

TITLE 54
PROFESSIONS, VOCATIONS, AND BUSINESSES

CHAPTER 19
PUBLIC WORKS CONTRACTORS

54-1901. LEGISLATIVE INTENT -- DEFINITIONS. (1) The legislature finds that it is in the best interests of the people of the state of Idaho to establish a process for licensure of public works contractors to be administered through the public works contractors license board. To assure that experienced and qualified contractors provide services to public entities in Idaho, the board is charged with licensing as provided in this chapter. Effective licensing procedures should assure that contractors of integrity provide work for which they have specific experience and expertise and that public facilities are constructed and rebuilt by efficient and cost-effective means. Licensing should also protect the public health and safety through judicious exercise of investigative, disciplinary and enforcement activities.

(2) For the interpretation of this chapter, unless the context indicates a different meaning:

(a) "Person" includes any individual, firm, copartnership, corporation, limited liability company, limited liability partnership, association or other organization, or any combination thereof acting as a unit.

(b) "Public works contractor," which term is synonymous with the term "builder," "subcontractor" and "specialty contractor," and in this chapter referred to as "contractor" or "licensee," includes any person who, in any capacity, undertakes, or offers to undertake, or purports to have the capacity to undertake any construction, repair or reconstruction of any public work, or submits a proposal to, or enters into a contract with, the state of Idaho, or any county, city, school district, sewer district, fire district, or any other taxing subdivision or district of any public or quasi-public corporation of the state, or with any agency, or with any other public board, body, commission, department or agency, or officer or representative thereof, authorized to let or award contracts for the construction, repair or reconstruction of any public work.

(c) "Public works construction" includes any or all of the following branches:

(i) Heavy construction, which is defined as constructing substantially in its entirety any fixed works and structures (not including "building construction"), without limitation, for any or all of the following divisions of subjects: irrigation, drainage, sanitation, sewage, water power, water supply, reservoirs, flood control, reclamation, inland waterways, railroads, grade separations, track elevation, elevated highways, hydroelectric developments, aqueducts, transmission lines, duct lines, pipelines, locks, dams, dikes, levees, revetments, channels, channel cutoffs, intakes, drainage, excavation and disposal of earth and rocks, foundations, piers, abutments, retaining walls, viaducts, shafts, tunnels, airports, air bases and airways, and other facilities incidental to the same;

- (ii) Highway construction, which is defined as all work included in highway construction contracts, including, without limitation, highways, roads, streets, bridges, tunnels, sewer and street grading, street paving, curb setting, surfacing and other facilities incidental to any of the same;
- (iii) Building construction, which is defined as all work in connection with any structure now built, being built, or hereafter built, for the support, shelter and enclosure of persons, chattels, personal and movable property of any kind, requiring in its construction the use of more than two (2) unrelated building trades or crafts.
- (iv) Specialty construction, which is defined as any work in connection with any public works construction, requiring special skill and the use of specially skilled trades or crafts.
- (d) "Board" means the board created by this chapter under the name of "public works contractors license board."
- (e) "Administrator" means the administrator of the division of occupational and professional licenses.
- (f) "Year" means the fiscal year ending June 30, each year.
- (g) "Federal aid funds" means a direct grant in aid, matching funds, or loan from an agency of the federal government and designated for a specific public works project. Revenue sharing funds, federal impact funds, timber stumpage fees, and similar indirect allowances and subsidies not designated for a specific public works project shall not be regarded as "federal aid funds" within the meaning of this section.
- (h) "Government obligation" means a public debt obligation of the United States government or the state of Idaho and an obligation whose principal and interest is unconditionally guaranteed by the United States government or the state of Idaho.
- (i) "Public entity" means the state of Idaho, or any county, city, school district, sewer district, fire district, or any other taxing subdivision or district of any public or quasi-public corporation of the state, or any agency thereof, or with any other public board, body, commission, department or agency, or officer or representative thereof.
- (j) "Bid" or "bidder" means any proposal submitted by a public works contractor to a public entity in competitive bidding for the construction, alteration, repair or improvement of any public works construction.

[54-1901, added 1941, ch. 115, sec. 1, p. 212; am. 1955, ch. 223, sec. 1, p. 480; am. 1982, ch. 140, sec. 1, p. 395; am. 1982, ch. 147, sec. 1, p. 409; am. 1986, ch. 67, sec. 1, p. 189; am. 1991, ch. 282, sec. 1, p. 727; am. 1999, ch. 201, sec. 1, p. 530; am. 2001, ch. 300, sec. 1, p. 1086; am. 2005, ch. 213, sec. 24, p. 658; am. 2023, ch. 15, sec. 45, p. 100.]

54-1902. UNLAWFUL TO ENGAGE IN PUBLIC WORKS CONTRACTING WITHOUT LICENSE -- INVESTIGATIONS. (1) It shall be unlawful for any person to engage in the business or act in the capacity of a public works contractor within this state without first obtaining and having a license issued pursuant to the provisions of this chapter by the administrator of the division of occupational and professional licenses, unless such person is particularly exempted as provided in this chapter.

(2) It shall be unlawful for any public works contractor to subcontract in excess of eighty percent (80%) of the work under any contract to be performed by him as such public works contractor according to the contract prices therein set forth, unless otherwise provided in the specifications of such contracts.

(3) Except as provided in subsection (4) of this section, it shall be unlawful for any public works contractor to:

(a) Accept a bid from any person who at that time does not possess the appropriate license for the project involved; or

(b) Accept bids to sublet any part of any contract for specialty construction from a specialty contractor who at that time does not possess the appropriate license in accordance with this chapter.

(4) No contractor shall be required to have a license under this chapter in order to submit a bid or proposal for contracts for public works financed in whole or in part by federal aid funds, provided that, at or prior to the award and execution of any such contract by the state of Idaho or any other contracting authority mentioned in this chapter, the successful bidder has secured a license as provided in this chapter.

(5) The administrator may, upon his own motion or at the direction of the board, and shall, upon the verified written complaint of any person, investigate allegations of unlicensed practice of public works contracting.

[54-1902, added 1941, ch. 115, sec. 2, p. 212; am. 1955, ch. 223, sec. 2, p. 480; am. 1982, ch. 147, sec. 2, p. 410; am. 1999, ch. 201, sec. 2, p. 531; am. 2001, ch. 300, sec. 2, p. 1087; am. 2002, ch. 127, sec. 1, p. 355; am. 2023, ch. 15, sec. 46, p. 102.]

54-1903. EXEMPTIONS. This chapter shall not apply to:

(1) An authorized representative of the United States government, the state of Idaho, or any incorporated town, city, county, irrigation district, reclamation district or other municipal or political corporation or subdivision of this state.

(2) Officers of a court when they are acting within the scope of their office.

(3) Public utilities operating under the jurisdiction of the public utilities commission of the state of Idaho on construction, maintenance and development work incidental to their own business.

(4) The sale or installation of any finished products, materials or articles of merchandise that are not actually fabricated into and do not become a permanent fixed part of the structure.

(5) Any construction, alteration, improvement or repair of personal property.

(6) Any construction, alteration, improvement or repair carried on within the limits and boundaries of any site or reservation, the title of which rests in the federal government.

(7) Any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts, drainage districts or reclamation districts, except when performed by a person required to be licensed under this chapter.

(8) Duly licensed architects, licensed engineers, and land surveyors when acting solely in their professional capacity.

(9) Any construction, alteration, improvement or repair involving any single project involving any number of trades or crafts with an estimated cost of less than one hundred thousand dollars (\$100,000).

(10) Any construction, operation, alteration or maintenance of a solid waste disposal site, including those operated by, for, or at the direction of a city or a county.

(11) Any construction, operation or repair carried on in response to an emergency that has been officially declared by the governor pursuant to the provisions of [chapter 10, title 46](#), Idaho Code, or an emergency that has been declared by a governing body (city or county) in anticipation of a governor's declaration, for a period of time not to exceed seven (7) calendar days.

(12) Any subcontractor performing work under the direct supervision of a licensed public works contractor who holds a Class "Unlimited," "AAA," "AA," or "A" license pursuant to section [54-1904](#), Idaho Code, if the value of the subcontracted work is less than one hundred thousand dollars (\$100,000).

[54-1903, added 1941, ch. 115, sec. 3, p. 212; am. 1961, ch. 216, sec. 1, p. 345; am. 1979, ch. 109, sec. 4, p. 347; am. 1980, ch. 116, sec. 1, p. 254; am. 1987, ch. 71, sec. 1, p. 140; am. 1997, ch. 170, sec. 1, p. 484; am. 1999, ch. 201, sec. 3, p. 532; am. 2000, ch. 376, sec. 1, p. 1236; am. 2005, ch. 213, sec. 25, p. 659; am. 2017, ch. 197, sec. 2, p. 482; am. 2024, ch. 58, sec. 1, p. 275.]

54-1904. CLASSES OF LICENSES -- RIGHTS GRANTED UNDER LICENSES -- FEES. (1) There shall be seven (7) classes of licenses issued under the provisions of this chapter, which are hereby designated as Classes Unlimited, AAA, AA, A, B, CC, and C, the maximum fee for which shall be as specified in this section. Each applicant for a license shall specify the class of license applied for in his application.

(2) For the purpose of licensing public works contractors under this chapter, the board may adopt rules necessary to determine the classification according to their responsibility and the type and scope of the operations of a licensed contractor to those in which he is classified and qualified to engage as in this chapter provided.

(3) The license classes shall be as follows:

(a) Class "Unlimited" license. Any contractor whose qualifications, ability and responsibility to execute contracts for public works involving an estimated cost of more than five million dollars (\$5,000,000) may, upon application and payment of a license fee not to exceed six hundred dollars (\$600), be granted a Class "Unlimited" license and be so classified by the board in accordance with the provisions of this chapter. The holder of a Class "Unlimited" license shall be entitled to engage in the public works contracting business in this state as provided in said license. The renewal fee for a Class "Unlimited" license shall not exceed six hundred dollars (\$600). An applicant requesting a Class "Unlimited" license in heavy, highway, specialty or building construction shall have a minimum net worth of one million dollars (\$1,000,000) with six hundred thousand dollars (\$600,000) in working capital.

(b) Class "AAA" license. Any contractor whose qualifications, ability and responsibility to execute contracts for public works involving an estimated cost of not more than five million dollars (\$5,000,000) may, upon application and the payment of a license fee not to exceed five hundred dollars (\$500), be granted a Class "AAA" license and be so classified by the board in accordance with the provisions of this chapter. The holder of a Class "AAA" license shall be entitled to engage in the public works contracting business in the state as provided in said license.

The renewal fee for a Class "AAA" license shall not exceed five hundred dollars (\$500).

(c) Class "AA" license. Any contractor whose qualifications, ability and responsibility to execute contracts for public works involving an estimated cost of not more than three million dollars (\$3,000,000) may, upon application and the payment of a license fee not to exceed four hundred dollars (\$400), be granted a Class "AA" license and be so classified by the board in accordance with the provisions of this chapter. The holder of a Class "AA" license shall be entitled to engage in the public works contracting business in the state as provided in said license. The renewal fee for a Class "AA" license shall not exceed four hundred dollars (\$400).

(d) Class "A" license. Any contractor whose qualifications, ability and responsibility to execute contracts for public works involving an estimated cost of not more than one million two hundred fifty thousand dollars (\$1,250,000) may, upon application and the payment of a license fee not to exceed three hundred dollars (\$300), be granted a Class "A" license and be so classified by the board in accordance with the provisions of this chapter. The holder of a Class "A" license shall be entitled to engage in the public works contracting business in the state as provided in said license. The renewal fee for a Class "A" license shall not exceed three hundred dollars (\$300).

(e) Class "B" license. Any contractor whose qualifications, ability and responsibility to execute contracts for public works involving an estimated cost of not more than six hundred thousand dollars (\$600,000) may, upon application and the payment of a license fee not to exceed two hundred dollars (\$200), be granted a Class "B" license and be so classified by the board in accordance with the provisions of this chapter. The holder of a Class "B" license shall be entitled to engage in the public works contracting business in the state as provided in said license. The renewal fee for a Class "B" license shall not exceed two hundred dollars (\$200).

(f) Class "CC" license. Any contractor whose qualifications, ability and responsibility to execute contracts for public works involving an estimated cost of not more than four hundred thousand dollars (\$400,000) may, upon application and the payment of a license fee not to exceed one hundred fifty dollars (\$150), be granted a Class "CC" license and be so classified by the board in accordance with the provisions of this chapter. The holder of a Class "CC" license shall be entitled to engage in the public works contracting business in the state as provided in said license. The renewal fee for a Class "CC" license shall not exceed one hundred fifty dollars (\$150).

(g) Class "C" license. Any contractor whose qualifications, ability and responsibility to execute contracts for public works involving an estimated cost of not more than two hundred thousand dollars (\$200,000) may, upon application and the payment of a license fee not to exceed one hundred dollars (\$100), be granted a Class "C" license and be so classified by the board in accordance with the provisions of this chapter. The holder of a Class "C" license shall be entitled to engage in the public works contracting business in the state as provided in said license. The renewal fee for a Class "C" license shall not exceed one hundred dollars (\$100).

(4) The board shall be vested with the power to fix annually the amount of the original and renewal license fees for each class of license for the ensuing license year. The amount of the license fee so fixed shall not exceed the maximum fee set forth in this section.

(5) Each license issued by the administrator shall clearly indicate the type and scope of work for which the licensee is qualified and licensed. The holder of the license shall be permitted to submit proposals for and perform only those types of work specified in each license. The administrator may extend the permissible type or scope of work to be done under any license when it is determined by the administrator that the applicant meets all of the requirements of this chapter to qualify him to do such other work.

(6) The total of any single bid on a given public works project, or the aggregate total of any split bids, or the aggregate of any base bid and any alternate bid items, or the aggregate total of any separate bid by a licensee of any class, except Class "Unlimited," shall not exceed the estimated cost or bid limit of the class of license held by the licensee. The aggregate total of bids shall include all bids of subcontractors. Subcontractor bids shall not be considered a separate bid for the purposes of computing the bid on a given public works project.

[54-1904, added 1941, ch. 115, sec. 4, p. 212; am. 1955, ch. 223, sec. 3, p. 480; am. 1965, ch. 227, sec. 1, p. 535; am. 1969, ch. 18, sec. 1, p. 30; am. 1973, ch. 92, sec. 1, p. 159; am. 1985, ch. 137, sec. 1, p. 374; am. 1991, ch. 14, sec. 1, p. 30; am. 1996, ch. 332, sec. 1, p. 1126; am. 1999, ch. 201, sec. 4, p. 533; am. 2001, ch. 300, sec. 3, p. 1088; am. 2006, ch. 80, sec. 1, p. 242; am. 2008, ch. 254, sec. 1, p. 744; am. 2012, ch. 63, sec. 1, p. 165; am. 2024, ch. 58, sec. 2, p. 275.]

54-1904A. FILING OF NOTICES AND INCOME TAX RETURNS -- PAYMENT OF INCOME TAXES BY CONTRACTORS. Within thirty (30) days after any public works contractor who is required to be licensed pursuant to this chapter has been awarded a contract for construction to be performed within the state of Idaho involving the expenditure of any public moneys, the contract awarding agency shall notify the state tax commission that the contract has been awarded and shall provide to the state tax commission the name and address of the prime contractor. Upon written request of the state tax commission, the prime contractor, within thirty (30) days, shall file with the state tax commission a signed statement showing the date on which such contract was made or awarded, the names and addresses of the home offices of the contracting parties, including all subcontractors, the state of incorporation if the party is a corporation, the project number and a general description of the type and location of the work to be performed, the amount of the prime contract and all subcontracts, and all other relevant information which may be required on forms which may be prescribed by the state tax commission. The state tax commission shall forward to the administrator such information from the form as the administrator and the state tax commission agree is necessary for the administrator to fulfill the requirements of section [54-1913](#), Idaho Code. Every contractor or subcontractor whose name appears on any such notice shall be required to file income tax returns with the state tax commission and to pay all income taxes which may be due thereon pursuant to law for all years in which any public moneys were received by him in connection with any construction work which was performed within the state of Idaho.

[54-1904A, added 1963, ch. 292, sec. 1, p. 772; am. 1993, ch. 237, sec. 1, p. 820; am. 2005, ch. 213, sec. 26, p. 660; am. 2005, ch. 295, sec. 1, p. 935.]

54-1904B. RELIEF FROM BIDS. (a) If an awarding authority for the public entity determines that a bidder is entitled to relief from a bid because of a mistake, the authority shall prepare a report in writing to document the facts establishing the existence of each element required in section [54-1904C](#), Idaho Code. The report shall be available for inspection as a public record and shall be filed with the public entity soliciting bids.

(b) A bidder claiming a mistake satisfying all the conditions of section [54-1904C](#), Idaho Code, shall be entitled to relief from the bid and have any bid security returned by the public entity. Bidders not satisfying the conditions found in section [54-1904C](#), Idaho Code, shall forfeit any bid security. Bidders failing to execute a contract and not satisfying the conditions of a mistake shall also forfeit any bid security.

[54-1904B, added 1991, ch. 282, sec. 2, p. 728; am. 1999, ch. 201, sec. 5, p. 534.]

54-1904C. GROUNDS FOR RELIEF. The bidder shall establish to the satisfaction of the public entity that:

- (a) A clerical or mathematical mistake was made;
- (b) The bidder gave the public entity written notice within five (5) calendar days after the opening of the bids of the mistake, specifying in the notice in detail how the mistake occurred; and
- (c) The mistake was material.

[54-1904C, added 1991, ch. 282, sec. 2, p. 729.]

54-1904D. PROHIBITION AGAINST FURTHER BIDDING. A bidder who claims a mistake or who forfeits their bid security shall be prohibited from participating in any rebidding of that project on which the mistake was claimed or security forfeited.

[54-1904D, added 1991, ch. 282, sec. 2, p. 729; am. 1999, ch. 201, sec. 6, p. 535.]

54-1904E. AWARD OF CONTRACT TO SECOND OR NEXT LOWEST BIDDER. If the public entity deems it is in its best interest, it may, on refusal or failure of the successful bidder to execute the contract, award it to the second lowest responsible bidder.

If the second lowest responsible bidder fails or refuses to execute the contract, the public entity may likewise award it to the next lowest responsible bidders.

On the failure or refusal of the second or next lowest responsible bidders to execute a contract, their bidder's security shall be likewise forfeited. A public entity may determine it is in its best interests to cancel and rebid the public works project and retain any forfeited bid security.

[54-1904E, added 1991, ch. 282, sec. 2, p. 729; am. 1999, ch. 201, sec. 7, p. 535.]

54-1905. PUBLIC WORKS CONTRACTORS LICENSE BOARD CREATED -- QUALIFICATIONS OF APPOINTEES -- TERM -- REMOVALS. There is hereby created and made part of the division of occupational and professional licenses a public works contractors license board. It shall be the responsibility and duty of the administrator of the division of occupational and professional licenses to administer and enforce the provisions of this chapter and to serve as secretary to the board. The board shall be composed of eight (8) members, who shall be appointed by the governor. One (1) member of the board shall be a person whose primary business is that of a "heavy construction" contractor, one (1) member shall be a person whose primary business is that of a "highway construction" contractor, one (1) member shall be a person whose primary business is that of a "building construction" contractor, one (1) member shall be a person whose primary business is that of a "specialty construction" contractor, as such construction terms are defined in this chapter, one (1) member shall be a subcontractor with a license no higher than a class "A," one (1) member shall be a "construction manager," one (1) member shall be a registered professional engineer, and one (1) member shall be a member of the general public with an interest in the rights of consumers of public works contracting services. All contractor members of the board shall be contractors holding a current unrevoked license at the time of their appointment, actively engaged in the contracting business and have been so engaged for a period of not less than five (5) years preceding the date of their appointment, and who shall so continue in the contracting business during their term of office. Each member of the board next preceding his appointment shall have been a citizen and resident of the state of Idaho for at least five (5) years. The governor shall appoint a member to said board for a term of three (3) years, and no member shall be appointed to more than two (2) consecutive terms. All members shall serve at the pleasure of the governor. Each member shall hold office after the expiration of their own term until their successor has been duly appointed and qualified. Vacancies on the board for any cause shall be filled by appointment by the governor for the balance of the unexpired term. Each member of the board shall receive a certificate of appointment from the governor and, before entering upon the discharge of his duties, shall file with the secretary of state the constitutional oath of office.

[54-1905, added 1941, ch. 115, sec. 5, p. 212; am. 1955, ch. 223, sec. 4, p. 480; am. 1974, ch. 13, sec. 148, p. 138; am. 1998, ch. 410, sec. 2, p. 1272; am. 1999, ch. 201, sec. 8, p. 535; am. 2000, ch. 438, sec. 1, p. 1396; am. 2001, ch. 300, sec. 4, p. 1089; am. 2001, ch. 301, sec. 1, p. 1098; am. 2016, ch. 340, sec. 23, p. 944; am. 2021, ch. 222, sec. 17, p. 631.]

54-1907. DUTIES AND POWERS OF THE BOARD -- SEAL. The board is authorized and directed to prescribe and amend rules consistent with this chapter for the administration of this chapter and to effectuate the purpose thereof, and for the investigation, classification, examination and licensing of public works contractors. The board shall adopt a seal, having upon it the words "Public Works Contractors License Board -- State of Idaho." The care and custody of the seal shall be with the administrator. Any member of the board may administer oaths and may take testimony concerning all matters within the jurisdiction of the board.

[54-1907, added 1941, ch. 115, sec. 7, p. 212; am. 1999, ch. 201, sec. 10, p. 536; am. 2001, ch. 300, sec. 6, p. 1090.]

54-1908. MEETINGS -- QUORUM. The board shall hold not less than two (2) regular meetings each year for the purpose of transacting such business as may properly come before it. Each year the board shall elect officers. Special or regular monthly meetings of the board may be held at such times as the board may provide in the rules. A majority of the board shall constitute a quorum. Two (2) members of the board may call a special meeting at any time. Due notice of each meeting of the board and the time and place thereof shall be given each member in the manner prescribed in the rules. Each member of the board shall be compensated as provided by section [59-509](#)(n), Idaho Code, and paid from the public works contractors license board fund.

[54-1908, added 1941, ch. 115, sec. 8, p. 212; am. 1955, ch. 223, sec. 5, p. 480; am. 1969, ch. 18, sec. 2, p. 30; am. 1980, ch. 247, sec. 66, p. 634; am. 1987, ch. 55, sec. 1, p. 91; am. 1998, ch. 410, sec. 3, p. 1273; am. 1999, ch. 201, sec. 11, p. 536; am. 2012, ch. 36, sec. 2, p. 107; am. 2013, ch. 187, sec. 9, p. 456; am. 2019, ch. 144, sec. 1, p. 495.]

54-1910. EXAMINATIONS, QUALIFICATIONS AND APPLICATIONS. Under such rules as the board may adopt, the administrator shall have the power and authority to investigate, classify, and to qualify applicants for licenses under this chapter, by written or oral examinations, or both.

The qualifications to be required of an applicant by the board are as follows:

(a) Such degree of experience, and such general knowledge of the building, safety, health and lien laws of the state, and of the rudimentary administrative principles of the contracting business, as may be deemed necessary by the board for the safety and protection of the public. The applicant if an individual may qualify as to the aforementioned experience and knowledge by personal appearance or by the appearance of his responsible managing employee, and if a copartnership or corporation, limited liability company, limited liability partnership and any other combination or organization, by the appearance of the responsible managing officer or member of the personnel of such applicant. If the person qualifying by examination as to experience and knowledge shall, for any reason whatsoever, cease to be connected with the licensee to whom the license is issued, such licensee shall so notify the administrator in writing within ten (10) days from such cessation. If such notice is given, the license shall remain in force for a reasonable length of time, to be determined by rules of the board. If such licensee fails to so notify the administrator within said ten (10) day period, then at the end of such ten (10) day period the license of such licensee shall be automatically suspended. A suspended license shall be reinstated upon the filing with the administrator of an affidavit executed by the licensee or a member of the suspended firm, to the effect that the individual originally examined for the firm has been replaced by another individual who has been qualified by examination as herein provided, and who shall not have had a license suspended or revoked, nor have been connected with any licensee who has had a license suspended or revoked for reasons that should preclude him from personally qualifying as to good character as herein required of an applicant.

(b) The possession by the applicant of good character. Lack of character may be established by showing any of the following:

(1) That the applicant has committed or done any act which, if committed or done by any licensed contractor, would be grounds for the suspension or revocation of a contractor's license; or

(2) That the applicant has committed or done any act involving dishonesty, fraud or deceit whereby the applicant has been benefited or whereby some injury has been sustained by another; or

(3) That the applicant bears a bad reputation for honesty and integrity; or

(4) That the applicant has been convicted of a crime that is deemed relevant in accordance with section [67-9411](#) (1), Idaho Code.

(c) That he has never been refused a license or had a license revoked for reasons that would preclude the granting of the license applied for.

(d) No license shall be issued to a corporation, copartnership, limited liability company, limited liability partnership or other combination or organization if any responsible officer of such corporation, or other combination or organization, or any member of such copartnership does not meet the qualifications required of an applicant other than those qualifications relating to knowledge and experience.

(e) To obtain an original license under this chapter, the applicant shall submit to the administrator, on such forms as the administrator shall prescribe, accompanied by the required fee for the class of license applied for, and in accordance with such rules as may be deemed necessary and adopted by the board in order to carry out the foregoing provisions of this section, a sworn written application for such license, containing the statement that the applicant desires the issuance of a license under the terms of this chapter. The information contained in such application forms shall include a complete statement of the general nature of the applicant's contracting business, and stating concisely the applicant's experience and qualifications as a contractor; the value and character of contract work completed and for whom performed during the three (3) year period prior to filing the application; a general description of the applicant's machinery and equipment; a complete financial statement that may include a letter from the applicant's bonding company stating the amount of the applicant's bonding capability per project and in the aggregate, on such forms and disclosing such information as shall be required by the administrator, together with such additional information as may be required by the administrator to determine the applicant's fitness for a license under this chapter. The application shall contain, if by an individual, the individual's name, social security number and business address; if by a copartnership, its business address and the names and addresses of all partners; and if by a corporation, association, limited liability company, limited liability partnership or other organization, its business address and the names and addresses of the president, vice president, secretary, and chief construction managing officers, or responsible managing employee. A request for a licensing class higher than that for which the applicant qualifies must go to the administrator for review and may be approved up to the bond limit. A final appeal of a decision of the administrator may be made to the board.

[54-1910, added 1941, ch. 115, sec. 10, p. 212; am. 1969, ch. 18, sec. 3, p. 30; am. 1999, ch. 201, sec. 12, p. 537; am. 2001, ch. 300, sec. 7, p. 1090; am. 2001, ch. 301, sec. 2, p. 1099; am. 2020, ch. 175, sec. 24, p. 527.]

54-1911. FILING, ISSUANCE AND DENIAL OF LICENSES -- FEES NOT REFUNDED. Applications for original licenses, together with the fees therefor, shall be filed with the administrator. After such examination and investigation as may be prescribed by rule, in accordance with the provisions of this chapter, if no valid reason exists for further investigation of applicant, the administrator shall issue a license to applicant permitting him to engage in business as a contractor under the terms of this chapter for the licensing period designated. If the information brought to the attention of the administrator concerning the character and integrity of an applicant is such that it would appear proper to deny the application, the applicant shall be notified by certified mail to show cause within such time, not less than five (5) days, nor more than thirty (30) days, why the application should not be denied.

Fees accompanying original applications under this section are for the administration and enforcement of the provisions of this chapter and shall not be refunded to the applicant.

[54-1911, added 1941, ch. 115, sec. 11, p. 212; am. 1955, ch. 223, sec. 6, p. 480; am. 1965, ch. 227, sec. 2, p. 535; am. 1980, ch. 130, sec. 1, p. 288; am. 1993, ch. 237, sec. 3, p. 820; am. 1999, ch. 201, sec. 13, p. 538; am. 2001, ch. 300, sec. 8, p. 1092.]

54-1912. EXPIRATION AND RENEWAL OF LICENSES -- FEES. (1) All contractors required by the provisions of this section to be licensed, shall be licensed for a period of twenty-four (24) consecutive calendar months. License renewal shall be in accordance with the provisions of section [67-2614](#), Idaho Code.

(2) Application for renewal of a current license prior to its expiration date shall authorize operation as a contractor by such licensee until actual issuance of such renewal license for the ensuing twenty-four (24) months or until the final decision of the board is rendered in any proceeding. An applicant for renewal of a license issued under this chapter shall not be required to take any other or further examination to obtain such renewal license, provided that at the time of such application his license has not been suspended or permitted to lapse or expire for any cause for a period of one (1) year or more. All applications for renewal of license shall be made on forms prescribed by the administrator and shall be accompanied by the renewal fee and a complete current financial statement on such forms and disclosing such information as shall be required by rule, duly certified as true by the applicant, and if a copartnership, limited liability company or limited liability partnership by a member thereof, and if a corporation, by its executive or financial officer; such renewal application shall be filed prior to the first day of such renewal licensing period. Fees accompanying renewal applications under this section are for the administration and enforcement of the provisions of this chapter and shall not be refunded to the applicant.

(3) The license issued under this chapter shall be signed both by the administrator and by the licensee, shall be nontransferable, and shall be displayed in the licensee's main office or chief place of business, and satisfactory evidence of the possession thereof and of the current renewal thereof shall be exhibited by licensee upon demand.

(4) A surviving member or members of a licensed copartnership, limited liability company or limited liability partnership by reason of death shall be entitled to continue in business under such license until the expiration

date thereof, provided due application for permission is made to the administrator within thirty (30) days after death of the member, and the application is approved by the administrator in accordance with rules.

(5) All licensees shall report to the administrator all changes of personnel, name style or addresses recorded under this chapter within thirty (30) days after the changes are made.

[54-1912, added 1941, ch. 115, sec. 12, p. 212; am. 1955, ch. 223, sec. 7, p. 480; am. 1965, ch. 227, sec. 3, p. 535; am. 1969, ch. 18, sec. 4, p. 30; am. 1980, ch. 130, sec. 2, p. 288; am. 1993, ch. 237, sec. 4, p. 821; am. 1999, ch. 201, sec. 14, p. 539; am. 2001, ch. 300, sec. 9, p. 1093; am. 2024, ch. 86, sec. 15, p. 399.]

54-1913. RECORDS, LISTS AND INFORMATION. The administrator shall maintain, open to public inspection during office hours, a complete record of all retained applications, licenses issued, licenses renewed, data collected through the provisions of section [54-1904A](#), Idaho Code, and all revocations, cancellations and suspensions of licenses, and shall furnish a certified copy of any license issued, upon receipt of the sum of fifty cents (50¢), which certified copy shall be received in all courts and elsewhere as evidence of the facts stated therein.

Whenever funds are available for the purpose, the administrator shall publish a list of the names and addresses of contractors licensed under this chapter and such further information with respect to this chapter and its administration as the administrator deems proper. The administrator may furnish the lists to such public works and building departments, public officials or public bodies, and other persons interested in or allied with the building and construction industry in this or any other state as deemed advisable, and at such intervals as deemed necessary, whenever funds therefor are available. Copies of the lists may also be furnished by the administrator upon request to any firm or individual upon payment of a reasonable fee fixed by the board.

Whenever funds are available for the purpose, the administrator may publish and disseminate to licensees and to public officials or other persons interested in or allied with the building and construction industry, such information with relation to the administration and enforcement of this chapter as deemed necessary to carry out its purposes.

[54-1913, added 1941, ch. 115, sec. 13, p. 212; am. 1974, ch. 13, sec. 149, p. 138; am. 1980, ch. 130, sec. 3, p. 290; am. 1990, ch. 213, sec. 80, p. 548; am. 1993, ch. 237, sec. 5, p. 822; am. 1999, ch. 201, sec. 15, p. 540; am. 2001, ch. 183, sec. 23, p. 635; am. 2001, ch. 300, sec. 10, p. 1093; am. 2005, ch. 213, sec. 27, p. 661.]

54-1914. ADMINISTRATIVE ENFORCEMENT PROCEEDINGS. (1) The administrator may upon his own motion or at the direction of the board, and shall upon the verified complaint in writing of any person, investigate the actions of any public works contractor within the state and may undertake to reclassify, retype, place on probation, defer or precondition licensure, impose an administrative fine not to exceed twenty thousand dollars (\$20,000) per violation, temporarily suspend or permanently revoke any license if the holder, while a licensee or applicant hereunder, is guilty of or commits any one (1) or more of the following acts or omissions:

- (a) Abandonment without legal excuse of any construction project or operation engaged in or undertaken by the licensee as a contractor;
- (b) Diversion of funds or property received under express agreement for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and their application or use for any other construction project or operation, obligation or purpose, with intent to defraud or deceive creditors or the owner;
- (c) Willful departure from or disregard of plans or specifications in any material respect, and prejudicial to another, without consent of the owner or his duly authorized representative, and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans and specifications;
- (d) Willful or deliberate disregard and violation of valid building laws of the state, or of any political subdivision thereof, or of the safety laws or labor laws or compensation insurance laws of the state;
- (e) Misrepresentation of a material fact by an applicant in obtaining a license;
- (f) Aiding or abetting an unlicensed person to evade the provisions of this chapter or conspiring with an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as agent or partner or associate or otherwise of an unlicensed person, with the intent to evade the provisions of this chapter;
- (g) Failure in any material respect to comply with the provisions of this chapter;
- (h) Acting in the capacity of a contractor under any license issued hereunder except: (1) in the name of the licensee as set forth upon the license; or (2) in accordance with the personnel of the licensee as set forth in the application for such license, or as later changed as provided in this chapter;
- (i) Knowingly accepting a bid from or entering into a contract with another contractor for a portion of a public works project if at that time such contractor does not possess the appropriate license to do that work as provided in this chapter;
- (j) Willful failure or refusal without legal excuse on the part of a licensee as a contractor to finish a construction project or operation with reasonable diligence, causing material injury to another;
- (k) Willful or deliberate failure by any licensee, or agent or officer thereof, to pay any moneys when due, for any materials or services rendered in connection with his operations as a contractor, when he has the capacity to pay or when he has received sufficient funds therefor as payment for the particular construction work, project or operation for which the services or materials were rendered or purchased; or denial of any such amount due or the validity of the claim thereof with intent to secure for himself, his employer, or other person any discount upon such indebtedness or with intent to hinder, delay or defraud the person to whom such indebtedness is due;
- (l) Suffers a change in financial circumstances which may impair the licensee's financial responsibility;
- (m) Holding oneself or one's firm out as a public works contractor by engaging in any act meeting the definition or character of a public

works contractor as defined herein without a legally required license;
or

(n) Failure to comply with subsection (1), (2) or (3) of section [67-2310](#), Idaho Code.

(2) The administrator may upon his own motion or at the direction of the board, and shall upon the verified complaint in writing of any licensed public works contractor eligible to perform public works contracting duties, investigate the actions of any public entity within the state and may impose an administrative fine not to exceed five thousand dollars (\$5,000) per violation if the public agency contracts for public works construction with an unlicensed or improperly licensed contractor or knowingly awards a contract based upon a bid or proposal not in compliance with subsection (1) or (2) of section [67-2310](#), Idaho Code.

(3) The assessment of costs and fees incurred to investigate and prosecute or defend a complaint under this section shall be governed by the provisions of section [12-117](#)(5), Idaho Code.

[54-1914, added 1941, ch. 115, sec. 14, p. 212; am. 1965, ch. 227, sec. 4, p. 535; am. 1982, ch. 147, sec. 3, p. 410; am. 1999, ch. 201, sec. 16, p. 540; am. 2000, ch. 318, sec. 1, p. 1073; am. 2001, ch. 300, sec. 11, p. 1094; am. 2005, ch. 213, sec. 28, p. 661; am. 2007, ch. 127, sec. 1, p. 382; am. 2018, ch. 348, sec. 11, p. 808.]

54-1915. PROCEDURE FOR IMPOSITION OF DISCIPLINE. (1) Upon the filing of a verified complaint with the administrator charging a licensee or public entity with the commission of any act constituting a cause for disciplinary action within two (2) years prior to the date of filing, or upon such a finding made by the administrator following an investigation, the administrator shall forthwith issue a notice, accompanied by a copy of the complaint, directing the licensee or public entity, within ten (10) days after service of the notice, to appear by filing with the administrator a verified answer to the complaint.

(2) The administrator shall have the power to appoint, by an order in writing, a hearing officer to take testimony, who shall have power to administer oaths, issue subpoenas and compel the attendance of witnesses.

(3) Service of the notice and complaint upon the licensee or public entity shall be fully effected by mailing a true copy of the notice and complaint by certified mail addressed to the licensee at his last address of record with the administrator or to the public entity at its principal place of business. Service of the notice and complaint shall be complete at the time of deposit in accordance with the provisions of the Idaho rules of civil procedure relating to service by mail.

(4) The hearing shall be conducted in accordance with the provisions of [chapter 52, title 67](#), Idaho Code, and the Idaho rules of administrative procedure.

(5) Following the hearing, the hearing officer shall issue recommended findings of fact, conclusions of law, and order. The recommended order may:

(a) Provide for the immediate complete suspension by the licensee of all operations as a contractor during the period fixed by the decision.

(b) Permit the licensee to complete any or all contracts shown by competent evidence taken at the hearing to be then uncompleted.

(c) Impose upon the licensee compliance with such specific conditions as may be just in connection with his operations as a contractor disclosed at the hearing and may further provide that until such conditions

are complied with no application for restoration of the suspended or revoked license shall be accepted by the administrator.

(d) Provide for the imposition of any of the sanctions provided by section [54-1914](#), Idaho Code.

(6) Following a review of the entire hearing record, the administrator shall issue a final decision.

[54-1915, added 1941, ch. 115, sec. 15, p. 212; am. 1993, ch. 216, sec. 72, p. 651; am. 1999, ch. 201, sec. 18, p. 542; am. 2001, ch. 300, sec. 13, p. 1095; am. 2005, ch. 213, sec. 29, p. 663.]

54-1916. JUDICIAL REVIEW -- APPEALS PROCEDURE. (1) The applicant, public entity, or licensee, as the case may be, shall have the right to judicial review of an action of the administrator refusing issuance of a license, or actions taken by the board pursuant to section [54-1914](#), Idaho Code, in accordance with the provisions of [chapter 52, title 67](#), Idaho Code.

(2) Appeals may be taken from the judgment of said district court to the supreme court of Idaho by either party in the same manner that appeals are taken and records prepared on appeal in civil actions.

(3) On any appeal to the district court by a licensee, the court may, in its discretion, upon the filing of a proper bond by the licensee in an amount to be fixed by the court, but not less than one thousand dollars (\$1,000), guaranteeing the compliance by the licensee with specific conditions imposed upon him by the board's decision, if any, permit the licensee to continue to do business as a contractor pending entry of judgment by the district court.

(4) On any appeal to the district court by a public entity, the court may, in its discretion, suspend the action taken by the board pursuant to section [54-1914](#), Idaho Code, pending entry of judgment by the district court.

[54-1916, added 1941, ch. 115, sec. 16, p. 212; am. 1993, ch. 216, sec. 73, p. 653; am. 1993, ch. 237, sec. 6, p. 823; am. 1999, ch. 201, sec. 19, p. 543; am. 2001, ch. 300, sec. 14, p. 1096; am. 2005, ch. 213, sec. 30, p. 664.]

54-1917. RENEWAL OF SUSPENDED OR REVOKED LICENSE. After suspension or revocation of the license upon any of the grounds set forth in this chapter, the administrator may renew the license upon proof of compliance by the contractor with all provisions of the decision as to renewal or, in the absence of such decision or any provisions therein as to renewal, in the sound discretion of the administrator. After revocation of a license upon any of the grounds set forth in this chapter, the license shall not be renewed or reissued within a period of one (1) year after the final decision of revocation and then only on proper showing that all loss caused by the act or omission for which the license was revoked has been fully satisfied and that all conditions imposed by the decision of revocation have been complied with. At any time before a case is finally submitted to the board for decision, whether upon an original hearing, or upon a rehearing, a complaint or answer may, upon the motion of either party, and with the consent of the board, or upon the board's own motion, be amended. If new charges are alleged in an amended complaint, the defendant may, upon request, be allowed ten (10) days to prepare his defense to such new charges.

[54-1917, added 1941, ch. 115, sec. 17, p. 212; am. 2001, ch. 300, sec. 15, p. 1097.]

54-1918. SUBPOENAS AND PROCESS. In any investigation, proceeding or hearing which the administrator is empowered to institute, conduct or hold, the board, and each member thereof, may administer oaths, certify to official acts, issue subpoenas for the attendance of witnesses and the production of books, papers and records, in like manner and to the same extent as courts of record, and with their aid when necessary. The process issued by the board, or any member thereof, shall extend to all parts of the state and may be served by any person authorized to serve process, or by any person designated for that purpose by the board or a member thereof. The person executing any such process shall receive such compensation as may be allowed by the board and not to exceed the fees prescribed by law for similar services, and such fees shall be paid in the same manner as provided herein for the payment of fees for witnesses. Any citation, notice or other process or any paper or document required by this chapter to be served on any party may be personally served as provided in the code of civil procedure, with the same effect as if served by mail in the manner provided in this chapter.

[54-1918, added 1941, ch. 115, sec. 19, p. 212; am. 1999, ch. 201, sec. 20, p. 543; am. 2001, ch. 300, sec. 16, p. 1097.]

54-1919. REVOCATION BY COURT. The suspension or revocation of a license as provided in this act may also be included in any action otherwise proper in any court involving the licensee's performance of his legal obligation as a contractor.

[54-1919, added 1941, ch. 115, sec. 20, p. 212; am. 1999, ch. 201, sec. 21, p. 544.]

54-1920. PENALTIES -- INJUNCTION. (1) Any person, firm, copartnership, corporation, limited liability company, limited liability partnership, association or other organization acting in the capacity of a public works contractor within the meaning of this chapter, without a license as herein provided or fails to comply with the provisions of subsection (1), (2) or (3) of section [67-2310](#), Idaho Code, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in the county jail for a term not to exceed one (1) year or by both such fine and imprisonment, at the discretion of the court. The same penalties shall apply, upon conviction to any member of a copartnership, or to any construction, managing or directing officer of any corporation, limited liability company or limited liability partnership, or other organization consenting to, participating in, or aiding or abetting any such violation of this chapter.

(2) Every public officer who knowingly lets a public contract to any person, firm, copartnership, corporation, limited liability company, limited liability partnership, association or other organization who does not hold a license as required by the provisions of this chapter or knowingly fails to comply with the provisions of subsection (1) or (2) of section [67-2310](#), Idaho Code, shall be guilty of a misdemeanor and upon conviction, punishable as provided in this section, unless, however, there be no qualified bidder willing to undertake the public works covered by the contract. No person engaged in the business or acting in the capacity of a

contractor, may bring or maintain any action in any court of this state for the collection of compensation for the performance of any act or contract for which a license is required by this chapter without alleging and providing that he was a duly licensed contractor at all times during the performance of such act or contract.

(3) In addition to any other penalties specified in this section, whenever any person violates the provisions of this chapter by acting as a public works contractor without a license, the administrator may maintain an action in the name of the state of Idaho to enjoin the person from any further violations. Such action may be brought either in the county in which the acts are claimed to have been or are being committed, in the county where the defendant resides or in Ada county. Upon the filing of a verified complaint in the district court, the court, if satisfied that the acts complained of have been or probably are being or may be committed, may issue a temporary restraining order and/or preliminary injunction, without bond, enjoining the defendant from the commission of any such act or acts constituting the violation. A copy of the complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other similar civil actions. If the commission of the act or acts is established, the court shall enter a decree permanently enjoining the defendant from committing such act or acts. If an injunction issued under the provisions of this section is violated, the court, or the judge thereof at chambers, may summarily try and punish the offender for contempt of court.

[54-1920, added 1941, ch. 115, sec. 21, p. 212; am. 1955, ch. 223, sec. 8, p. 480; am. 1969, ch. 18, sec. 5, p. 30; am. 1999, ch. 201, sec. 22, p. 544; am. 2000, ch. 318, sec. 2, p. 1074; am. 2002, ch. 127, sec. 2, p. 356; am. 2007, ch. 127, sec. 2, p. 383.]

54-1920A. ENFORCEMENT. Upon request of the administrator, it shall be the duty of the attorney general to institute and prosecute civil enforcement actions or injunctive actions as provided in section [54-1920](#), Idaho Code. The attorney general may delegate the authority and duty under this section to the prosecuting attorney of the county in which the action may arise.

[54-1920A, added 2002, ch. 127, sec. 3, p. 357.]

54-1921. OCCUPATIONAL LICENSES FUND -- RECEIPTS AND DISBURSEMENTS. All fees, charges, and fines received by the board under the provisions of this chapter shall be deposited in the state treasury to the credit of the occupational licenses fund, and all costs and expenses incurred by the board under the provisions of this chapter shall be a charge against and paid from the fund for such purposes. The funds collected under this chapter shall be immediately available for the administration of this chapter, the provisions of any other law notwithstanding.

[54-1921, added 2021, ch. 224, sec. 48, p. 676.]

54-1922. ACT SUPERIOR TO ALL LAWS IN CONFLICT. Wherever any provisions of the existing laws of the state of Idaho are in conflict with the provisions of this act, the provisions of this act shall control and supersede all such laws.

[54-1922, added 1941, ch. 115, sec. 23, p. 212; am. 1999, ch. 201, sec. 24, p. 545.]

54-1923. TITLE. This act shall be known as "Public Works Contractors License Act."

[54-1923, added 1941, ch. 115, sec. 24, p. 212.]

54-1924. SEPARABILITY. If any part or parts of this act shall be adjudged by the courts to be unconstitutional or invalid, the same shall not affect the validity of any part or parts thereof which can be given effect without the part or parts adjudged to be unconstitutional or invalid.

[54-1924, added 1941, ch. 115, sec. 25, p. 212; am. 1999, ch. 201, sec. 25, p. 545.]

54-1925. PUBLIC CONTRACTS BOND ACT -- SHORT TITLE. This act may be cited as the Public Contracts Bond Act.

[54-1925, added 1965, ch. 28, sec. 1, p. 43.]

54-1926. PERFORMANCE AND PAYMENT BONDS REQUIRED OF CONTRACTORS FOR PUBLIC BUILDINGS AND PUBLIC WORKS OF THE STATE, POLITICAL SUBDIVISIONS AND OTHER PUBLIC INSTRUMENTALITIES -- REQUIREMENTS FOR BONDS -- GOVERNMENTAL OBLIGATIONS. Before any contract equal to or greater than fifty thousand dollars (\$50,000) for the construction, alteration, or repair of any public building or public work or improvement of the state of Idaho, or of any county, city, town, municipal corporation, township, school district, public educational institution, or other political subdivision, public authority, or public instrumentality, or of any officer, board, commission, institution, or agency of the foregoing, is executed, the person to whom such contract was awarded shall furnish to the state of Idaho, or to such county, city, town, municipal corporation, township, school district, public educational institution, or other political subdivision, public authority, or public instrumentality, or to such officer, board, commission, institution, or agency thereof, bonds that shall become binding upon the execution of the contract, and the person to whom the contract was awarded is hereinafter designated as "contractor":

(1) A performance bond in any amount to be fixed by the contracting body, but in no event less than eighty-five percent (85%) of the contract amount conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions thereof. Said bond shall be solely for the protection of the public body executing the contract.

(2) A payment bond in an amount to be fixed by the contracting body but in no event less than eighty-five percent (85%) of the contract amount, solely for the protection of persons supplying labor or materials, or renting, leasing, or otherwise supplying equipment to the contractor or his subcontractors in the prosecution of the work provided for in such contract.

(3) Public bodies requiring a performance bond or payment bond in excess of fifty percent (50%) of the total contract amount shall not be authorized to withhold from the contractor or subcontractor any amount exceeding five percent (5%) of the total amount payable as retainage. Further, the public body shall release to the contractor any retainage for those portions of the project accepted by the contracting public body and the contractors as

complete within thirty (30) days after such acceptance. Contractors, contracting with subcontractors pursuant to contract work with a public body, shall not be authorized to withhold from the subcontractor any amount exceeding five percent (5%) of the total amount payable to the subcontractor as retainage. The contractor shall remit the retainage to the subcontractor within thirty (30) days after completion of the subcontract.

Each bond shall be executed by a surety company or companies duly authorized to do business in this state, or the contractor may deposit any of the type of government obligations listed in subsection (2) (h) of section [54-1901](#), Idaho Code, in lieu of furnishing a surety company performance or payment bond or bonds. In the case of contracts of the state or a department, board, commission, institution, or agency thereof the aforesaid bonds shall be payable to the state, or particular state agency where authorized. In case of all other contracts subject to this chapter, the bonds shall be payable to the public body concerned.

Said bonds shall be filed in the office of the department, board, commission, institution, agency or other contracting body awarding the contract.

Nothing in this section shall be construed to limit the authority of the state of Idaho or other public body hereinabove mentioned to require a performance bond or other security in addition to these, or in cases other than the cases specified in this chapter.

It shall be illegal for the invitation for bids, or any person acting or purporting to act, on behalf of the contracting body to require that such bonds be furnished by a particular surety company, or through a particular agent or broker.

[54-1926, added 1965, ch. 28, sec. 2, p. 43; am. 1979, ch. 124, sec. 1, p. 383; am. 1980, ch. 199, sec. 1, p. 460; am. 1986, ch. 67, sec. 2, p. 191; am. 1992, ch. 141, sec. 1, p. 434; am. 1999, ch. 166, sec. 1, p. 453; am. 2005, ch. 213, sec. 31, p. 664.; am. 2017, ch. 197, sec. 3, p. 483.]

54-1926A. USE OF GOVERNMENT OBLIGATIONS INSTEAD OF SURETY BONDS. (a) If a person is required under a law of the state of Idaho to give a surety bond, the person may give a government obligation, as defined in subsection (2) (h) of section [54-1901](#), Idaho Code. The government obligation shall:

- (1) Be given to the official having authority to approve the surety bond, or its authorized custodian;
- (2) Be in an amount equal at fair market value to the penal sum of the required surety bond; and
- (3) Authorize the official receiving the obligation to collect or sell the obligation if the person defaults on a required condition.

(b) (1) An official receiving a government obligation under subsection (a) of this section may deposit it with:

1. The state treasurer;
2. A national or state chartered bank; or
3. A depository designated by the state treasurer.

(2) The state treasurer, bank, or depository shall issue a safekeeping receipt that describes the obligation deposited.

(c) Using a government obligation instead of a surety bond for security is the same as using:

- (1) A corporate surety bond;
- (2) A certified check;
- (3) A bank draft;

- (4) A post office money order; or
- (5) Cash.

(d) When security is no longer required, a government obligation given instead of a surety bond shall be returned to the person giving the obligation. If a person supplying labor or material to a contractor defaulting under the public contracts bond act, sections [54-1925](#) through [54-1930](#), Idaho Code, files with the contracting body the application and affidavit provided under section [54-1927](#), Idaho Code, the contracting body:

- (1) May return to the contractor the government obligation given as security or proceeds of the government obligation given under the public contracts bond act, sections [54-1925](#) through [54-1930](#), Idaho Code, only after the ninety (90) day period for bringing a civil action under section [54-1927](#), Idaho Code;

- (2) Shall hold the government obligation or the proceeds subject to the order of the court having jurisdiction of the action if a civil action is brought in the ninety (90) day period.

(e) The provisions of this section do not affect the:

- (1) Priority of a claim of the contracting body against a government obligation given under this section;
- (2) Right or remedy of the contracting body for default on an obligation provided under this section;
- (3) Authority of a court over a government obligation given as security in a civil action; and
- (4) Authority of an official of the state of Idaho authorized by another law to receive a government obligation as security.

(f) To avoid frequent substitution of government obligations, the state treasurer may promulgate rules limiting the effect of the provisions of this section, to a government obligation maturing more than one (1) year after the date the obligation is given as security.

[54-1926A, added 1986, ch. 67, sec. 3, p. 192; am. 1992, ch. 17, sec. 1, p. 50; am. 2005, ch. 213, sec. 32, p. 665.]

54-1927. CLAIMS FOR LABOR OR MATERIAL FURNISHED OR EQUIPMENT SUPPLIED -- SUIT ON CONTRACTOR'S PAYMENT BOND -- PROCEDURE -- LIMITATION. Every claimant who has furnished labor or material or rented, leased, or otherwise supplied equipment in the prosecution of the work provided for in such contract in respect of which a payment bond is furnished under this act, and who has not been paid in full therefor before the expiration of a period of ninety (90) days after the day on which the last of the labor was done or performed by him or material or equipment was furnished or supplied by him for which such claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute such action to final judgment for the sum or sums justly due him and have execution thereon; provided, however, that any such claimant having a direct contractual relationship with a subcontractor of the contractor furnishing such payment bond but no contractual relationship expressed or implied with such contractor shall not have a right of action upon such payment bond unless he has given written notice to such contractor within ninety (90) days from the date on which such claimant performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the person to whom the material or equipment was furnished or supplied or for whom the labor was done or performed. Each notice shall be

served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office or conducts his business or at his residence.

The contracting body and the agent in charge of its office, is authorized and directed to furnish, to anyone making application therefor who submits an affidavit that he has supplied labor, equipment, or materials for such work and payment therefor has not been made or that he is being sued on any such bond, or that it is the surety thereon, a certified copy of such bond and the contract for which it was given, which copy shall be prima-facie evidence of the contents, execution, and delivery of the original. Applicants shall pay for such certified copies such reasonable fees as the contracting body or the agent in charge of its office fixes to cover the actual cost of the preparation thereof.

Every suit instituted on the aforesaid payment bond shall be brought in appropriate court in any county in which the contract was to be performed and not elsewhere; provided, however, that no such suit shall be commenced after the expiration of one (1) year from the date on which the claimant performed the last of the labor or furnished or supplied the last of the material or equipment for which such suit is brought, except, that if the claimant is a subcontractor of the contractor, no such suit shall be commenced after the expiration of one (1) year from the date on which final payment under the sub-contract became due.

[54-1927, added 1965, ch. 28, sec. 3, p. 43; am. 1980, ch. 199, sec. 2, p. 461.]

54-1928. LIABILITY OF PUBLIC BODY FOR FAILURE TO OBTAIN PAYMENT BOND. Any public body subject to this act which shall fail or neglect to obtain the delivery of the payment bond as required by this act, shall, upon demand, itself promptly make payment to all persons who have supplied materials or performed labor in the prosecution of the work under the contract, and any such creditor shall have a direct right of action upon his account against such public body in any court having jurisdiction in any county in which the contract was to be performed and executed which action shall be commenced within one (1) year after the furnishing of materials or labor.

[54-1928, added 1965, ch. 28, sec. 4, p. 43.]

54-1929. ATTORNEY'S FEES ALLOWED. In any action brought upon either of the bonds provided herein, or against the public body failing to obtain the delivery of the payment bond, the prevailing party, upon each separate cause of action, shall recover a reasonable attorney's fee to be taxed as costs.

[54-1929, added 1965, ch. 28, sec. 5, p. 43.]

54-1930. MEANING OF TERMS USED IN ACT. The terms "person" and "claimant" and the masculine pronoun as used in this act shall include individuals, associations, copartnerships, or corporations.

[54-1930, added 1965, ch. 28, sec. 6, p. 43.]