



Office of Performance Evaluations Idaho Legislature

Report 06-01F

August 2006

Public Works Contractor Licensing Function Follow-up Report

In November 2001, we issued a report about the public works contractor licensing function. Follow-up reviews in 2002 and 2004 found that the Division of Building Safety and the Public Works Contractors License Board had addressed six of the report's eight recommendations. This follow-up report focuses on the remaining two recommendations, which relate to licensing requirements and complaint investigations. We found the board has not implemented our recommendation to establish clear criteria for assessing the work experience of license applicants, and the division has partially addressed our recommendation to strengthen complaint handling.

Background

Statutes require contractors and subcontractors involved in public works projects costing \$10,000 or more to be licensed. As of May 2006, there were approximately 2,800 licensed contractors statewide. Responsibility for regulation of public works contractors is assigned to the Division of Building Safety and the Public Works Contractors License Board.

The report's eight recommendations were aimed at improving the consistency of licensing decisions, minimizing potential conflicts of interest in licensing and complaint handling,

expanding education efforts and compliance monitoring, and strengthening enforcement of licensing requirements. In our 2004 follow-up review, we found that six of the eight recommendations were implemented or resolved.

Current Status

This report focuses on two recommendations that remain open:

- The Public Works Contractors License Board should adopt clear standards for judging applicant work experience in its rules.
- The Division of Building Safety should take steps to strengthen the complaint handling process.

The Division of Building Safety's self-assessment of its implementation efforts is provided in appendix A. Our assessment of the department's progress is provided below.

Assessing Contractor Work Experience

To obtain a public works contractor license, applicants must meet certain financial requirements and demonstrate work experience in the areas they are seeking a license. In our original report, we found that adequate standards

This report was completed at the request of the Joint Legislative Oversight Committee under the authority of Idaho Code § 67-457 through § 67-464. Questions about the report may be directed to the Office of Performance Evaluations through e-mail (opeinfo@ope.idaho.gov) or phone (208 334-3880).

had been developed to assess applicants' financial qualifications for licensure. However, we also found that clear criteria for evaluating contractor work experience had not been established and decisions regarding licensure were left to division staff with little construction experience.

At the time of the 2004 review, the board was considering whether to establish testing requirements to verify if applicants had the expertise needed for licensure. Although the board continues to discuss this possibility, no action has been taken to adopt formal criteria to assess applicant work experience. We therefore conclude that the board **has not implemented** this recommendation.

Although the board has not established formal standards for assessing the work experience of license applicants, it has taken two steps in the right direction. First, the division hired a new manager, who has substantial construction management experience, to oversee the program. Second, as discussed in our 2004 review, the division began collecting and verifying more detailed work history information from applicants. These two steps should improve the division's ability to make sound decisions about whether applicants qualify for licensure.

Responding to Complaints

The Division of Building Safety is charged with investigating complaints and enforcing the state's public works contractor licensing laws. In the 2004 review, we found the division had developed general procedures for handling complaints, but concluded the procedures were inadequate because they did not specify required investigative work, documentation standards for investigations, or the steps to be followed when closing complaint cases without disciplinary action.

Our 2004 review also found the division had not taken disciplinary action against any licensees since the release of our report in 2001. In

addition, we reported division representatives believed they had insufficient statutory authority to address complaints of unlicensed practice and agencies violating bidding requirements.

While the division has not strengthened its investigative procedures, it has made the following improvements:

- The division and the board worked with industry representatives to strengthen enforcement provisions in the public works contractor licensing law. House Bill 263, which was enacted during the 2005 legislative session, made a number of important changes:
 - ◊ Increased the maximum fines the Division of Building Safety can assess for violations of the public works contractor licensing law from \$5,000 to \$20,000
 - ◊ Authorized the division to issue fines to unlicensed contractors (previously, the division could only refer cases to the Attorney General or county prosecutors for possible action by the courts)
 - ◊ Charged the division with investigating complaints about public agencies that contract for public works construction with an unlicensed or improperly licensed contractor
- The division has stepped up enforcement when violations of the state's licensing laws are identified. In fiscal year 2006, the division fined seven contractors and issued warnings to eight others. Fines assessed by the division have ranged from \$250 to \$5,000.
- The division recently began reviewing information that contractors submit to the Idaho Tax Commission to identify possible licensing law violations (suggested in our original report). This information can be used to identify (1) unlicensed contractors or

subcontractors that perform work on public works projects, and (2) contractors who exceed their bid limit when bidding on these projects.

Because of these changes, we conclude that this recommendation **has been partially implemented**.

We appreciate the cooperation and assistance we received from the Division of Building Safety in conducting this follow-up review. Ned Parrish of the Office of Performance Evaluations conducted the review.

Joint Legislative Oversight Committee (JLOC)

Sen. Shawn Keough, Co-chair
Sen. John Andreason
Sen. Bert Marley
Sen. Kate Kelly

Rep. Margaret Henbest, Co-chair
Rep. Maxine Bell
Rep. Debbie Field
Rep. Donna Boe

Office of Performance Evaluations

Rakesh Mohan, Director

Appendix A

Division of Building Safety's Self-assessment of Implementation Efforts



State of Idaho
DIVISION OF BUILDING SAFETY

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Governor

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April 27, 2006

Mr. Rakesh Mohan, Director
Office of Performance Evaluations
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Boise, ID 83720-0055

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MAY - 3 2006

PERFORMANCE EVALUATIONS

Re: Response to your letter of April 14, 2006

Dear Mr. Mohan:

The Division of Building Safety is pleased to respond to the Joint Legislative Oversight Committee's request for follow-up information relative to our Public Works Contractor licensing function.

The first outstanding recommendation that the Public Works Contractor Licensing Board establish clear standards via administrative rule for assessing an applicant's work experience has, as of this date not been resolved. However, at its last meeting on April 3rd, the Board listened to a presentation from the International Code Council (ICC) regarding the process involved in engaging ICC to develop and implement a professional examination to be used to assure applicants possess the minimal qualifications required to function effectively as a Public Works Contractor in the State of Idaho. It is my belief that the Board, with assistance from recently installed DBS management, will finally proceed with the development and implementation of a professionally formulated and administered exam. The administrative rule stipulating this requirement should be presented to the Legislature for approval in the next session.

The Board has been somewhat handicapped in accomplishing its assigned task due to the fact that appointments to the Board have not been accomplished in a timely manner. This has left the Board undermanned and lacking representation from some sectors. In fact, at the present time, the only way a quorum can be assembled is to include members whose terms have expired but make themselves available for the good of the State. We presently have four unfilled positions on the seven member board, with two additional appointments set to expire at the end of this year. The sooner we can put the new members in place; the sooner this examination issue will be resolved.

The second unresolved recommendation regarding the handling of complaints has been resolved. The Public Works Task Force including legislators, local government representatives, and contractors, succeeded in convincing the Legislature in the 2005 session to update the governing statutes and add the tools necessary to facilitate effective handling of complaints. By significantly increasing the maximum penalties for violations, and extending sanctions to government officials, the Legislature greatly enhanced the toolkit for dealing with violations of

the law. With the assistance of task force members, and Mr. Jean Frenette, the new Program Manager for the Public Works Licensing program, compliance and education efforts have increased dramatically. The results are positive, and industry as well as governmental agencies have new found respect for the operations of the Public Works Contractor licensing function at DBS. I am enclosing information outlining the outreach activities that the agency has been involved in the past nine months, as well as investigations and assessments that have been made for violations of applicable statues and rules.

Please feel free to contact me if you have any questions regarding these issues or other concerns regarding the Division of Building Safety.

Respectfully,

A handwritten signature in black ink, appearing to read "John A. McAllister", with a long, sweeping horizontal flourish extending to the right.

John A. McAllister
Administrator