IN THE SENATE

SENATE BILL NO. 1219

BY STATE AFFAIRS COMMITTEE

AN ACT
RELATING TO PUBLIC WORKS CONTRACTS; AMENDING SECTION 54-4511, IDAHO CODE, TO PROVIDE FOR COMPENSATION OF CONSTRUCTION MANAGERS AND GENERAL CONTRACTORS, TO PROVIDE THAT CERTAIN COSTS MAY BE INCORPORATED INTO A CONTRACT, TO PROVIDE THAT CERTAIN BIDS SHALL BE HANDLED IN A PARTICULAR MANNER, TO CLARIFY HOW CONSTRUCTION MANAGERS AND GENERAL CONTRACTORS MAY BID, TO PROVIDE THAT CERTAIN TERMS SHALL BE INCLUDED IN CERTAIN CONTRACTS AND TO REMOVE A PROVISION RELATING TO COMPENSATION.

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

SECTION 1. That Section 54-4511, Idaho Code, be, and the same is hereby amended to read as follows:

54-4511. AWARD OF CONTRACTS -- DUAL CAPACITY. (1) Construction manager representative (CMR). A licensed construction manager and the firm of which he is a principal or full-time employee may be awarded a contract to act only as representative for an owner. In soliciting bids or awarding contracts for public works construction to be entered into by the owner, a licensed construction manager representative shall comply with all notice and bidding laws with which an owner would be required to comply if it were to do the same activities without the assistance of a construction manager. A licensed construction manager representative and the firm of which he is a principal or employee shall not provide construction management services for a construction project on which the licensed construction manager or his firm also provides design services or other construction related services, whether as a contractor or subcontractor. Provided however, that this section shall not preclude a licensed architect or registered professional engineer from providing public works construction management services which are normally provided by licensed architects or registered professional engineers for a project on which the person or firm has provided design services. Such public works construction management services provided by a licensed architect or registered professional engineer shall not include the procurement of equipment or construction work required by law to be competitively bid for public works construction.

(2) Construction manager/general contractor (CM/GC). A licensed construction manager and the firm of which he is a principal or full-time employee may be awarded a contract to act as both construction manager and general contractor provided the construction manager/general contractor has a valid public works contractor license as a general contractor pursuant to section 54-1902, Idaho Code.

(3) Compensation of a construction manager/general contractor shall be determined pursuant to section 67-2320, Idaho Code.

(4) At such time as the design of a project or a phase of a project is available, the construction work, materials and equipment for construction
of a project may be incorporated into the construction manager/general con-
tractor contract based upon bids solicited from licensed public works con-
tractors and from suppliers for all construction work, materials and equip-
ment.

(5) For each portion of the work, competitive bids shall be solicited
from not less than three (3) contractors or suppliers deemed to be qualified
by the construction manager/general contractor. All bids shall be opened
publicly in the presence of a representative of the public entity for whom
the project is undertaken and, once opened, bids shall be subject to the pub-
lic record requirements outlined in title 74, Idaho Code.

(6) All construction work, materials and equipment shall be awarded to
the lowest responsive qualified bidder. For good cause, the public entity
may approve the award of bids based upon fewer than three (3) bids.

(7) The construction manager/general contractor, or its subsidiaries
and affiliated companies, may bid to perform construction work or to sup-
ply materials or equipment only if it holds a valid license pursuant to sec-
tion 54-1902, Idaho Code, and for which it customarily self-performs or sup-
plies such construction work, materials or equipment; provided, the public
entity may limit the amount of work the construction manager/general con-
tractor, including its subsidiaries and affiliated companies, may perform
under the contract. Bids from the construction manager/general contractor
and its subsidiaries or affiliated companies must be opened at the opening of
any other bids.

(8) When bidding for all phases of the project has been completed, a
guaranteed maximum price for the entire project may be negotiated by the pub-
lic entity.

(9) No public entity shall enter into a contract with any person or firm
for construction management services as construction manager representa-
tive or as construction manager/general contractor if such person or firm is
required to be licensed under this chapter unless:

(a) Such person holds a valid license or such firm holds a valid cer-
tificate issued pursuant to this chapter; and

(b) The selection of such construction manager representative or
construction manager/general contractor is made pursuant to section
67-2320, Idaho Code; and

(c) All terms of the contract including, but not limited to, terms for
management fees, incentive compensation and disposition of any contin-
gency fund, if applicable, are agreed upon in writing.

(4) Compensation of a construction manager shall be determined pur-
suant to section 67-2320, Idaho Code. At such time as the design of a project
is available, the construction work, materials and equipment for construc-
tion of a project may be incorporated into the construction manager/general
contractor contract based upon bids solicited from licensed public works
contractors and from suppliers. All construction work, materials and equip-
ment shall be competitively bid to be opened publicly in the presence of a
representative of the public body for whom the project is undertaken and
shall be awarded to the lowest responsible bidders. The construction man-
ager/general contractor, or its subsidiaries and affiliated companies, may
bid to perform construction work or supply materials or equipment for which
1. it holds a valid license pursuant to section 54-1902, Idaho Code, and which
2. it customarily self-performs or supplies.