

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 445

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

RELATING TO PUBLIC WORKS CONSTRUCTION; AMENDING SECTION 54-4511, IDAHO
CODE, TO REVISE PROVISIONS REGARDING THE AWARD OF CONTRACTS.

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 man-
ager 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.

(a) In soliciting bids or awarding contracts for public works construc-
tion 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.

(b) A licensed construction manager representative and the firm of
which he is a principal or employee shall not provide construction man-
agement representative services for a construction project on which the
licensed construction manager or his firm also provides design services
or other construction-related services concurrently, whether as a con-
tractor 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~~
that are normally provided by licensed architects or registered profes-
sional 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 con-
struction manager and the firm of which he is a principal or full-time em-
ployee may be awarded a contract to act as both construction manager and gen-
eral 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.

(3a) A construction manager/general contractor (CM/GC) shall not be
precluded from being awarded a contract for preconstruction profes-
sional services, provided that the public solicitation and contract
award are independent from the public solicitation and contract award
for construction.

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

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

7 (5c) For each portion of the work, competitive bids shall be solicited
 8 ~~from not less than three (3) contractors or suppliers deemed to be qual-~~
 9 ~~ified by the construction manager/general contractor from licensed~~
 10 ~~public works contractors as per published public notice requirements~~
 11 ~~pursuant to section 67-2805, Idaho Code. All bids shall be opened pub-~~
 12 ~~licly in the presence of a representative of the public entity for whom~~
 13 ~~the project is undertaken and, once opened, bids shall be subject to the~~
 14 ~~public record requirements outlined in title 74, Idaho Code.~~

15 (6d) All construction work, materials, and equipment shall be awarded
 16 to the lowest responsive qualified bidder. For good cause, the public
 17 entity may approve the award of bids based upon fewer than three (3)
 18 bids.

19 (7e) The construction manager/general contractor, or its subsidiaries
 20 and affiliated companies, may bid to perform construction work or to
 21 supply materials or equipment only if it holds a valid license pursuant
 22 to section 54-1902, Idaho Code, and for which it customarily self-per-
 23 forms or supplies such construction work, materials, or equipment; pro-
 24 vided, the public entity may limit the amount of work the construction
 25 manager/general contractor, including its subsidiaries and affiliated
 26 companies, may perform under the contract. Bids from the construction
 27 manager/general contractor and its subsidiaries or affiliated compa-
 28 nies must be opened at the opening of any other bids.

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

32 (93) No public entity shall enter into a contract with any person or
 33 firm for construction management services as construction manager represen-
 34 tative or as construction manager/general contractor if such person or firm
 35 is required to be licensed under this chapter unless:

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

38 (b) The selection of such construction manager representative or
 39 construction manager/general contractor is made pursuant to section
 40 67-2320, Idaho Code; and

41 (c) All terms of the contract are agreed upon in writing, including, but
 42 ~~not limited to, terms for management fees,~~ incentive compensation and
 43 ~~disposition of any contingency fund, if applicable, are agreed upon in~~
 44 ~~writing and:~~

45 (i) Management fees for CMR;

46 (ii) Management fees for CM/GC preconstruction services; or

47 (iii) Management fees and guaranteed maximum price.