

11 CONTRACTS, PRICE AGREEMENTS, LEASES

11.1 Definition

A contract is merely a written agreement for the acquisition of property or services that defines the relationship and duties and obligations of the parties to it. Most commonly the term is used to describe term contracts, definite or indefinite quantity/indefinite delivery contracts, or other acquisition agreements whose subject matter involves multiple payments and deliveries. Contracts include a description of the item or service solicited, terms and conditions, amendments, the vendor's signed bid or proposal and the signed document by the purchasing official indicating acceptance.

11.2 Types of Contracts

The Division of Purchasing develops, bids, and awards statewide contracts, single agency contracts, lease contracts and price agreements.

Agencies may create their own contracts with the following conditions:

- Purchase of Services or Property: single or multiple-year contracts are allowed provided that the total expected cost, including all extensions and renewals, is within the agency's delegated purchasing authority.
- Leases: must not exceed one (1) year in length and total cost must not exceed the agency's delegated authority. Exception: All vehicle leases are processed by the Division of Purchasing.
- Information Technology, Professional, and Consultant Services: Must not exceed one (1) year and exceed \$75,000.
- Price Agreements: two (2) year non-exclusive price agreements may be entered into by agencies. See Section 11.5 below for details.

11.3 Statewide Contracts

Statewide or Open Contracts are items or services that are universally used by the majority of state agencies. They include such items as paper and plastics (hand towels, toilet tissue, plastic trash can liners), car batteries, office supplies, envelopes, business cards, tires, paint, photocopiers, vehicles and information technology (computers, telephones). A complete list of statewide contracts is available on the Internet at the Idaho Purchasing Homepage website.

How does the Division of Purchasing determine what goes on a statewide contract? There are four major considerations:

- Is it a product or service used by all or most state agencies?
- Is the product or service universally available and biddable?
- Will the combining of usage figures from all agencies on a contract result in a savings to the state?
- Is there a method for delivery or distribution available statewide?

Most statewide contracts are *mandatory use* meaning that they must be used by agencies purchasing the specific product or service. *Idaho Code 67-5726 Prohibitions* says, in part: "No officer or employee shall fail to utilize an open contract without justifiable cause for such action." Some statewide contracts are optional use and others have conditions such as delivery areas and minimum quantities that enable the agency to decline participation in the contract. Most statewide contracts also have a public agency clause that allows cities and political subdivisions of the state (school districts, counties, highway districts, etc.) to access the contract.

11.4 Single Agency Contracts

These types of contracts are generally for the exclusive use of an individual agency, although they may also have a public agency clause. Specifications for single agency contracts are developed by the agency and reviewed by the Division of Purchasing. Agencies may enter into single or multiple year contracts for property or services provided that the total cost, including renewals and extensions, does not exceed the agency's delegated authority.

11.5 Price Agreements

A price agreement is another method of contracting with a vendor for products or services authorized by the Division of Purchasing. Price agreements are non-exclusive (not mandatory use) written agreements between a vendor and an individual agency or group of agencies specifying a product or list of products or services offered at an agreed upon price or discount. They are not competitively bid.

Examples of price agreements are auto parts for the Department of Transportation, aircraft rental for the Department of Fish and Game and personal clothing and small household items for Department of Health and Welfare state hospital clients. The Division of Purchasing also establishes price agreements for use by all agencies such as auto rentals and court reporters.

IDAPA 38.05.01

084. NEGOTIATIONS.

In accordance with Section 67-5717(12), Idaho Code, the administrator may negotiate acquisitions as follows:

01. Price Agreements. The administrator may authorize and negotiate price agreements with vendors when such agreements are deemed appropriate. Price agreements shall provide for termination for any reason upon not more than thirty (30) days' written notice. Price agreements may be appropriate when:

- a. The dollar value of items or transactions is relatively small;
- b. The property may not be conducive to standard competitive bidding procedures, such as automobile, truck or other equipment parts having individual low unit costs;
- c. There exists a need to establish multiple agreements with vendors supplying property that is similar in nature or function but is represented by different manufacturers or needed in multiple locations; or
- d. Non-exclusive agreements for periods not exceeding two (2) years are deemed necessary to establish consistent general business terms, including without limitation, price, use of catalogs, delivery or credit terms.

11.6 Leases

A lease is a contract for the use of property under which title to the property does not pass to the state agency. Individual agencies may enter into leases provided that the lease cost is within their delegated authority and for a period less than one (1) year. All leases exceeding one year are required to be processed by the Division of Purchasing.

The Division of Purchasing currently has *mandatory* statewide lease contracts for photocopiers and facsimile machines.

IDAPA 38.05.01

101. LEASES.

01. Lease For Personal Property. A lease for personal property may be entered into provided the lease is subject to the same requirements of competition that govern the purchase of property. Leases for periods exceeding one (1) year specifically require the approval of the administrator.

02. Lease Purchase Option. Unless a specific exemption is granted by the administrator or unless otherwise exempt by these rules, a lease purchase option may be exercised only if the lease containing the purchase option was awarded using the competitive process. Before exercising such an option, the buyer shall meet all applicable requirements of Section 67-5721, Idaho Code, including providing notice of the exercise of option as a sole source or competitively bidding the property by soliciting bids for new or used property.

11.7 Lease with Purchase Option

A purchase option in a lease may be exercised only after compliance with the Idaho Code purchasing statutes, unless the requirement can be met only by the property being leased as determined in writing by the buyer. Before exercising such an option, the buyer shall:

- investigate alternative means of acquiring comparable property; and
- compare estimated costs and benefits associated with the alternative means and the exercise of the option; for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option; and
- provide notice and advertisement of the exercise of option in accordance with these rules pertaining to sole source or competitively bid the property by soliciting bids for new or used property.

11.8 Time Purchase Contracts

Time Purchase or Installment Payments Contracts may be entered into by the Division of Purchasing with the following rules:

IDAPA 38.05.01

102. TIME PURCHASE CONTRACTS.

01. Time Purchase For Personal Property. A time purchase or installment contract, that may include interest charges over a period of time, may be entered into provided:

a. Such contract is in the best interest of the agency. Installment payments should be used judiciously in order to achieve economy and not to avoid budgetary restraints.

b. Using agencies shall be responsible for ensuring that all statutory or other applicable requirements are met and that all budgetary or other required approvals are obtained.

c. Documentation of any required approval shall be submitted to the division with any required requisition.

d. Provision for installment payments must be included in the solicitation.

02. Lack of Fund Contract Language Required. An installment or time purchase contract shall include appropriate language stating that the agency is not obligated to make payments beyond the term of any particular appropriation of state or federal funds that may exist from time to time and that the contract may be terminated upon such without any penalty or future liability.

11.9 Service Contracts

With the exception of Information Technology, Professional, and Consultant services, procurement of service contracts fall under the same purchasing rules and dollar threshold bidding requirements as Invitation To Bids and Request For Proposals.

Agencies may enter into multiple year service contracts provided that the total cost, including ant renewals and extensions, does not exceed the agencies delegated authority.

11.10 Division of Purchasing Rules Pertaining to Contracts

IDAPA 38.05.01

044. SMALL PURCHASES.

06. Statewide Contracts. Property available under single agency or statewide contracts shall be purchased under such contracts and not as a small purchase under this rule unless otherwise authorized by the administrator.

07. Professional, Consultant and Information Technology Services. Professional, consultant and information technology services acquired under this rule, where the services are reasonably expected to cost seventy five thousand dollars (\$75,000) or less through a fixed price/not to exceed price contract for a term not exceeding one (1) year, may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state.

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