

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 509

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

RELATING TO PUBLIC BUILDINGS AND WORKS; AMENDING CHAPTER 57, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5711E, IDAHO CODE, TO ESTABLISH A PROCESS FOR BIDDERS OR THE ADMINISTRATOR TO CHALLENGE CERTAIN MATTERS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 57, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5711E, Idaho Code, and to read as follows:

67-5711E. CHALLENGES. (1) As used in this section:

(a) "Administrator" means the administrator of the division of public works.

(b) "Director" means the director of the department of administration.

(c) "Hearing officer" has the same meaning as provided for in section 67-5201, Idaho Code.

(d) "Nonresponsive bid" means a bid that does not comply with a bid invitation and specifications and does not include a bidder whose bid is considered but who is determined not to be the lowest responsible bidder.

(2) A bidder may challenge the administrator's decision pursuant to the provisions of this section under the following circumstances:

(a) A bidder's bid was found nonresponsive;

(b) A bidder's bid was considered pursuant to section 67-5711C, Idaho Code, and the bidder was found not to be the lowest responsible bidder;

(c) A professional service firm's proposal was considered pursuant section 67-2320, Idaho Code, and was not selected for award;

(d) A design-build firm's proposal was considered pursuant to section 67-5711A, Idaho Code, and was not selected for award; or

(e) A construction manager's or general contractor's bid was considered pursuant to section 54-4511, Idaho Code, and was not selected for award.

(3) The administrator may, on his own initiative, file a challenge seeking resolution of any matter presented to the administrator for a decision.

(4) Challenges shall be submitted to the director within five (5) business days of the notice of the challenged decision. The challenge shall set forth in specific terms the reasons why the bidder challenges the administrator's decision as erroneous and shall provide available documentation supporting such reasons.

(5) Upon receipt, the director shall act pursuant to this subsection within five (5) business days.

1 (a) Upon receipt of a challenge where no request for qualifications was
2 issued the director shall:

3 (i) Affirm the decision of the administrator, which shall be con-
4 sidered the final agency decision;

5 (ii) Modify the decision of the administrator;

6 (iii) Affirm the challenge and issue recommendations to the admin-
7 istrator; or

8 (iv) Request a hearing officer to review the record and recommend
9 to the director to affirm, modify, or reverse the administrator's
10 decision.

11 (b) Upon receipt of a challenge where a request for qualifications was
12 issued the director shall request a hearing officer with authority to
13 conduct a contested case hearing in accordance with the provisions of
14 chapter 52, title 67, Idaho Code, to review the record and recommend
15 to the director to affirm, modify, or reverse the administrator's deci-
16 sion.

17 (c) A hearing officer appointed pursuant to paragraph (b) of this sub-
18 section shall conduct a contested case hearing and upon conclusion of
19 the hearing shall prepare findings of fact, conclusions of law, and a
20 recommended order for the director. Upon receipt of the findings of
21 fact, conclusions of law, and recommended order, the director shall
22 enter a final order affirming, modifying, or reversing the decision of
23 the administrator. In addition to the requirements of section 67-5270,
24 Idaho Code, the challenging bidder shall also file a proper protest bond
25 in an amount equal to twenty-five percent (25%) of the challenging bid-
26 der's bid.

27 (6) When a challenge is submitted under this section, the administrator
28 shall not execute a contract until the challenge is concluded. However, the
29 director shall have the power to allow a contract to be awarded to the suc-
30 cessful bidder if he determines such award to be in the best interest of the
31 state.

32 SECTION 2. An emergency existing therefor, which emergency is hereby
33 declared to exist, this act shall be in full force and effect on and after
34 July 1, 2024.