

Public Works Contractor Licensing Function

Follow-up Review
March 2004

Office of Performance Evaluations
Idaho State Legislature



Report 04-02F

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March 1, 2004

Rakesh Mohan
Director

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At the direction of the Joint Legislative Oversight Committee, we have completed the second follow-up review of the public works contractor licensing function.

We assessed the progress of the Division of Building Safety and the Public Works Contractors License Board in implementing the eight recommendations from our November 2001 report. Six recommendations have been implemented and the remaining two are still in process. Overall, the division and the board continue to make progress, but progress is slow.

We appreciate the division's cooperation in providing the information needed to conduct this review. Ned Parrish of the Office of Performance Evaluations completed this follow-up review.

Sincerely,

A handwritten signature in black ink that reads "Rakesh Mohan".

Rakesh Mohan

Public Works Contractor Licensing Function in Idaho

Follow-up Report March 2004

ABSTRACT

The Division of Building Safety and the Public Works Contractors License Board have taken steps to address recommendations from our November 2001 evaluation, although progress has been slow. Roughly two years after the report's release, six of the eight report recommendations are now considered implemented or resolved. The remaining two recommendations—calling for changes to clarify contractor licensing standards and improving the complaint handling process—are still in the process of being implemented.

BACKGROUND

In November 2001, the Office of Performance Evaluations released a report titled, *A Review of the Public Works Contractor Licensing Function in Idaho*. The Joint Legislative Oversight Committee requested the evaluation because of questions regarding:

- the Public Works Contractors License Board's consistency in making licensing decisions
- the potential for conflicts of interest in the licensing process
- the efficiency of licensing processes and systems

Statutes require contractors involved in public works projects costing \$10,000 or more to be licensed. As of February 2004, there were nearly 2,800 licensed public works contractors statewide. Historically, responsibility for licensing these contractors was assigned to the Public Works Contractors License Board and its staff. In 2001, the board was placed within the Division of Building Safety, and many of the board's responsibilities were shifted to the division. The board retains its responsibility for developing program rules and, since July 2002, has been charged with hearing appeals of the decisions made by the division.

The evaluation found the board had not established clear standards for assessing applicants' work experience, relying instead on informal guidelines and the experience and judgment of board members when making licensing decisions. The lack of clear standards resulted in some inconsistencies in licensing decisions, and provided insufficient guidance to division staff, who were charged with making licensing decisions but had limited construction experience. The work history obtained from applicants was sometimes sketchy, and little was done by staff to verify its accuracy.

Problems were identified with the board's involvement in the licensing and complaint process. Board members participated in cases where they had a potential conflict of interest. In addition, the division administrator continued to take cases to the board, although statutes no longer provided for the board's involvement in license and complaint review.

The division is responsible for enforcing contractor licensing requirements, but the division administrator's authority to respond to complaints of unlicensed practice was found to be unclear. Efforts to address complaints and enforce license requirements were also inadequate.

IMPLEMENTATION STATUS OF RECOMMENDATIONS

Our November 2001 report contained eight recommendations to address evaluation findings. Recommendations were directed to the administrator of the Division of Building Safety, the Public Works Contractors License Board, and the Idaho State Legislature. The division's response regarding progress made in implementing report recommendations is included as Appendix A. Our assessment of the implementation status for each recommendation is provided below.

Contractor Licensing Process

***Recommendation:** The Public Works Contractor License Board should establish clear standards for judging applicant work experience in its rules.*

Status: In Process. Clear standards for assessing applicant work experience have yet to be established by the board. To ensure that applicants are qualified for a license, some states have established testing requirements or specified the number of years of experience needed to perform various types of contracting work. The board recognizes the need to provide clear standards to determine whether applicants qualify for a contractor license, but has done little to develop such guidance in the two years since the report's release. The board has recently begun investigating the possibility of establishing testing requirements for applicants. In addition, the board has gone through a lengthy process to reduce the number of license categories, and may begin developing standards for the various types and categories of licenses.

Recommendation: *The administrator of the Division of Building Safety should take steps to collect more detailed work history information from applicants and verify its accuracy.*

Status: Implemented/Resolved. The board and the division have taken steps to require more detailed work history information from applicants and to verify its accuracy. Proposed rule changes—the first since the board was moved within the Division of Building Safety in 2001—were brought before the Legislature this session that would clarify and somewhat expand the information applicants are required to provide when seeking a license. In addition, since our report was issued, division staff have begun contacting references to verify information submitted by applicants.

Recommendation: *The administrator of the Division of Building Safety should consider requiring direct construction supervision experience when hiring staff responsible for reviewing license applications.*

Status: Implemented/Resolved. Efforts to strengthen the construction experience of licensing staff are underway. Since the release of our report, the public works contractor licensing function has been moved within the division's Building Bureau, which is overseen by a manager with construction experience. The division administrator has indicated he will work with the Division of Human Resources to modify the job description for the program supervisor position requiring construction experience for future hires. Members of the Public Works Contractors License Board have endorsed the hiring of staff with construction experience.

Board Member Involvement in the Decision-Making Process

Recommendation. *The board should adopt a formal conflict of interest policy and maintain a record of how they voted and when they recused themselves in appeals cases.*

Recommendation. *The administrator of the Division of Building Safety should discontinue taking contractor licensing and complaint cases to the board unless authorized to do so by statute.*

Status: Implemented/Resolved. The board adopted a written conflict of interest policy at the time our report was released in 2001. Based on our review of board minutes for the past year, licensing and complaint cases no longer are routinely brought before the board. Instead, licensing and complaint decisions are made by division staff. The division administrator said the board had recently assigned one member responsibility for providing technical assistance to the division when needed in selected licensing or complaint cases, allowing staff to benefit from the member's construction and contracting expertise. He also

said the board liaison will not participate in appeals cases when technical assistance is provided.

Enforcement and Complaint Handling

Recommendation. *The Legislature should consider modifying Idaho Code to grant the division clear authority to respond to complaints of unlicensed practice of public works contracting.*

Status: Implemented/Resolved. The public works contractor licensing statutes were revised in 2002 to clearly specify that the division is responsible for investigating unlicensed practice cases. The changes also authorized the division to (1) seek an injunction when unlicensed contractors had initiated work on public works projects; and (2) refer unlicensed practice cases to the Attorney General or county prosecutors.

Recommendation. *The division should improve the complaint handling process by adopting investigation standards, documentation requirements, and procedures for resolving complaints.*

Status: In Process. General procedures for complaint investigations have been established. However, the procedures are limited and do not specify required investigative work, documentation standards for investigations, or the steps to be followed when closing complaint cases with disciplinary action. The division has not taken disciplinary action against any licensee since the release of our November 2001 evaluation, and the division's attorney said their statutory authority to address complaints of unlicensed practice and agencies violating bidding requirements remains insufficient. As a result, the division continues to address complaints informally, and no cases have been referred for prosecution.

The board has recently taken steps to learn about enforcement efforts in other states, with an eye to improving enforcement efforts in Idaho. The division administrator reports that a committee consisting of representatives of the board, the division, and the Associated General Contractors has been established to address issues concerning the board, including the enforcement process.

Recommendation: *The division should strengthen its efforts to educate local agencies of licensing requirements.*

Status: Implemented/Resolved. Working with board members, the Division of Building Safety has developed a brochure summarizing contractor licensing requirements. The brochure is intended to help local agencies better understand contractor licensing requirements and can also be distributed to contractors who are interested in performing public works construction work. The division plans to distribute the brochures to cities, counties, school districts, and highway districts, as well as through various local government associations.

Appendix A
Division of Building Safety
Letter of Response



State of Idaho
DIVISION OF BUILDING SAFETY
ADMINISTRATION

DIRK KEMPTHORNE
Governor
DAVE MUNROE
Administrator

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February 25, 2004

The Honorable Shawn Keough, Co-Chair
Joint Legislative Oversight Committee
The State Senate
Idaho State Legislature
P.O. Box 83720
Boise, Idaho 83720-0081

The Honorable Margaret Henbest, Co-Chair
Joint Legislative Oversight Committee
The House of Representatives
Idaho State Legislature
P.O. Box 83720
Boise, Idaho 83720-0038

Dear Senator Keough and Representative Henbest:

The Public Works Contractors License Bureau (Bureau) is submitting the following information in response to recommendations made by the Office of Performance Evaluations.

1. We recommend the Public Works Contractors License Board (Board) adopt clear standards for judging applicant work experience in its rules.

Response: Proposed changes to the Bureau's Administrative Rules were presented to the Legislature this year in Docket No. 07-0501-0301. These changes are set out in IDAPA 07.05.01.110, subsections 01.a, b and c. The Senate and the House subcommittees approved the proposed changes with no objections.

The Board is aware further definition is necessary and would like to implement the testing of contractors to assist in judging applicant work experience. Two companies who conduct contractor testing were interviewed at the January 2004 Board meeting. The Board was informed the cost of developing a written examination could be anywhere from \$25,000 to \$100,000. Currently there is no test to assess contractors doing heavy, highway, building and specialty construction.

Presently, the application requires the contractor to submit work history with similar dollar amounts to those of the class of license for which they wish to be licensed. It also states the applicant must list at least five projects per year for the last three years, listing the largest project first in each year. Additionally, the applicant is asked to list work history that supports the types and categories of licensing they are requesting.

2. We recommend the administrator of the Division of Building Safety consider requiring direct construction supervision experience for future staff hires.

Response: The Public Works Contractors License Bureau is under the Building Bureau. Building Bureau Chief Jack Rayne has five years construction experience and was a building inspector for many years.

The job description for the program supervisor in the Public Works Contractors License Bureau will be revised to include a requirement for construction supervision experience. When the position is next vacated the job description will be adequate.

Equal Opportunity Employer

3. We recommend the administrator of the Division of Building Safety take steps to obtain more detailed work history information and verify its accuracy.

Response: The Bureau requires the applicant to submit work history of four to six jobs in support of each type and category of licensing for which they are applying. The work history must be close to the class limit of the license for which the applicant is applying.

Applicants are also required to complete and submit three contractor references. Bureau staff calls each reference to verify the experience. In some instances it is difficult to verify the information provided as references are often inclined to say as little as possible. Bureau staff makes an effort to ask the same questions of each reference. Once the reference is contacted, the date is noted and their comments are summarized at the bottom of the reference form.

4. We recommend the administrator of the Division of Building Safety discontinue taking any contractor licensing and complaint cases to the Board unless authorized to do so by statute.

Response: The Board has not reviewed any applications for licensure since fall of 2001. At the Board's request they are provided with the number of original applications approved each month. They do not see or review applications.

During Board meetings, the Board is informed of any complaints and how they were resolved, but they do not make any decisions regarding the complaint. When a complaint is received it is discussed with the Bureau's attorney, if necessary, and investigated. Most complaints are handled via the telephone. The complainant is called to obtain as much information as possible. The contractor and/or public works entity involved is then contacted to get additional information. Once the information has been gathered, the Division of Building Safety's administrator makes a decision and all parties are advised as to what they can do to remedy the situation.

In the past, the Board's expertise had been used to assist in the administrator's decision-making process regarding complaints. Complaints have not been taken to the Board since fall of 2001 in response to a recommendation made by the Office of Performance Evaluations to discontinue taking complaint cases to the Board unless authorized to do so by statute. During the last two years it has come to the administrator's attention that Board expertise continues to be needed occasionally. As such, the Board appointed a Board member at the February 2004 Board meeting to act as the liaison to the Bureau. This allows the administrator to use the expertise of the liaison Board member if clarification is needed. This liaison Board member would be recused in the event of an appeal to the Board.

7. We recommend the administrator of the Division of Building Safety take steps to strengthen the complaint handling process.

Response: The Board adopted a complaint resolution policy and procedure to be used when the Bureau receives complaints. Complaints must be made in writing before any action can be taken. Once written complaints are received they are logged in and investigated. Most complaints are handled via the telephone. The complainant is called to obtain as much information as possible. The contractor and/or public works entity involved is then contacted to

get additional information. Once the information has been gathered, the administrator makes a decision and all parties are advised as to what they can do to remedy the situation.

The attorney for the Bureau has stated that the changes made in the statute to be able to discipline unlicensed contractors are not adequate. At Governor Kempthorne's request, David Lehman, Policy Advisor, appointed a committee to address some of the outstanding issues the Board faces. Currently appointed to the committee are Jack Rayne, Building Bureau Chief, Division of Building Safety; David Bennion, Board Member, Public Works Contractors License Board; Michael Gifford, Associated General Contractors (AGC). The Committee would also like representatives from the Division of Public Works and the Idaho Transportation Department, as well as entities like highway districts. The Committee has already met a few times and begun to look at ways to improve the Bureau.

8. We recommend the administrator of the Division of Building Safety adopt more efficient and effective methods of educating local agencies and assessing compliance with licensing requirements.

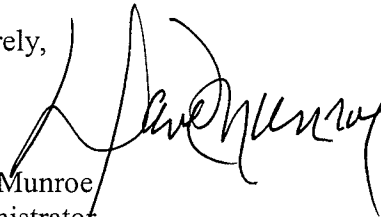
Response: Over the last three months the Bureau has developed an educational brochure explaining public works contractors license law. This brochure informs readers on what they need to know in order to use public works contractors, what a contractor has to do to obtain a license, etc. It is the Bureau's intention to distribute the brochure to public works entities such as cities, counties, school districts and highway districts, along with the Idaho Association of Cities and Idaho Association of Counties. Once the Board has given final approval, the educational brochure will be printed and distributed.

The Board is working with AGC to help with any statute changes that are needed to strengthen the current licensing law and the educational brochure. The AGC is also interested in the testing issue and feels testing would be beneficial to the public and the Bureau.

Please feel free to contact me at 332-7100 or dmunroe@dbs.state.id.us with any questions or concerns.

Sincerely,

Dave Munroe
Administrator



DM:slw

cc: Rakesh Mohan, Office of Performance Evaluations

David Bennion, Public Works Contractors License Board

Office of Performance Evaluations Reports Completed 2001–Present

<u>Pub. #</u>	<u>Report Title</u>	<u>Date Released</u>
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01-02	Idaho Department of Fish and Game: Opportunities Exist to Improve Lands Program and Strengthen Public Participation Efforts	January 2001
01-03	Improvements in Data Management Needed at the Commission of Pardons and Parole: Collaboration With the Department of Correction Could Significantly Advance Efforts	May 2001
01-04	The State Board of Medicine: A Review of Complaint Investigation and Adjudication	June 2001
01-05	A Review of the Public Works Contractor Licensing Function in Idaho	November 2001
01-06	A Descriptive Summary of State Agency Fees	November 2001
02-01	The Department of Environmental Quality: Timeliness and Funding of Air Quality Permitting Programs	June 2002
02-02	Management of State Agency Passenger Vehicles: A Follow-up Review	November 2002
02-03	A Review of the Idaho Child Care Program	November 2002
03-01HHW	Return of Unused Medications from Assisted Living Facilities	January 2003
03-01F	Agency Response to <i>Management of State Agency Passenger Vehicles: A Follow-up Review</i>	February 2003
03-01	Programs for Incarcerated Mothers	February 2003
03-02F	The Department of Environmental Quality: Timeliness and Funding of Air Quality Permitting Program	February 2003
03-03F	Data Management at the Commission of Pardons and Parole and the Department of Correction	February 2003
03-02	Overview of School District Revenues and Expenditures	April 2003
04-01	Higher Education Residency Requirements	January 2004
04-02	Fiscal Accountability of Pupil Transportation	January 2004
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