

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 607

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO PUBLIC BUILDINGS AND WORKS; AMENDING CHAPTER 57, TITLE 67, IDAHO
2 CODE, BY THE ADDITION OF A NEW SECTION 67-5711E, IDAHO CODE, TO ESTAB-
3 LISH A PROCESS FOR BIDDERS OR THE ADMINISTRATOR TO CHALLENGE CERTAIN
4 MATTERS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
5

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

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

10 67-5711E. CHALLENGES. (1) As used in this section:

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

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

14 (c) "Hearing officer" has the same meaning as provided for in section
15 67-5201, Idaho Code.

16 (d) "Nonresponsive bid" means a bid that does not comply with a bid in-
17 vitation and specifications and does not include a bidder whose bid is
18 considered but who is determined not to be the lowest responsible bid-
19 der.

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

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

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

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

27 (d) A design-build firm's proposal was considered pursuant to section
28 67-5711A, Idaho Code, and was not selected for award.

29 (3) The administrator may, on his own initiative, file a challenge
30 seeking resolution of any matter presented to the administrator for a deci-
31 sion.

32 (4) Challenges shall be submitted to the director within five (5) busi-
33 ness days of the notice of the challenged decision. The challenge shall set
34 forth in specific terms the reasons why the bidder challenges the adminis-
35 trator's decision as erroneous and shall provide available documentation
36 supporting such reasons.

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

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

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

- 1 (ii) Modify the decision of the administrator;
2 (iii) Affirm the challenge and issue recommendations to the admin-
3 istrator; or
4 (iv) Request a hearing officer to review the record and recommend
5 to the director to affirm, modify, or reverse the administrator's
6 decision.

7 (b) Upon receipt of a challenge where a request for qualifications was
8 issued the director shall request a hearing officer to:

- 9 (i) Review the record and recommend to the director to affirm,
10 modify, or reverse the administrator's decision; or
11 (ii) Conduct a contested case hearing.

12 (c) A hearing officer appointed pursuant to paragraph (b) (ii) of this
13 subsection shall conduct a contested case hearing and upon conclusion
14 of the hearing shall prepare findings of fact, conclusions of law, and
15 a recommended order for the director. Upon receipt of the findings of
16 fact, conclusions of law, and recommended order, the director shall
17 enter a final order affirming, modifying, or reversing the decision of
18 the administrator. In addition to the requirements of section 67-5270,
19 Idaho Code, the challenging bidder shall also file a proper protest bond
20 in an amount equal to twenty-five percent (25%) of the allocated budget
21 for the construction of the public works capital improvements. If the
22 allocated budget was not included in the request for qualifications,
23 the director shall set the bond at a reasonable amount that does not ex-
24 ceed twenty-five percent (25%) of the anticipated capital expenditures
25 to complete the public works improvements.

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

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