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April 11, 1990

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THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Previously Bid Contracts Under Idaho Competitive
Bidding Laws

Dear Mr. Rippel:

You have requested guidance concerning the propriety of a sale proposal received by the Lost River Highway District. The sale proposal offers the District a motor grader of the same type and at the same contract terms as previously accepted by the city of Ketchum pursuant to competitive bidding. The proposal further states that it qualifies as a "previously bid state contract" and therefore may be accepted "without the necessity of competitive bidding, as stated in Idaho Code § 31-4002."

A highway district is required to utilize competitive bidding for expenditures which exceed \$5,000.00, or \$10,000.00 if for equipment. Idaho Code § 40-906. However, as noted in your letter, the definition of "expenditure" was amended in 1984 to exclude "the acquisition of personal property through a contract that has been competitively bid by the state of Idaho, one of its subdivisions or an agency of the federal government." 1984 Idaho Sess. Laws, chap. 136, p.321 (House Bill 483). This type of language is applicable to cities, counties, county highway systems, highway districts and irrigation districts.

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An examination of the legislative intent behind House Bill 483 shows that it was intended to allow local governments to participate in previously bid state contracts without incurring the cost and delay of competitive bidding. The title to H.B. 483 states that the amendment is "to provide that local governments may participate in previously bid state contracts without the necessity of competitive bidding." 1984 Idaho Sess. Laws, chap. 136, p.321. The statement of purpose for H.B. 483 provides:

This proposal allows local units of government to participate under state contracts when and if they exist without going through a bidding process that essentially involves the potential of "re-inventing the wheel."

The fiscal note for H.B. 483 says: "Potentially significant savings to local units of government without any impact on the State General Fund." During committee meetings it was explained that "[i]t is simply a housekeeping measure. It provides that if there is a bid in place at the state for a particular product, it will allow local units of government to participate without going through a bidding process." House, Local Government Committee Minutes, February 28, 1984.

The statutes do not provide any guidelines as to when a local governmental entity may participate in a previously bid state contract. Presumably, a local governmental entity may participate in the previously bid state contract as long as the vendor is willing to provide the equipment at the same price and contract terms. There is no time limit in the statutes. To protect itself and establish an adequate basis for action, the local governmental entity should: (1) develop specifications for the product or equipment; (2) gauge current market conditions; and (3) by formal resolution forego competitive bidding and adopt the previously bid contract as its own (vendor willing).

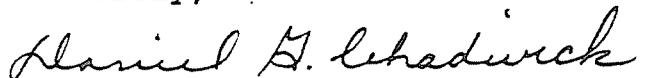
One guideline that is clear from the statutes is that the previously bid contract must have been "competitively bid by the state of Idaho, one of its subdivisions, or an agency of the federal government."

Since this sale proposal is identical to the proposal accepted by the city of Ketchum after competitive bidding and the vendor is willing to extend the same contract terms to the Lost River Highway District, the Highway District may accept the sale proposal without competitive bidding pursuant to Idaho Code § 40-106(2).

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If additional clarification is needed, please do not
hesitate to contact me.

Sincerely,



Daniel G. Chadwick
Deputy Attorney General
Chief, Intergovernmental Affairs
Division

cc: Jerry Mason
Chuck Holden, I.A.C.
Bill Jarocki, A.I.C.
Ray Oliver