

STATE OF IDAHO



DIVISION OF PURCHASING

**UNDERSTANDING & APPLYING THE
IDAHO RECIPROCAL
PREFERENCE LAW**

C.L. 'Butch' Otter, Governor

Department of Administration
Robert L. Geddes, Director

Division of Purchasing
Sarah Hilderbrand, Administrator

P.O. Box 83720
Boise, Idaho 83720-0075
(208) 327-7465
FAX (208) 327-7320

www.adm.idaho.gov

July 18, 2012

UNDERSTANDING & APPLYING THE IDAHO RECIPROCAL PREFERENCE LAW

What is the Idaho Reciprocal Preference Law and how does it apply to purchasing?

Some states and countries provide a preference for vendors within their borders and add a percentage to bids received from outside states. Where that happens, the State of Idaho responds (reciprocates) in like manner by adding the same percentage to bids received from vendors who are "domiciled" in those states or countries. This applies to the purchases of materials, supplies, equipment, or services.

This law (Idaho Code 67-2349) applies to any department, division, bureau or agency thereof, city, county, school district, irrigation district, drainage district, sewer district, highway district, good road district, fire district, flood district, or other public body that solicits competitive bids.

How does it affect purchasing?

The law is applicable to **any purchase that is bid, regardless of the dollar amount**, and is not limited to the United States.

It is *not* applicable to purchases that are *not* competitively bid, such as:

- ◆ small purchases under \$10,000 that are not competitively bid....however, if small purchases are bid, **regardless of the dollar amount**, then the reciprocal law takes effect
- ◆ sole source purchases
- ◆ emergency purchases
- ◆ other purchases that are exempt from bidding (Rehabilitation Agencies, Correctional Industries, The Federal Government, Professional and Consultant Services under \$100,000, Statewide and Agency Contracts and Price Agreements, Training Travel, Lodging, Seminars, and Meeting Rooms under \$75,000, and any other purchase that may be exempted from bidding by the Division of Purchasing by policy directives.

How is it applied to bids?

In determining the lowest responsible bidder, a percentage increase should be added to each out-of-state bidder's bid price which is equal to the percent of preference given to local bidders in the bidder's home state. That is, if the low bidder is from a state that grants a 10 percent preference to its own in-state bidders, the Idaho agency must add 10 percent to that bidder's price when evaluating the bid. It is only applied to bid evaluations when comparing bids from Idaho "domiciled" vendors with bids from out-of-state vendors with a preference in their state. There is no need to apply any percentage when comparing one out-of-state bid with another out-of-state bid. In no instance will the increase (penalty percentage) actually be paid to a vendor whose bid is accepted.

Definition of "Domiciled" and "Significant Idaho Economic Presence"

Domiciled means where a corporation is chartered or incorporated or where a sole proprietor or partnership is located or has its permanent headquarters. Bidders domiciled in states other than Idaho who have a "significant Idaho economic presence" for one year preceding the bid date, may be considered an Idaho domiciled bidder.

Significant Idaho Economic Presence is a phrase defined in Idaho Statute 67-2349 that means a vendor is considered "domiciled" if they have maintained a staffed office, sales office, sales outlet, manufacturing facility, or warehouse for at least one (1) year and, if a corporation, be registered and licensed to do business in the state of Idaho with the office of the secretary of state.

List of States and their Preferences

Information on the preference laws of all states is available on the purchasing website at:

http://www.oregon.gov/DAS/EGS/ps/Pages/detail_a_main_page.aspx

Or from the purchasing homepage, click on *Documents*, Purchasing Guides scroll down to *Appendix A-2: Reciprocal Preference Information* link.

Canadian Preferences

The Idaho Reciprocal Preference Law is not limited to the United States. It applies to any bidder who is domiciled outside Idaho. Some of the ten provinces and two territories of Canada have a preference for Canadian suppliers and products. To our knowledge, this is the current information regarding Canadian preferences.

- ◆ Alberta AB allows for up to 10% preference for Canadian value-added or may limit bids to Canadian goods or suppliers.
- ◆ British Columbia BC has a discretionary program called BC MAX. Basically it allows awards to Canadian suppliers for purchases of goods under \$25,000 and for up to a 20% preference for services under \$100,000.
- ◆ Manitoba No preference information available
- ◆ New Brunswick NB may elect to give preference to local suppliers when goods purchased are less than \$25,000 and services less than \$50,000. They may also give preference to other Atlantic provinces suppliers or other Canadian suppliers when costs of services are less than \$100,000. Further, they may give up to a 10% preference to Canadian value-added suppliers when goods exceed \$25,000 and services exceeds \$50,000.
- ◆ New Foundland & Labrador NF uses a Provincial Content Factor to give preference to local suppliers. It is a combination of the Provincial Overhead Allowance (up to 10% Preference based the supplier's presence in the province), the Provincial Labour (dollar value of labour), and the Provincial Material (dollar value of raw material from the province). The Provincial Content factor (preference) is calculated from these three areas and applied to the bid.
- ◆ Northwest Territories NT uses a Business Incentive program. It gives a preference to northern business to offset the cost of doing business in NT. For all purchases over \$1,000 and under \$5,000 a 20% discount is applied for bid evaluation purposes. For purchases over \$5,000 a 15% discount is applied for Northern Content and an additional 5% discount for Local content. Also, contracts valued under \$30,000 are bid to only northern firms as long as there are at least two.
- ◆ Nova Scotia No preference information available
- ◆ Ontario The Canadian Content Statement allows a 10% preference for Canadian content in goods and services.

- ◆ Prince Edwards Island
The Procurement Office may elect to apply a preference for up to a maximum of 10% of the amount of the lowest compliant Bid received. If other than low Bid is accepted, approval shall be limited to a difference between the low Bid and the awarded Bid of not more than \$2,500.00 or 10% (whichever is the lesser) and approval will be given by the Minister. In any other case, the approval of the Management Board shall be obtained. This preference is applicable only for the purchase of goods valued under \$25,000.00.
- ◆ Quebec
No preference information available
- ◆ Saskatchewan
No preference information available
- ◆ Yukon Territory
YK has no published preference percentage or discount policy but, to stimulate the local economy, YK has a Business Incentive Policy that rebates local suppliers a percentage of labor and product costs. YK also attempts to contract for services and goods in local communities where possible and makes best efforts to hire locally for construction contracts.

If you have any questions about applying the Idaho Reciprocal Preference Law regarding Canadian bidders please call the Division of Purchasing at 327-7465.

Other Countries Preferences

If you have any questions about applying the Idaho Reciprocal Preference Law regarding other countries please call the Division of Purchasing at 327-7465.

Idaho Statute 67-2349

PREFERENCE FOR IDAHO SUPPLIERS AND RECYCLED PAPER PRODUCTS FOR PURCHASES.

(1) To the extent permitted by federal laws and regulations, whenever the State of Idaho, or any department, division, bureau or agency thereof, or any city, county, school district, irrigation district, drainage district, sewer district, highway district, good road district, fire district, flood district, or other public body, shall let for bid any contract for purchase of any materials, supplies, services or equipment, the bidder domiciled outside the boundaries of Idaho shall be required, in order to be successful, to submit a bid the same percent less than the lowest bid submitted by a responsible bidder domiciled in Idaho as would be required for such an Idaho domiciled bidder to succeed over the bidder domiciled outside Idaho on a like contract being let in his domiciliary state.

For the purposes of this section, any bidder domiciled outside the boundaries of the state of Idaho may be considered as an Idaho domiciled bidder, provided that there exists for a period of one (1) year preceding the date of the bid a significant Idaho economic presence as defined herein. A significant economic presence shall consist of the following:

(a) That the bidder maintain in Idaho fully staffed offices, or fully staffed sales offices or divisions, or fully staffed sales outlets, or manufacturing facilities, or warehouses or other necessary related property; and

(b) If a corporation be registered and licensed to do business in the state of Idaho with the office of the secretary of state.

(2) In the evaluation of paper product bids, those items that meet recycled content standards may be given not more than a five percent (5%) purchasing preference. As such, those qualifying paper products may be considered to cost five percent (5%) less when choosing the lowest responsible bidder.