

IN THE SENATE

SENATE BILL NO. 1103

BY TRANSPORTATION COMMITTEE

AN ACT

1 RELATING TO CONTRACTS FOR DESIGN-BUILD HIGHWAY PROJECTS; AMENDING
 2 SECTION 40-103, IDAHO CODE, TO DEFINE A TERM; AMENDING SECTION
 3 40-104, IDAHO CODE, TO DEFINE A TERM; AMENDING SECTION 40-105,
 4 IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING CHAPTER 1, TITLE
 5 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-119, IDAHO
 6 CODE, TO PROVIDE DEFINITIONS; AMENDING SECTION 40-120, IDAHO CODE,
 7 TO DEFINE A TERM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
 8 CHAPTER 9, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW
 9 SECTION 40-904, IDAHO CODE, TO PROVIDE PROCEDURES FOR AWARDED
 10 DESIGN-BUILD CONTRACTS FOR HIGHWAY TRANSPORTATION PROJECTS;
 11 AND AMENDING CHAPTER 9, TITLE 40, IDAHO CODE, BY THE ADDITION
 12 OF A NEW SECTION 40-905, IDAHO CODE, TO PROVIDE PROCEDURES FOR
 13 AWARD OF CONSTRUCTION MANAGER/GENERAL CONTRACTOR CONTRACTS
 14 FOR HIGHWAY PROJECTS.
 15

16 Be It Enacted by the Legislature of the State of Idaho:

17 SECTION 1. That Section 40-103, Idaho Code, be, and the same is hereby amended to
 18 read as follows:

19 40-103. DEFINITIONS – B. (1) "Best and final offer" means the department requested
 20 proposal revision following presentations and/or discussions presented by the short list of
 21 qualified design-build firms.

22 (2) "Board" means the Idaho transportation board.

23 (3) "Business" means any lawful activity, excepting a farm operation, conducted
 24 primarily for the purchase, resale, lease and rental of personal and real property, and for the
 25 manufacture, processing or marketing of products, commodities, or other personal property; for
 26 the sale of services to the public; or solely for the purpose of section 40-2004(1), Idaho Code,
 27 for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products,
 28 commodities, personal property, or services by the erection and maintenance of an outdoor
 29 advertising display or displays, whether or not displays are located on the premises on which
 30 any of the activities are conducted.

31 SECTION 2. That Section 40-104, Idaho Code, be, and the same is hereby amended to
 32 read as follows:

33 40-104. DEFINITIONS – C. (1) "City system" means all public highways within the
 34 corporate limits of a city, with a functioning street department, except those highways which
 35 are under federal control, a part of the state highway system, part of a highway district system
 36 or an extension of a rural major collector route as specified in section 40-607, Idaho Code.

1 (2) "Commercial activities." (See "Unzoned commercial or industrial areas," section
2 40-122, Idaho Code)

3 (3) "Commercial areas, unzoned." (See "Unzoned commercial or industrial areas,"
4 section 40-122, Idaho Code)

5 (4) "Commissioners" means the board of county commissioners of a county of this state.

6 (5) "Construction manager/general contractor firm" means a firm with which the
7 department has contracted to provide services prior to final design phase and to act as
8 construction manager/general contractor during the construction phase.

9 (6) "Controlled-access facility" means a highway especially designed for through
10 traffic to which owners or occupants of abutting land have no right or easement or only a
11 controlled right or easement of access by reason of the fact that their property abuts upon
12 the controlled-access facility. These highways may be freeways open to use by all customary
13 forms of highway traffic, or they may be parkways from which trucks, buses and other
14 commercial vehicles shall be excluded.

15 (67) "County highway system" or "county secondary highways" mean all public
16 highways in a county except those included within the state highway system, those under
17 another state agency, those included within city highway systems of incorporated cities, those
18 included within a highway district highway system, and those under federal control.

19 SECTION 3. That Section 40-105, Idaho Code, be, and the same is hereby amended to
20 read as follows:

21 40-105. DEFINITIONS – D. (1) "Department" means the Idaho transportation
22 department.

23 (2) "Design-build contract" means a single contract between the department and a
24 design-build firm to furnish the architectural or engineering and related design services, labor,
25 material, supplies, equipment and construction services for the highway project.

26 (3) "Design-build firm" means a sole proprietorship, partnership, limited liability
27 partnership, joint venture, corporation, any type of limited liability company, professional
28 corporation or legal entity qualified to design and build highway projects.

29 (4) "Design-build highway project" means the procurement of both the design and
30 construction of a project in a single contract with a design-build firm capable of providing the
31 necessary design services and construction.

32 (5) "Design professional" means a professional engineer or architect licensed by the state
33 of Idaho and qualified to design highway projects.

34 (6) "Director" means the director of the Idaho transportation department.

35 (37) "Displaced person" means any individual, family, business or farm operation which
36 moves from real property or moves personal property from real property acquired for a program
37 or project of a state or local agency, in whole or in part, or as the result of a written order of
38 an acquiring agency to vacate real property for a program or project of a state or local agency,
39 and, solely for the purposes of section 40-2004, Idaho Code, as a result of a written order of an
40 acquiring agency to vacate other real property, on which a person conducts a business or farm
41 operation, for a program or project of any state or local agency.

42 (48) "Draw" means making a cash demand on the proceeds of transportation bonds or
43 notes issued by the Idaho housing and finance association as it pertains to section 40-718, Idaho
44 Code.

1 (59) "Dump" means any place or area, not operated as a business, where junk is
2 deposited, stored or kept.

3 SECTION 4. That Chapter 1, Title 40, Idaho Code, be, and the same is hereby amended
4 by the addition thereto of a NEW SECTION, to be known and designated as Section 40-119,
5 Idaho Code, and to read as follows:

6 40-119. DEFINITIONS – R. (1) A "Request for proposals" or "RFP" means a
7 document used to solicit proposals from design-build firms to design and construct a highway
8 project and to solicit proposals from construction manager/general contractor firms to provide
9 services prior to final design and then to construct a highway or bridge project.

10 (2) A "Request for qualifications" or "RFQ" means a document used to qualify potential
11 design-build firms for placement on a short list. (See "Short list," section 40-120, Idaho Code)

12 SECTION 5. That Section 40-120, Idaho Code, be, and the same is hereby amended to
13 read as follows:

14 40-120. DEFINITIONS – S. (1) "Safety rest area" means an area or site established and
15 maintained within or adjacent to the right-of-way by or under public supervision or control, for
16 convenience of the traveling public.

17 (2) "Short list" means a list of qualified firms selected from a longer list of such firms.

18 (3) "Sign." (See "Advertising structure," section 40-102, Idaho Code)

19 (34) "~~Single county-wide~~ countywide highway district" means all public highways within
20 the county, including those within all cities of the county, but excepting those within the state
21 highway system and those under federal control.

22 (45) "State highway system" means the principal highway arteries in the state, including
23 connecting arteries and extensions through cities, and includes roads to every county seat in the
24 state.

25 (56) "State law" means a provision of the constitution or statutes of this state, or an
26 ordinance, rule or regulation enacted or adopted by an agency or political subdivision of this
27 state pursuant to the constitution or statutes.

28 (67) "Structure." (See "Advertising structure," section 40-102, Idaho Code)

29 (78) "System, city." (See "City system," section 40-104, Idaho Code)

30 SECTION 6. That Chapter 9, Title 40, Idaho Code, be, and the same is hereby amended
31 by the addition thereto of a NEW SECTION, to be known and designated as Section 40-904,
32 Idaho Code, and to read as follows:

33 40-904. CONTRACTS – DESIGN-BUILD. (1) While design/bid/build is the preferred
34 method of contracting, the department may select design-build firms and award contracts
35 for design-build highway projects as provided in this section. Design-build transportation
36 projects shall be of appropriate size and scope as determined by the board to encourage
37 maximum competition and participation by qualified design-build firms. Design-build
38 contracting procedures may be used for projects only after the board determines that awarding
39 a design-build contract will serve the public interest. The department shall establish and
40 publish guidelines consistent with the provisions of this section prior to soliciting and awarding
41 design-build contracts.

1 (2) The following criteria shall be used as the minimum basis for determining when to
2 use design-build procedures for awarding contracts:

- 3 (a) Definition of the project requirements in the proposed scope of the design and
4 construction desired;
5 (b) Time constraints for project delivery;
6 (c) The capability and experience of potential design-build firms;
7 (d) Project suitability for the design-build method of project delivery regarding time,
8 schedule, costs and quality factors;
9 (e) The department's ability to manage design-build projects, including employing
10 experienced personnel or outside consultants; and
11 (f) Other criteria the department deems relevant and states in writing in its determination
12 to use design-build procedures for awarding contracts.

13 (3) The department shall employ for the duration of each design-build highway
14 transportation project, a design professional, either in-house or retained, who shall act as
15 the department's project manager, to provide technical advice, preliminary studies, designs
16 and other information needed or for the preparation of the RFQ or RFP, construction review
17 services and professional expertise on behalf of the department.

18 (4) The department shall publicly advertise a request for proposals in at least two (2)
19 consecutive weekly issues in a weekly newspaper or five (5) issues in a daily newspaper,
20 having a general circulation in the county or one (1) of the counties, where the work is to
21 be done.

22 (5) The department shall use a two (2) phase procedure to award design-build contracts
23 unless otherwise provided in this section. In phase one:

- 24 (a) The department shall request proposals by issuing a request for qualifications that
25 provides information on design-build firm qualifications and requests information on their
26 technical approach to the proposed highway project. The solicitation shall be developed
27 under the supervision of the design professional in accordance with guidelines established
28 by the department.

29 At a minimum, the following shall be included in each request for qualifications:

- 30 (i) Minimum design-build firm qualifications necessary to meet the project's
31 design-build requirements;
32 ii) Scope of work statement and schedule;
33 (iii) Documents defining the project requirements;
34 (iv) Weighted selection criteria for compiling a short list of design-build firms
35 and the number of design-build firms to be included in the short list, which must
36 be at least two (2) but not more than five (5);
37 (v) Description of the request for proposals's requirements;
38 (vi) Maximum time allowed for project design and construction; and
39 (vii) Requirements for construction experience, design experience, the financial,
40 personnel and equipment resources available from potential design-build firms for
41 the project, and experience in this type of project or similar projects.

42 (6) The request for qualifications shall not include any cost-related or price-related
43 factors. The department shall develop a short list of the most qualified design-build firms
44 from the proposals submitted in response to the request for qualifications. If only one (1)
45 design-build firm responds to the request for qualifications or remains on the short list, the
46 department may readvertise or cancel the project.

1 (7) In the second phase, the department shall issue a request for proposals to the
2 design-build firms included on the short list. At a minimum, the request for proposals shall
3 include:

- 4 (a) Scope of work for the project, including:
5 (i) Performance and technical requirements;
6 (ii) Conceptual design;
7 (iii) Specifications; and
8 (iv) Functional and operational elements for the delivery of the completed project,
9 which must be prepared by an Idaho licensed professional engineer;
10 (b) Description of the required design-build firm qualifications and the selection criteria,
11 including the weight or relative order, or both, of each criterion;
12 (c) Copies of the contract documents the selected bidder will be expected to sign;
13 (d) Maximum time allowed for project design and construction;
14 (e) Estimated cost of design and construction;
15 (f) A requirement that all proposals be submitted to the department in two (2) parts:
16 (i) A technical proposal; and
17 (ii) A price proposal;
18 (g) A requirement that all proposals be submitted in a separately sealed, clearly identified
19 package that includes the date and time of the submittal deadline;
20 (h) A requirement that the technical proposal include a critical path method, bar schedule
21 of the work to be performed or similar schematic, design plans and specifications,
22 technical reports, calculations, permit requirements, applicable development fees, and
23 other data requested in the request for proposals;
24 (i) A requirement that the price proposal contain all design, construction, engineering,
25 inspection and construction costs of the proposed project;
26 (j) The date, time and location of the public opening of the sealed price proposals; and
27 (k) Other information relevant to the project.

28 (8) Prior to the opening of sealed bid proposals, the department shall score the technical
29 proposals using the selection criteria provided in the request for proposals. At a minimum, fifty
30 percent (50%) of the technical proposal shall account for the final score and at a minimum, fifty
31 percent (50%) of the qualifications of the design-build professional or firm shall account for
32 the technical proposal. At the sealed price proposal bid opening, the department shall publicly
33 announce the technical proposal score for each bidder on the short list, publicly open the sealed
34 price proposals and divide each price proposal by the bidder's technical score to obtain an
35 adjusted score. The department shall award the bid of the design-build firm whose adjusted
36 score is the lowest.

37 (9) If a request for proposals includes a time factor with the selection criteria, the
38 department may also adjust the bids using a department established value of the time factor.
39 The value of the time factor must be expressed as a value per day. The adjustment must
40 be based on the total time value. The total time value shall be the bidder's total number of
41 days to complete the project multiplied by the time factor. The time adjusted price is the total
42 time value plus the bid amount. An adjusted score must then be obtained by dividing each
43 bidder's time adjusted price by the technical proposal scores. The department shall award the
44 design-build contract to the bidder with the lowest adjusted score.

45 (10) The department may offer short list bidders the opportunity to participate in
46 presentations and/or discussions regarding their proposals. If presentations or discussions are

1 held with one (1) short list bidder, they must be held with all short list bidders. If presentations
2 and/or discussions are held, best and final offers shall be requested and shall be the basis of
3 awarding the contract.

4 If determined by the board, the department may elect to use the following process for
5 awarding a design-build contract for a project with an estimated project cost of less than five
6 million dollars (\$5,000,000):

7 (a) The department shall give the lowest cost proposal the full number of price points
8 defined in the request for proposals. The department shall assign each of the other
9 proposals a percentage of the price points based on a ratio of the lowest price divided
10 by the bidder's price. The department shall add the technical score and price score and
11 award the contract to the bidder with the highest total score. If determined by the board,
12 the department may also use low bid, design-build procedures to award a design-build
13 contract where the scope of the work can be clearly defined. Low bid design-build
14 projects may require a request for qualifications and short-listing and shall require a
15 request for proposals.

16 (b) Submitted proposals shall include a separate technical proposal and a price proposal.
17 The low bid, design-build procedures shall use the following two (2) step review process:

18 (i) The department shall open technical proposals first to determine if they
19 comply with the requirements and are responsive. The technical proposals shall
20 not be ranked or scored. The department may not open the price proposal until the
21 review of the technical proposal is complete.

22 (ii) The department shall open price proposals and select the lowest bidder.

23 (c) Contracts shall be awarded to the bidder who submits the lowest price proposal and if
24 the proposal is responsive to the technical requirements as determined by the department.

25 (11) (a) The department shall grant a stipulated fee of not less than two-tenths of one
26 percent (0.2%) of the department's estimated cost of design and construction to each
27 bidder on the short list who provides a responsive but unsuccessful proposal. If the
28 department does not award a contract, all bidders on the short list shall receive the
29 stipulated fee.

30 (b) If the department cancels a contract before reviewing submitted technical proposals,
31 the department shall award each design-build firm on the short list a stipulated fee of not
32 less than two-tenths of one percent (0.2%) of the department's estimated cost of design
33 and construction. The department shall pay the stipulated fee to each design-build firm
34 within ninety (90) days of the day the contract is awarded or the day the decision is made
35 not to award a contract. In consideration for paying the stipulated fee, the department
36 may use any ideas or information contained in the submitted proposals, with no obligation
37 to pay any additional compensation to the unsuccessful bidders.

38 (c) Unselected bidders on the short list may elect to waive the stipulated fee. If an
39 unsuccessful bidder on the short list elects to waive the stipulated fee, the department may
40 not use ideas and information contained in that bidder's proposal.

41 (d) At the request of the department, bidders who waive the stipulated fee may
42 subsequently withdraw their waivers, in which case the department shall pay the
43 stipulated fee to the bidders and may use ideas and information contained in their
44 proposals.

45 (12) The department may reject any and all design-build highway project bids at their
46 discretion.

1 (13) Bidders who do not submit the lowest responsible bid as determined by the
2 department may challenge the department's determination in accordance with section 40-902(5),
3 Idaho Code.

4 SECTION 7. That Chapter 9, Title 40, Idaho Code, be, and the same is hereby amended
5 by the addition thereto of a NEW SECTION, to be known and designated as Section 40-905,
6 Idaho Code, and to read as follows:

7 40-905. CONTRACTS – CONSTRUCTION MANAGER/GENERAL
8 CONTRACTOR. (1) The department may select construction manager/general contractor
9 firms and award contracts for highway projects as provided in this section. Construction
10 manager/general contractor transportation projects shall be of appropriate size and scope
11 to encourage maximum competition and participation by qualified firms. Construction
12 manager/general contractor procedures may be used for highway projects only after the board
13 determines that awarding a construction manager/general contractor contract will serve the
14 public interest. "Construction manager/general contractor" means a firm with which the
15 department has selected to provide services during the design phase and to act as construction
16 manager/general contractor during the construction phase. The department shall establish and
17 publish guidelines consistent with the provisions of this section prior to soliciting and awarding
18 construction manager/general contractor contracts.

19 (2) Contracts for the services of a construction manager/general contractor shall be
20 awarded through a competitive process requiring the public solicitation of a request for
21 proposals for construction manager/general contractor services. The request for proposals may
22 require separate technical and price proposals and meeting requirements as stated in the request
23 for proposals.

24 (3) At a minimum, the request for proposals shall include:

- 25 (a) A description of the project, including programmatic, performance, technical
26 requirements and specifications, when available;
- 27 (b) The reasons for using the construction manager/general contractor procedure;
- 28 (c) A description of the qualifications to be required of the firm;
- 29 (d) A description of the process the department will use to evaluate qualifications and
30 proposals, including evaluation factors and the relative weight of factors; and
- 31 (e) The form of the contract, including any contract for preconstruction services, to be
32 awarded.

33 (4) The department shall publicly advertise a request for proposals in at least two (2)
34 consecutive weekly issues in a weekly newspaper or five (5) issues in a daily newspaper,
35 having a general circulation in the county or one (1) of the counties, where the work is to
36 be done.

37 (5) The department shall establish a committee to evaluate the proposals. The
38 department shall select the firm submitting the highest scored proposal using the evaluation
39 factors and the relative weight of factors published in the public solicitation of the request for
40 proposals.

41 (6) The contract shall be awarded in two (2) phases. The first phase is to provide
42 services during the design phase that may include life cycle cost design considerations, value
43 engineering, scheduling, cost estimating, constructability, alternative construction options for
44 cost-savings and sequencing of work. The second phase is for construction services. The
45 second phase will be awarded after the plans have been sufficiently developed and a guaranteed

1 maximum price for construction services has been successfully negotiated. In the event that a
2 guaranteed maximum price is not negotiated, the department will not award the construction
3 phase of the contract. Incremental construction phases may be awarded after guaranteed
4 maximum prices are negotiated for each phase.

5 (7) The construction manager/general contractor shall provide performance and payment
6 bonds during construction phases.

7 (8) The department is not required to award a contract. The department shall have the
8 right to advertise and award contracts pursuant to section 40-902, Idaho Code. If awarded,
9 however, a contract shall be executed and notice given to proceed with the work.

10 (9) Firms who do not receive the highest scored proposal as determined by the
11 department may challenge the department's determination in accordance with section 40-902(5),
12 Idaho Code.