at the direction of
42 a city or a county.

1 (11) Any construction, operation or repair carried on in response to an
2 emergency that has been officially declared by the governor pursuant to the
3 provisions of chapter 10, title 46, Idaho Code, or an emergency that has been
4 declared by a governing body (city or county) in anticipation of a governor's
5 declaration, for a period of time not to exceed seven (7) calendar days.

6 SECTION 2. That Section 67-2803, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 67-2803. EXCLUSIONS. The procurement requirements established in
9 this chapter shall not be applicable to:

10 (1) The acquisition of personal property when the procurement dupli-
11 cates the price and substance of a contract for like goods or services that
12 has been competitively bid by the state of Idaho, one (1) of its political
13 subdivisions, or an agency of the federal government;

14 (2) Contracts or purchases where expenditures to procure public works
15 construction are less than ~~fifty thousand dollars (\$50,000)~~ seventy-five
16 thousand dollars (\$75,000) or where expenditures to procure services or
17 personal property are less than seventy-five thousand dollars (\$75,000),
18 provided such contracts or purchases shall be guided by the best interests of
19 the political subdivision procuring the goods and services as determined by
20 the governing board;

21 (3) Disbursement of wages or compensation to any employee, official or
22 agent of a political subdivision for the performance of personal services
23 for the political subdivision;

24 (4) Procurement of personal or professional services to be performed by
25 an independent contractor for the political subdivision;

26 (5) Procurement of an interest in real property;

27 (6) Procurement of insurance;

28 (7) Costs of participation in a joint powers agreement with other units
29 of government;

30 (8) Procurement of used personal property;

31 (9) Procurement from federal government general services administra-
32 tion (GSA) schedules or federal multiple award schedules (MAS);

33 (10) Procurement of personal property or services through contracts en-
34 tered into by the division of purchasing of the department of administration
35 of the state of Idaho;

36 (11) Procurement of goods for direct resale;

37 (12) Procurement of travel and training;

38 (13) Procurement of goods and services from Idaho correctional indus-
39 tries;

40 (14) Procurement of repair for heavy equipment;

41 (15) Procurement of software maintenance, support and licenses of an
42 existing system or platform that was bid in compliance with state law;

43 (16) Procurement of public utilities;

44 (17) Procurement of food for use in jails or detention facilities; or

45 (18) Procurement of used equipment at an auction if authorized by the
46 governing board.

47 SECTION 3. That Section 67-2805, Idaho Code, be, and the same is hereby
48 amended to read as follows:

1 67-2805. PROCUREMENT OF PUBLIC WORKS CONSTRUCTION. (1) When a po-
2 litical subdivision contemplates an expenditure to procure public works
3 construction valued at or in excess of ~~fifty thousand dollars (\$50,000) but~~
4 ~~not to exceed two hundred thousand dollars (\$200,000)~~ seventy-five thou-
5 sand dollars (\$75,000) but not to exceed two hundred fifty thousand dollars
6 (\$250,000), the procurement procedures of this subsection shall apply:

7 (a) The solicitation for bids for the public works construction to be
8 performed shall be supplied to no fewer than three (3) owner-desig-
9 nated licensed public works contractors by written means, either by
10 electronic or physical delivery. The solicitation shall describe the
11 construction work to be completed in sufficient detail to allow an expe-
12 rienced public works contractor to understand the construction project
13 the political subdivision seeks to build.

14 (b) The solicitation for bids shall describe the electronic or physi-
15 cal delivery method or methods authorized to submit a bid, the date and
16 time by which a bid proposal must be received by the clerk, secretary or
17 other authorized official of the political subdivision, and shall provide
18 a reasonable time to respond to the solicitation, provided that ex-
19 cept in the event of an emergency, such time shall not be less than three
20 (3) business days.

21 (c) Written objections to specifications or bid procedures must be re-
22 ceived by the clerk, secretary or other authorized official of the po-
23 litical subdivision at least one (1) business day before the date and
24 time upon which bids are scheduled to be received.

25 (d) When written bids have been received, by either physical or elec-
26 tronic delivery, they shall be submitted to the governing board or a de-
27 signee of the governing board who shall present the lowest responsive
28 bid to the governing board for approval or, if authorized, approve the
29 bid. The governing board or the board's designee shall approve the re-
30 sponsive bid proposing the lowest procurement price or reject all bids
31 and publish notice for bids, as before.

32 (e) If the political subdivision finds that it is impractical or impos-
33 sible to obtain three (3) bids for the proposed public works procure-
34 ment, the political subdivision may acquire the work in any manner the
35 political subdivision deems best from a qualified public works contrac-
36 tor quoting the lowest price. When fewer than three (3) bids are consid-
37 ered, a description of the efforts undertaken to procure at least three
38 (3) bids shall be documented by the political subdivision and such docu-
39 mentation shall be maintained for at least six (6) months after the pro-
40 curement decision is made. If two (2) or more price quotations offered
41 by different licensed public works contractors are the same and the low-
42 est responsive bids, the governing board or governing-board authorized
43 official may accept the one (1) it chooses.

44 (2) When a political subdivision contemplates an expenditure to pur-
45 chase public works construction valued in excess of ~~two hundred thousand~~
46 ~~dollars (\$200,000)~~ two hundred fifty thousand dollars (\$250,000), the
47 procurement procedures of this subsection shall apply. The purchase of
48 construction services shall be made pursuant to a competitive sealed bid
49 process with the purchase to be made from the qualified public works contrac-
50 tor submitting the lowest bid price complying with bidding procedures and

1 meeting the prequalifications, if any are provided, established by the bid
2 documents. Competitive bidding for public works may proceed through either
3 of two (2) alternative procedures as set forth below:

4 (a) Category A. Competitive bidding procedures shall be open to receipt
5 of bids from any licensed public works contractor desiring to bid upon a
6 public works project. For a category A bid, the political subdivision
7 may only consider the amount bid, bidder compliance with administrative
8 requirements of the bidding process, and whether the bidder holds the
9 requisite license, and shall award the bid to the qualified bidder sub-
10 mitting the lowest responsive bid.

11 (i) The request for bids for a category A procurement shall set
12 a date and place for the public opening of bids. Two (2) notices
13 soliciting bids shall be published in the official newspaper of
14 the political subdivision. The first notice shall be published
15 at least two (2) weeks before the date for opening bids, with the
16 second notice to be published in the succeeding week at least seven
17 (7) days before the date that bids are scheduled to be opened. The
18 notice shall succinctly describe the project to be constructed.
19 Copies of specifications, bid forms, bidder's instructions, con-
20 tract documents, and general and special instructions shall be
21 made available upon request and payment of a reasonable plan copy
22 fee by any interested bidder.

23 (ii) Written objections to specifications or bidding procedures
24 must be received by the clerk, secretary or other authorized of-
25 ficial of the political subdivision at least three (3) business
26 days before the date and time upon which bids are scheduled to
27 be opened. The administrative officer or governing board super-
28 vising the bidding process shall respond to any such objection
29 in writing and communicate such response to the objector and all
30 other plan holders, adjusting bidding timeframes if necessary.

31 (iii) All bids shall be presented or otherwise delivered under
32 sealed cover to the clerk of the political subdivision or other au-
33 thorized agent of the political subdivision designated by the in-
34 formation provided to bidders by the political subdivision with a
35 concise statement marked on the outside generally identifying the
36 project to which the bid pertains.

37 (iv) If the political subdivision deems it is in the political
38 subdivision's best interest, it may require the bidder to provide
39 bid security in an amount equal to at least five percent (5%) of the
40 amount bid. If required, a bid shall not be considered unless one
41 (1) of the forms of bidder's security is enclosed with it, and un-
42 less the bid is submitted in a form which substantially complies
43 with the form provided by the political subdivision. The politi-
44 cal subdivision may require that the bid security be in one (1) of
45 the following forms:

46 (A) Cash;

47 (B) A cashier's check made payable to the political subdivi-
48 sion;

49 (C) A certified check made payable to the political subdivi-
50 sion; or

1 (D) A bidder's bond executed by a qualified surety company,
2 made payable to the political subdivision.

3 (v) Any bid received by the political subdivision may not be
4 withdrawn after the date and time set in the notice for opening of
5 bids. When sealed bids have been received, they shall be opened in
6 public at a designated place and time, thereafter to be compiled
7 and submitted to the governing board for award or, if a designee is
8 authorized, for approval of the award.

9 (vi) If the successful bidder fails to execute the contract, the
10 amount of his bidder's security may be forfeited to the political
11 subdivision at the sole discretion of the political subdivision
12 and the proceeds shall be deposited in a designated fund out of
13 which the expenses of procuring substitute performance are paid.

14 (vii) The political subdivision may, on the refusal or failure of
15 the successful bidder to execute the contract, award the contract
16 to the qualified bidder submitting the next lowest responsive bid.
17 If the governing board awards the contract to the next lowest qual-
18 ified bidder, the amount of the lowest qualified bidder's secu-
19 rity may be applied by the political subdivision to the difference
20 between the lowest responsive bid and the next lowest responsive
21 bid, and the surplus, if any, shall be returned to the lowest bid-
22 der if cash or check is used, or to the surety on the bidder's bond
23 if a bond is used, less reasonable administrative costs not to ex-
24 ceed twenty-five percent (25%) of the amount of the bidder's secu-
25 rity to the owner.

26 (viii) In its discretion, the governing board may reject all bids
27 presented and re-bid, or the governing board may, after finding it
28 to be a fact, pass a resolution declaring that the project sought
29 to be accomplished by the expenditure can be performed more eco-
30 nomically by purchasing goods and services on the open market. If
31 identical bids are received, the governing board may choose the
32 bidder it prefers. If no bids are received, the governing board
33 may procure the goods or services without further competitive bid-
34 ding procedures.

35 (ix) If the governing board of any political subdivision chooses
36 to award a competitively bid contract involving the procurement of
37 public works construction to a bidder other than the apparent low
38 bidder, the political subdivision shall declare its reason or rea-
39 sons on the record and shall communicate such reason or reasons in
40 writing to all persons who have submitted a competing bid.

41 (x) If any participating bidder objects to such award, such bid-
42 der shall respond in writing to the notice from the political sub-
43 division within seven (7) calendar days of the date of transmittal
44 of the notice, setting forth in such response the express reason
45 or reasons that the award decision of the governing board is in er-
46 ror. Thereafter, staying performance of any procurement until af-
47 ter addressing the contentions raised by the objecting bidder, the
48 governing board shall review its decision and determine whether to
49 affirm its prior award, modify the award, or choose to re-bid, set-
50 ting forth its reason or reasons therefor. After completion of the

1 review process, the political subdivision may proceed as it deems
2 to be in the public interest.

3 (b) Category B. Competitive bidding procedures shall be open to li-
4 censed public works contractors only after meeting preliminary supple-
5 mental qualifications established by the political subdivision. The
6 solicitation for bids in a category B procurement shall consist of two
7 (2) stages, an initial stage determining supplemental prequalifica-
8 tions for licensed contractors, either prime or specialty contractors,
9 followed by a stage during which bid prices will be accepted only from
10 prequalified contractors.

11 (i) Notice of the prequalification stage of the category B com-
12 petitive bidding process shall be given in the same manner that
13 notice of competitive bidding is provided for a category A com-
14 petitive bid request, providing a specific date and time by which
15 qualifications statements must be received. Political subdivi-
16 sions may establish prequalification standards premised upon
17 demonstrated technical competence, experience constructing simi-
18 lar facilities, prior experience with the political subdivision,
19 available nonfinancial resources, equipment and personnel as
20 they relate to the subject project, and overall performance his-
21 tory based upon a contractor's entire body of work. Such request
22 must include the standards for evaluating the qualifications of
23 prospective bidders.

24 (ii) During the initial stage of the category B bidding process,
25 licensed contractors desiring to be prequalified to bid on a
26 project must submit a written response to a political subdivi-
27 sion's request for qualifications.

28 (iii) Written objections to prequalification procedures must be
29 received by the clerk, secretary or other authorized official of
30 the political subdivision at least three (3) business days before
31 the date and time upon which prequalification statements are due.
32 The administrative officer or governing board supervising the
33 bidding process shall respond to any such objection in writing
34 and communicate such response to the objector and all other con-
35 tractors seeking to prequalify, adjusting bidding timeframes if
36 necessary. After a review of qualification submittals, the po-
37 litical subdivision may select licensed contractors that meet the
38 prequalification standards. If any licensed contractor submits
39 a statement of qualifications but is not selected as a qualified
40 bidder, the political subdivision shall supply a written state-
41 ment of the reason or reasons why the contractor failed to meet
42 prequalification standards.

43 (iv) Any licensed contractor that fails the prequalification
44 stage can appeal any such determination to the governing board
45 within seven (7) days after transmittal of the prequalification
46 results to contest the determination. If the governing board
47 sustains the decision that a contractor fails to meet prequali-
48 fication standards, it shall state its reason or reasons for the
49 record. A governing board decision concerning prequalification
50 may be appealed to the public works contractors license board

1 no more than fourteen (14) days following any decision on appeal
2 made by the governing board. The public works contractors license
3 board shall decide any such appeal within thirty-five (35) days
4 of the filing of a timely appeal. The public works contractors
5 license board shall allow participation, written or oral, by the
6 appealing contractor and the political subdivision, either by
7 employing a hearing officer or otherwise. The public works con-
8 tractors license board shall not substitute its judgment for that
9 of the political subdivision, limiting its review to determining
10 whether the decision of the governing board is consistent with the
11 announced prequalification standards, whether the prequalifi-
12 cation standards comport with the law and whether the governing
13 board's decision is supported by the entirety of the record. The
14 decision of the public works contractors license board shall be
15 written and shall state the reason or reasons for the decision.
16 Category B prequalification procedures that are appealed shall be
17 stayed during the pendency of the prequalification appeal until
18 the public works contractors license board completes its review,
19 but in no instance more than forty-nine (49) days after the appel-
20 late decision of the governing board regarding prequalification.
21 Any licensed public works contractor affected by a decision on
22 appeal by the public works contractors license board may, within
23 twenty-eight (28) days of the final decision, seek judicial review
24 as provided by chapter 52, title 67, Idaho Code.

25 (v) Following the conclusion of the prequalification adminis-
26 trative procedures, the bidding stage shall proceed by the setting
27 of a time, date and place for the public opening of bids. In cir-
28 cumstances involving prequalified prime contractors, a notice
29 soliciting bids shall be transmitted to prequalified bidders at
30 least fourteen (14) days before the date of opening the bids. In
31 circumstances involving prequalified specialty or subordinate
32 contractors, the notice soliciting bids shall be published in the
33 same manner applicable to category A bids. The notice shall suc-
34 cinctly describe the project to be constructed. Copies of speci-
35 fications, bid forms, bidder's instructions, contract documents,
36 and general and special instructions shall be made available upon
37 request and payment of a reasonable plan copy fee by any eligible
38 bidder.

39 (vi) Written objections to specifications or bidding procedures
40 must be received by the clerk, secretary or other authorized of-
41 ficial of the political subdivision at least three (3) business
42 days before the date and time upon which bids are scheduled to be
43 opened.

44 (vii) All category B bids shall be presented or otherwise deliv-
45 ered under sealed cover to the clerk or other authorized agent
46 of the political subdivision designated by the instructions to
47 bidders with a concise statement marked on the outside generally
48 identifying the project to which the bid pertains.

49 (viii) If the political subdivision deems it is in the political
50 subdivision's best interest, it may require the bidder to provide

1 bid security in an amount equal to at least five percent (5%) of the
2 amount bid. If required, a bid shall not be considered unless one
3 (1) of the forms of bidder's security is enclosed with it, and un-
4 less the bid is submitted in a form which substantially complies
5 with the form provided by the political subdivision. The politi-
6 cal subdivision may require that the bid security be in one (1) of
7 the following forms:

8 (A) Cash;

9 (B) A cashier's check made payable to the political subdivi-
10 sion;

11 (C) A certified check made payable to the political subdivi-
12 sion; or

13 (D) A bidder's bond executed by a qualified surety company,
14 made payable to the political subdivision.

15 (ix) Any category B bid received by a political subdivision may
16 not be withdrawn after the date and time set in the notice for open-
17 ing of bids. When sealed bids have been received, they shall be
18 opened in public by the governing board or the board's designee at
19 a designated place and time. The governing board's designee shall
20 thereafter compile and submit to the governing board for award or,
21 if authorized, approve the award. If identical bids are received,
22 the governing board may choose the bidder it prefers. If the suc-
23 cessful bidder fails to execute the contract, the amount of his
24 bidder's security may be forfeited to the political subdivision,
25 in the sole discretion of the political subdivision, and the pro-
26 ceeds shall be deposited in a designated fund out of which the ex-
27 penses for procuring substitute performance are paid.

28 (x) The political subdivision may, on the refusal or failure of
29 the successful bidder to execute the contract, award the contract
30 to the qualified bidder submitting the next lowest responsive bid.
31 If the governing board awards the contract to the next lowest qual-
32 ified bidder, the amount of the lowest qualified bidder's secu-
33 rity, if forfeited, shall be applied by the political subdivision
34 to the difference between the lowest responsive bid and the next
35 lowest responsive bid, and the surplus, if any, shall be returned
36 to the lowest bidder if cash or check is used, or to the surety on
37 the bidder's bond if a bond is used, less reasonable administra-
38 tive costs not to exceed twenty-five percent (25%) of the amount of
39 the bidder's security.

40 (xi) In its discretion, the governing board may reject all bids
41 presented and re-bid, or the governing board may, after finding it
42 to be a fact, pass a resolution declaring that the project sought
43 to be accomplished by the expenditure can be performed more eco-
44 nomically by purchasing goods and services on the open market. If
45 no bids are received, the governing board may make the expenditure
46 without further competitive bidding procedures.

47 (xii) If the governing board of any political subdivision chooses
48 to award a competitively bid contract involving the procurement of
49 public works construction to a bidder other than the apparent low
50 bidder, the political subdivision shall declare its reason or rea-

1 sons on the record and shall communicate such reason or reasons in
2 writing to all persons who have submitted a competing bid.

3 (xiii) If any participating bidder objects to such award, such
4 bidder shall respond in writing to the notice from the political
5 subdivision within seven (7) calendar days of the date of trans-
6 mittal of the notice, setting forth in such response the express
7 reason or reasons that the award decision of the governing board
8 is in error. Thereafter, staying performance of any procurement
9 until after addressing the contentions raised by the objecting
10 bidder, the governing board shall review its decision and deter-
11 mine whether to affirm its prior award, modify the award, or choose
12 to re-bid, setting forth its reason or reasons therefor. After
13 completion of the review process, the political subdivision may
14 proceed as it deems to be in the public interest.

15 SECTION 4. That Section 67-2806, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 67-2806. PROCURING SERVICES OR PERSONAL PROPERTY. (1) When a polit-
18 ical subdivision contemplates an expenditure to purchase or lease personal
19 property or to procure services, other than personal property or services
20 excluded pursuant to section 67-2803, Idaho Code, valued at or in excess
21 of ~~seventy-five thousand dollars (\$75,000)~~ one hundred thousand dollars
22 (\$100,000) but not to exceed ~~one hundred fifty thousand dollars (\$150,000)~~
23 two hundred thousand dollars (\$200,000), the procurement procedures of this
24 subsection shall apply.

25 (a) The solicitation for bids shall be supplied to no fewer than three
26 (3) vendors by written means, either by electronic or physical deliv-
27 ery. The solicitation shall describe the personal property or services
28 to be purchased or leased in sufficient detail to allow a vendor dealing
29 in such goods or services to understand what the political subdivision
30 seeks to procure.

31 (b) The solicitation for bids shall describe the electronic or physi-
32 cal delivery method or methods authorized to submit a bid, the date and
33 time by which a bid proposal must be received by the clerk, secretary or
34 other authorized official of the political subdivision, and shall pro-
35 vide a reasonable time to respond to the solicitation, provided that ex-
36 cept in the event of an emergency, such time shall not be less than three
37 (3) business days.

38 (c) Written objections to specifications or bid procedures must be re-
39 ceived by the clerk, secretary or other authorized official of the po-
40 litical subdivision at least one (1) business day before the date and
41 time upon which bids are scheduled to be received.

42 (d) When written bids have been received, by either physical or elec-
43 tronic delivery, they shall be compiled and submitted to the governing
44 board or governing board-authorized official which shall approve the
45 responsive bid proposing the lowest procurement price or reject all
46 bids and publish notice for bids, as before.

47 (e) If the political subdivision finds that it is impractical or im-
48 possible to obtain three (3) bids for the proposed procurement, the
49 political subdivision may acquire the property in any manner the polit-

1 ical subdivision deems best from a qualified vendor quoting the lowest
2 price. When fewer than three (3) bids are considered, a description
3 of the efforts undertaken to procure at least three (3) bids shall be
4 documented by the political subdivision and such documentation shall
5 be maintained for at least six (6) months after any such procurement is
6 made. If two (2) or more bids are the same and the lowest responsive
7 bids, the authorized decision maker may accept the one (1) it chooses.

8 (2) When a political subdivision contemplates an expenditure to pur-
9 chase or lease personal property or to procure services, other than personal
10 property or services excluded pursuant to section 67-2803, Idaho Code, val-
11 ued in excess of ~~one hundred fifty thousand dollars (\$150,000)~~ two hundred
12 thousand dollars (\$200,000), the procurement procedures of this subsection
13 shall apply.

14 (a) The purchase or lease shall be made pursuant to an open competitive
15 sealed bid process with the procurement to be made from the qualified
16 bidder submitting the lowest bid price complying with bidding pro-
17 cedures and meeting the specifications for the goods and/or services
18 sought to be procured.

19 (b) The request for bids shall set a date, time and place for the opening
20 of bids. Two (2) notices soliciting bids shall be published in the of-
21 ficial newspaper of the political subdivision. The first notice shall
22 be published at least two (2) weeks before the date for opening bids,
23 with the second notice to be published in the succeeding week at least
24 seven (7) days before the date that bids are scheduled to be opened. The
25 notice shall succinctly describe the personal property and/or service
26 to be procured. Copies of specifications, bid forms, bidder's instruc-
27 tions, contract documents, and general and special instructions shall
28 be made available upon request by any interested bidder.

29 (c) Written objections to specifications or bidding procedures must be
30 received by the clerk, secretary or other authorized official of the po-
31 litical subdivision at least three (3) business days before the date and
32 time upon which bids are scheduled to be opened.

33 (d) If the political subdivision deems it is in the political subdivi-
34 sion's best interest, it may require the bidder to provide bid secu-
35 rity in an amount equal to at least five percent (5%) of the amount bid.
36 If required, a bid shall not be considered unless one (1) of the forms
37 of bidder's security is enclosed with it, and unless the bid is submit-
38 ted in a form which substantially complies with the form provided by the
39 political subdivision. The political subdivision may require that the
40 bid security be in one (1) of the following forms:

41 (i) Cash;

42 (ii) A cashier's check made payable to the political subdivision;

43 (iii) A certified check made payable to the political subdivision;

44 or

45 (iv) A bidder's bond executed by a qualified surety company, made
46 payable to the political subdivision.

47 (e) Any bid received by the political subdivision may not be withdrawn
48 after the time set in the notice for opening of bids. When sealed bids
49 have been received, they shall be opened in public at a designated place

1 and time, thereafter to be compiled and submitted to the governing board
2 for award or, if a designee is authorized, for approval of the award.

3 (f) If the successful bidder fails to execute the contract, the amount
4 of his bidder's security may be forfeited to the political subdivision
5 at the sole discretion of the governing board and thereafter the pro-
6 ceeds may be deposited in a designated fund out of which the reasonable
7 expenses for procuring substitute performance are paid.

8 (g) The political subdivision may, on the refusal or failure of the suc-
9 cessful bidder to execute the contract, award the contract to the next
10 lowest qualified bidder. If the governing board awards the contract to
11 the next lowest qualified bidder, the amount of the lowest qualified
12 bidder's security may be applied by the political subdivision to the
13 difference between the lowest responsive bid and the next lowest re-
14 sponsive bid, and the surplus, if any, shall be returned to the lowest
15 bidder if cash or check is used, or to the surety on the bidder's bond
16 if a bond is used, less reasonable administrative costs not to exceed
17 twenty-five percent (25%) of the amount of the bidder's security.

18 (h) In its discretion, the governing board or its designee may reject
19 all bids presented and re-bid or, after finding it to be a fact, the gov-
20 erning board may pass a resolution declaring that the subject goods or
21 services can be procured more economically on the open market. If two
22 (2) or more bids are the same and the lowest responsive bids, the gov-
23 erning board or its designee may accept the one (1) it chooses. In its
24 discretion, the governing board of a political subdivision may preau-
25 thorize the purchase of equipment at a public auction.

26 (i) If the governing board of any political subdivision chooses to
27 award a competitively bid contract involving the procurement of per-
28 sonal property or services to a bidder other than the apparent low
29 bidder, the political subdivision shall declare its reason or reasons
30 on the record and shall communicate such reason or reasons in writing to
31 all who have submitted a competing bid.

32 (j) If any participating bidder objects to such award, such bidder
33 shall respond in writing to the notice from the political subdivision
34 within seven (7) calendar days of the date of transmittal of the notice,
35 setting forth in such response the express reason or reasons that the
36 award decision of the governing board is in error. Thereafter, staying
37 performance of any procurement until after addressing the contentions
38 raised by the objecting bidder, the governing board shall review its
39 decision and determine whether to affirm its prior award, modify the
40 award, or choose to re-bid, setting forth its reason or reasons there-
41 for. After completion of the review process, the political subdivision
42 may proceed as it deems to be in the public interest.

43 SECTION 5. An emergency existing therefor, which emergency is hereby
44 declared to exist, this act shall be in full force and effect on and after
45 July 1, 2024.