

**PROCUREMENT BY
POLITICAL
SUBDIVISIONS:
A PUBLICLY ACCOUNTABLE
PROCESS**



OVERVIEW

Why do we have procurement laws?

What are the basic types of procurements?

Goods and Services vs. Construction

Are there any exclusions?

I'M CONFUSED.....

**WHAT DO YOU MEAN I
NEED A PURCHASE ORDER**

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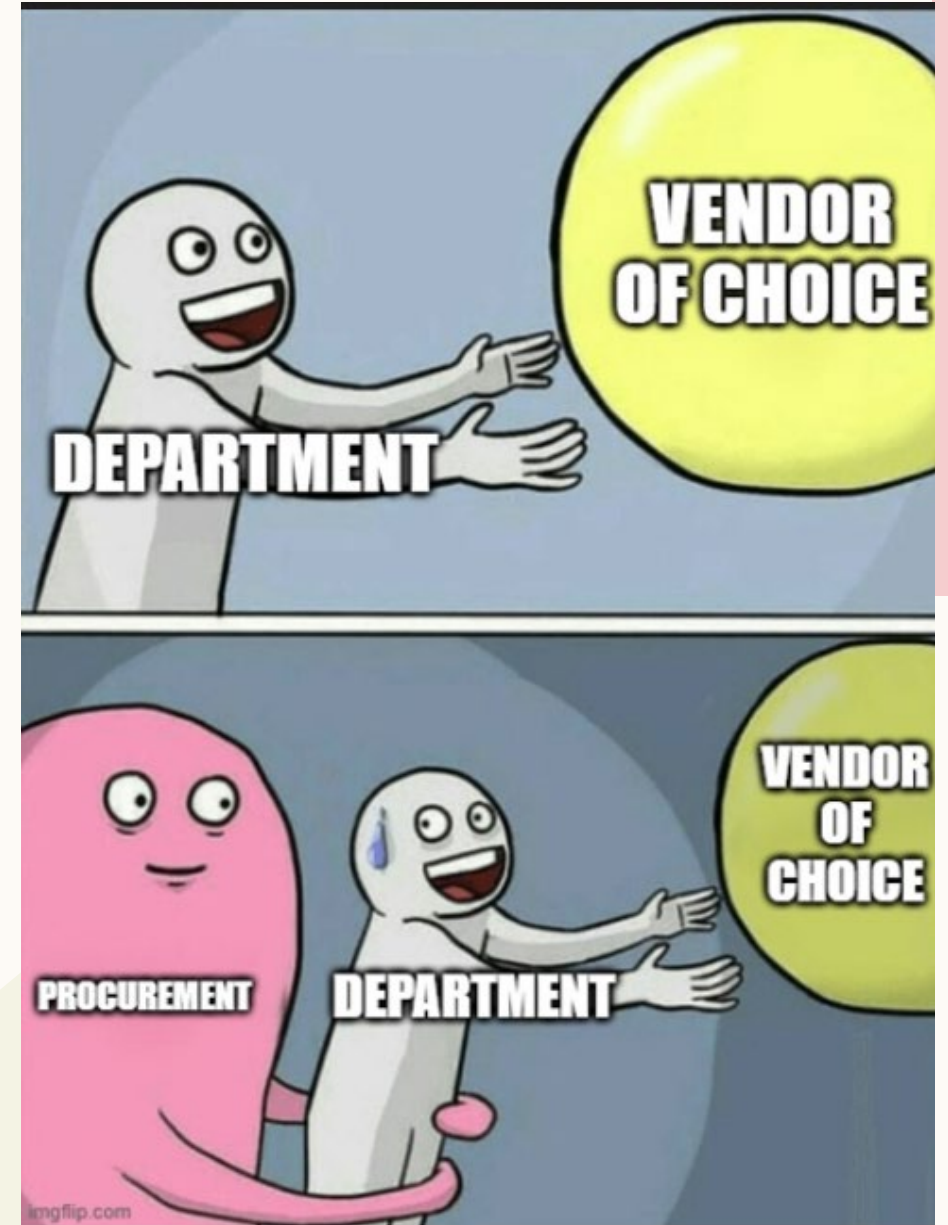
**WHY DO WE HAVE
PROCUREMENT
LAWS?**

PURPOSE

- State: I.C. § 67-9202
 - recognizing that an offered low price is not always indicative of the greatest value...
 - (1) To engage in open, competitive acquisitions of property; and
 - (2) To maximize the value received by the state with attendant benefits to the citizens
- Political Subdivisions: I.C. § 67-2801
 - Efficient and cost-effective procurement of goods, services and public works construction ...
 - A publicly accountable process that respects the shared goals of economy and quality.
 - Shall endeavor to purchase goods and services from vendors with a significant Idaho economic presence.
 - (two identical vendors/bids – should select the Idaho vendor)

BASIC GOODS/SERVICES PROCUREMENT TYPES

- Request for Quotes (low bid)
- Request for Proposals
- Sealed, Formal Bid
- Direct Negotiation (when an exception applies)



DOLLAR THRESHOLDS

Less than \$75,000

- I.C. § 67-2806
- Competitive solicitation not required by State law, but many political subdivisions do require some form of solicitation as a matter of policy

\$75,000 - \$150,000

- I.C. § 67-2806(1)
- Less formal bid solicitation process
- Written request to at least three vendors

\$150,000+

- I.C. § 67-2806(2)
- Formal bid process
- Publish notice 2x in newspaper
- Bids opened in public at formal bid opening
- Appeal period after notice of award



BASIC CONSTRUCTION PROCUREMENT TYPES

- Design, Bid, Build (I.C. § 67-2805)
- Design-Build (I.C. § 67-2309)
- Construction Manager/General Contractor (CM/CG) (Title 54, Chapter 45)

DESIGN, BID, BUILD DOLLAR THRESHOLDS

Note: there are bonding and licensing requirements at each level

- Licensing: I.C. § 54-1903(9) and (12)
- Your political subdivision may have additional requirements/thresholds
- Soliciting doesn't mean getting bids

Dollar Amount	Process	Code Cite
Less than \$50k	No set process; licensed public works contractor not required Solicit bids from at least 3 contractors (low bid)	I.C. § 67-2805
Between \$50k and \$200k	<ul style="list-style-type: none">• Under \$100k worth of contracted work, subcontractor not required to be licensed/total project under \$100k, contractor not required to be licensed	I.C. § 67-2805(1)
Above \$200k	Category A vs. Category B	I.C. § 67-2805(2)

CATEGORY A

Category A

- Can only consider:
 - Bid amount
 - Compliance with RFP administrative requirements
 - Whether bidder holds license
- Awarded to lowest responsive bidder
- Publish notice 2x in newspaper
- Bids opened in public at formal bid opening
- Appeal period after notice of award
- Can require bid security of 5%

CATEGORY B

Category B

- Two-stage solicitation process
- STEP 1: Qualification
- Political Subdivision establishes qualification criteria for bidders based on:
 - Demonstrated technical competence
 - Experience with similar projects
 - Prior work with the Political Subdivision
 - Nonfinancial resources (personnel, equipment)
 - Performance history
- STEP 2: Same as Category A
- Publish notice 2x in newspaper
- Bids opened in public at formal bid opening
- Appeal period after notice of award

DESIGN-BUILD

I.C. § 67-2309 permits local entities to use the design-build method

- But no other guidance is given

However, the State was given a framework in I.C. § 67-5711A that political subdivisions may choose to look to for guidance.

- Solicitation includes the design and build of the structure
- Because design is included, I.C. § 67-2320 requires selection of design professionals on the basis of qualifications
- Awarded to most qualified bidder rather than lowest cost bid

CM/CG

Title 67, Chapter 28 does not preclude political subdivisions from using other procurement procedures authorized by law (one of which is CM/CG under Title 54, Chapter 45)

Allows political subdivision to hire a licensed construction manager and the CM's affiliated construction firm to act as both Construction Manager and General Contractor for the project

- The CM/CG solicits bids from at least three qualified contractors/suppliers (as determined by the CM/CG)
- Bids must be publicly opened and a political subdivision representative must be present
- Awarded to lowest bidder

QUALIFICATION-BASED SELECTION OF DESIGN PROFESSIONALS

- Requires, as a matter of policy, the selection of:
 - professional engineering,
 - architectural,
 - landscape architecture,
 - construction management, and
 - professional land surveying services

via qualifications-based selection (rather than price-based selection).

More than \$50,000

Phase 1: publish RFQ describing the services and criteria used to evaluate; bidders provide qualifications requested; ranked by the political subdivision

Phase 2: Negotiate price w/ highest ranked

Less than \$50,000

- Political subdivision can choose to use the above process or establish its own process of selection (must start with qualifications then move to price)

See I.C. §§ 67-2320



EXCEPTIONS TO PROCUREMENT

EXCEPTIONS TO PROCUREMENT REQUIREMENTS

- “Piggy back” contracts
- Professional services (outside counsel, appraisers, etc.)
- Public works construction less than \$50,000
- Goods and services less than \$75,000
- Heavy equipment repair
- Travel and training
- Software maintenance, support and licensing of an existing system **that was bid in compliance with state law**
- Insurance
- Public Utilities
- Emergency expenditures
- **Sole source expenditures**

See I.C. §§ 67-2803, 67-2807, 67-2808

PIGGY BACK CONTRACTS

- **With approval of governing board**, political subdivisions may utilize cooperative purchasing agreements from:
 - The State of Idaho (statewide contracts)
 - Other Idaho political subdivisions
 - Other government entities (other states)
 - Associations that offer its goods or services as a result of competitive solicitation (H-GAC, NASPO ValuePoint)

See I.C. § 67-2807

Things to be aware of if using an out-of-state cooperative:

- Include your certifications (Anti-boycotts of Israel, Government of China, Anti-Boycotts of Certain Sectors, etc.)
- Make sure their bidding requirements align with Idaho's requirements—it can be **more** stringent, but not less

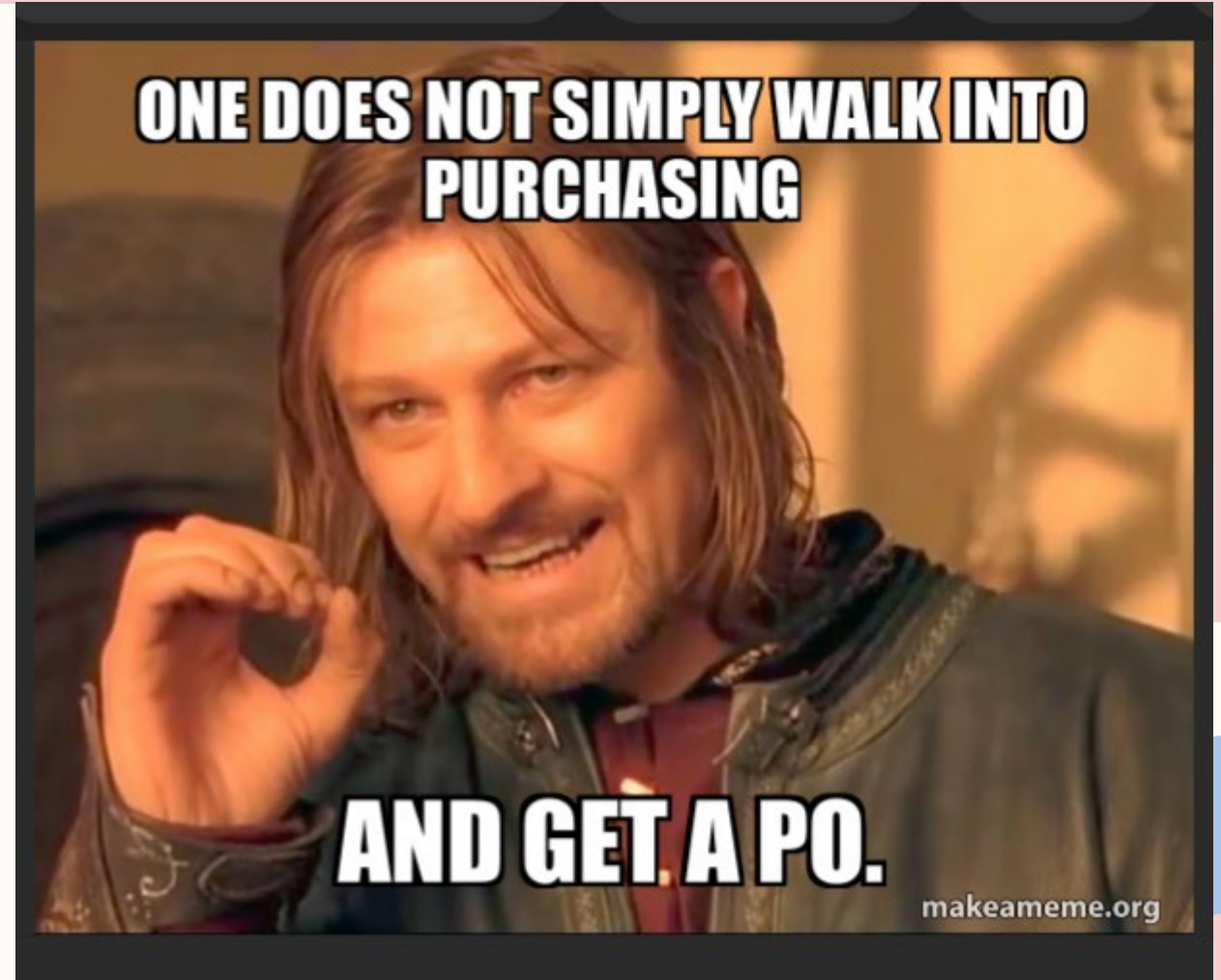
See I.C. §§ 67-2346, 67-2347A, 67-2359

SOLE SOURCE EXPENDITURES

There is only one vendor for the public works construction, services, or personal property.

Examples:

- Compatibility of equipment, components, accessories, computer software, replacement parts, or service is the paramount consideration;
- Competitive solicitation is impractical, disadvantageous, or unreasonable under the circumstances.
- No functional equivalent



- I.C. § 67-2808(2)

FINAL TIPS & TAKEAWAYS

- Keep the core principle of public accountability in mind
- Be careful in writing your specs—find the line between detailed and drafting the specs to a specific vendor (spoiler, don't do that!)
- If your project uses federal funds, be aware that there may be federal procurement requirements to comply with
- When in doubt, refer to ISB's Local Procurement Laws Manual or give me a call (I love to talk)

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Hello, Procurement? There appears to have been a mix up with my request for a new computer.

**THANK
YOU**

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[Idaho Local Procurement Laws Manual](#)