DIVISION OF BUILDING SAFETY

PUBLIC WORKS CONTRACTORS LICENSE
BOARD MEETING

JANUARY 11, 2010
OBJECTIVE: To approve the January 11, 2010 Public Works Contractors License Board’s Meeting Agenda.

ACTION: Consent

BACKGROUND:

PROCEDURAL HISTORY:

ATTACHMENTS: Copy of the January 11, 2010 Public Works Contractors License Board’s Tentative Agenda.
NOTICE OF PUBLIC MEETING

AGENDA

Monday, January 11, 2010

(Please note the following agenda items and time schedule are tentative pending Board action.)

9:30 a.m. CALL TO ORDER – Torry McAlvain, Chairman
   o Roll Call & Introductions
   o Open Forum

CONSENT AGENDA

1. Approval of the January 11, 2010 Agenda

2. Approval of the October 5, 2009 Board Meeting Minutes

INFORMATIONAL AGENDA

3. Bureau Chief’s Report – Jean Frenette

4. Administrator’s Report
   b. Administrator – C. Kelly Pearce

5. Highway Design Build Proposed Legislation – Torry McAlvain

NEW BUSINESS

EXECUTIVE SESSION (If required)

12:00 p.m. ADJOURN

All times, other than beginning, are approximate. Agenda items may shift depending on Board preference.

12/16/09
<table>
<thead>
<tr>
<th>Agenda Item No. 02</th>
<th>Minutes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>OBJECTIVE:</strong></td>
<td>To approve the October 5, 2009 Public Works Contractors License Board Meeting Minutes.</td>
</tr>
<tr>
<td><strong>ACTION:</strong></td>
<td>Consent</td>
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<tr>
<td><strong>BACKGROUND:</strong></td>
<td></td>
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<tr>
<td><strong>PROCEDURAL HISTORY:</strong></td>
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<tr>
<td><strong>ATTACHMENTS:</strong></td>
<td>Copy of the October 5, 2009 Public Works Contractors License Board Meeting Minutes.</td>
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</table>
The meeting was called to order by Chairman Torry McAlvain at 9:50 a.m. on Monday, October 5, 2009.

**Board Members Present:**  
Torry McAlvain, Chairman  
(Teleconference)  
Steffani Lippert (Teleconference)  
Ken Worst (Teleconference)  
Alan Smith (Teleconference)  
Lisa Hatch  

**Board Members Absent:**  
Arlan Smith, Plans Review Program Manager  
John Sheldon, Vice Chairman  
Jerry A. Peterson  

**DBS Staff Present:**  
C. Kelly Pearce, Administrator  
Steve Keys, Deputy Administrator, Operations  
Janice Foster, Deputy Administrator, Administration  
Patrick Grace, Deputy Attorney General  
Kirk Weiskircher, Financial Specialist, Principal  
Jean Frenette, PWCL Bureau Chief  
Bill Hatch, Public Information Officer  
Arlan Smith, Plans Review Program Manager  
Heather Carr, Outreach Advisor  
Rod Samuelson, Outreach Advisor  
Renee Bryant, Administrative Assistant 2/Board Secretary  
Sharon Chisom, Office Specialist 2

**Open Forum**  
No items were addressed.

**Approval of the October 5, 2009 Agenda**  
*MOTION:* Steffani Lippert made a motion to approve the October 5, 2009 Agenda. Alan Smith seconded. All in favor, motion carried.

**Approval of the July 6, 2009 Board Meeting Minutes**  
*MOTION:* Lisa Hatch made a motion to approve the July 6, 2009 Meeting Minutes. Alan Smith seconded. All in favor, motion carried.

**Approval of the August 10, 2009 Special Board Meeting Minutes**  
A question arose as to whether the topic “Estimated Cost” was originally discussed at the July or August Board meeting. After a brief discussion it was determined the topic was addressed at the July 6, 2009 meeting with the Board reviewing and voting on a draft proposal at the August 10, 2009 meeting.
Patrick Grace explained that the intent of the first motion, as stated on page two, was to hold a special teleconference meeting on August 27, 2009, if necessary. Steffani Lippert agreed. It was determined the words “if necessary” should be incorporated into the motion.

**MOTION:** Steffani Lippert made a motion to approve the August 10, 2009 “Special” Meeting Minutes as presented with corrections. Lisa Hatch seconded. All in favor, motion carried.

♦ **Schedule 2010 Meetings**
The 2010 PWCL Board meeting dates are as follows: January 11th (Monday), April 12th (Monday), July 6th (Tuesday) and October 4th (Monday).

**MOTION:** Lisa Hatch made a motion to accept the 2010 PWCL Board meeting dates. Alan Smith seconded. All in favor, motion carried.

♦ **Statutory Change – I.C. 54-1903 Exemptions**
Following concerns that were raised at the August meeting, Patrick Grace created and presented draft language which clarifies the actual construction or repair portion of any public works project the employee of a local jurisdiction can perform. It was also expressed that this is a fundamental change and should be contained in statute.

The Board agreed the new verbiage should be a separate paragraph under 54-1903(a), which expresses limitations the Board has approved on public works projects.

**MOTION:** Steffani Lippert made a motion to accept the draft proposal to Idaho Code 54-1903a “Exceptions”, with an amendment that the new language be a separate paragraph. Ken Worst seconded. All in favor, motion carried.

♦ **Bureau Chief’s Report**
**Outreach Advisor** – The Bureau welcomes Rod Samuelson as the newest Outreach Advisor. The southern section of Idaho has the largest population of contractors and has been divided into two sections. Mr. Samuelson will be responsible for the area east of Boise; i.e., Mountain Home, Buhl, and Ketchum/Hailey. Heather Carr will remain in the Ada, Adams, Canyon, and Washington county areas.

**Licensing** – The following licenses were issued this quarter: 138 originals, 806 renewals, 49 upgrades and 26 downgrades.

**Assessments** – There were 34 assessment cases created from July through September. Twenty three cases remain open, with two hearing requests. The hearing process was briefly explained. As of today, the Bureau has collected approximately $54,000 in assessments.

♦ **Administrator’s Report**
**Governor’s Summit Conference** – Administrator Pearce complimented Chairman McAlvain on his participation in the Governor’s Summit Conference.

**Occupational Licensing** – A letter was sent to Occupational Licensing requesting they clarify, on their website and outgoing documentation, the requirements for a Public Works project/license.
Economy – The project “HOKU” in Pocatello has found a benefactor in the Chinese government. The construction of the plant proceeds at a full pace. It is anticipated that by this time next year the plant will be in full production of the building of polysilicon solar cells for worldwide distribution.


Outreach – The Division apprised the Board of two situations where the Division educated two cities regarding the Public Works laws; avoiding potential assessments.

DOX Presentation – Arlan Smith explained the Division’s role of ensuring construction contract documents are in compliance with the codes. He also reviewed, via PowerPoint presentation, the DOX program. The Division has the ability to accept and review plans electronically, as well as to circulate them internally and externally for review and/or changes.

ACTION: Renee Bryant to e-mail the DOX PowerPoint presentation to the board members.

CAS – The agency has provided and continues to provide training throughout the state; informing contractors on how to use their system.

The license search function does not work properly. Therefore, in November the Division will begin working with a vendor called “Access Idaho” to improve their on-line capabilities. Access Idaho works specifically in web design and web functions. They are a contractor for the state of Idaho and are available to all state agencies. It is anticipated the program to be fully functional by April 2010.

♦ New Business
No new business was addressed.

♦ Executive Session
No Executive Session was required.

MOTION: Steffani Lippert made a motion to adjourn. Alan Smith seconded. All in favor; the meeting adjourned at 11:12 a.m.
**PUBLIC WORKS CONTRACTORS LICENSE BOARD**

<table>
<thead>
<tr>
<th>Agenda Item No. 03</th>
<th>Bureau Chief’s Report</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>OBJECTIVE:</strong></td>
<td>To report on the Bureau’s recent activities.</td>
</tr>
<tr>
<td><strong>ACTION:</strong></td>
<td>Informational</td>
</tr>
<tr>
<td><strong>BACKGROUND:</strong></td>
<td>This topic is addressed at all regularly scheduled Public Works Contractors License Board Meetings.</td>
</tr>
<tr>
<td><strong>PROCEDURAL HISTORY:</strong></td>
<td></td>
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<tr>
<td><strong>ATTACHMENTS:</strong></td>
<td>No documentation</td>
</tr>
<tr>
<td>Agenda Item No. 04a</td>
<td>Financial Report</td>
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<tr>
<td><strong>OBJECTIVE:</strong></td>
<td>To review the Public Works Contractors License Board’s Financial Report.</td>
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<tr>
<td><strong>ACTION:</strong></td>
<td>Informational</td>
</tr>
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<td><strong>BACKGROUND:</strong></td>
<td>This topic is addressed at all regularly scheduled Public Works Contractors License Board meetings.</td>
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<td></td>
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<tr>
<td><strong>ATTACHMENTS:</strong></td>
<td>Public Works Contractors License Board’s Financial Report.</td>
</tr>
</tbody>
</table>
### Division of Building Safety
PUBLIC WORKS CONTRACTORS LICENSING FUND
Fiscal Year 2010 Financial Statements
As of 11/30/2009

#### Statement of Revenues and Expenditures

<table>
<thead>
<tr>
<th>Class</th>
<th>Budget</th>
<th>Fiscal Year To Date</th>
<th>YTD as a % of Budget *</th>
<th>Remaining Budget</th>
<th>Projected for Remainder of Year</th>
<th>Projected Year End Totals</th>
<th>Projected Total as a % of Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues:</td>
<td>725,000</td>
<td>329,409</td>
<td>45.4%</td>
<td>395,591</td>
<td>420,000</td>
<td>749,409</td>
<td>103.4%</td>
</tr>
<tr>
<td>Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personnel:</td>
<td>609,000</td>
<td>225,214</td>
<td>37.0%</td>
<td>383,786</td>
<td>352,100</td>
<td>577,314</td>
<td>94.8%</td>
</tr>
<tr>
<td>Operating:</td>
<td>115,000</td>
<td>49,377</td>
<td>42.9%</td>
<td>65,623</td>
<td>63,000</td>
<td>112,377</td>
<td>97.7%</td>
</tr>
<tr>
<td>Capital:</td>
<td>10,000</td>
<td>-</td>
<td>0.0%</td>
<td>10,000</td>
<td>10,000</td>
<td>10,000</td>
<td>100.0%</td>
</tr>
<tr>
<td>Total Expenditures</td>
<td>734,000</td>
<td>274,590</td>
<td>37.4%</td>
<td>459,410</td>
<td>425,100</td>
<td>699,690</td>
<td>95.3%</td>
</tr>
</tbody>
</table>

Net for FY 2010 (9,000) 54,818 (5,100) 49,718

#### Statement of Cash Balance

<table>
<thead>
<tr>
<th>Beginning Cash Available</th>
<th>Revenues</th>
<th>Expenditures and Encumbrances</th>
<th>Other Changes in Cash Available Cash</th>
<th>Projected Change in Cash for Remainder of Year</th>
<th>Projected Year End Available Cash</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,299,427</td>
<td>329,409</td>
<td>(274,590)</td>
<td>616</td>
<td>1,354,861</td>
<td>(5,100)</td>
</tr>
</tbody>
</table>

* Percent of Fiscal Year Completed 41.7%
Percent of Pay Periods Completed 42.3%
PUBLIC WORKS CONTRACTORS LICENSING FUND

FY 07 - 10 Month-End Available Cash

FY 10 Revenues vs Expenditures

FY 07-10 Expenditures

FY 07-10 Revenues

FUND 2297 As of November 30, 2009
OBJECTIVE: To provide the Board with an overview of the Division’s current activities.

ACTION: Informational

BACKGROUND: This topic is addressed at all regularly scheduled Public Works Contractors License Board meetings.

PROCEDURAL HISTORY:

ATTACHMENTS: No documentation
Agenda Item No. 05                Highway Design Build Draft Legislation

OBJECTIVE: To review AGC’s proposed legislation: specifically section 40-904 “Contracts – Design Build”, paragraph eight (8).

ACTION: Informational

BACKGROUND: The legislation defines the procedures to allow the Idaho Transportation Department to solicit and award contracts using design-build or construction manager/general contractor methods of procurement for highway projects. Design-build projects were authorized for public works projects in 1987 by Section 67-5711A, Idaho Code. However, Section 40-902(3), Idaho Code specifically states that contracts for highways be “let to the lowest responsible bidder.” This legislation will allow the department to solicit and award design-build or construction manager/general contractors contracts.

If enacted, this legislation will allow the department to begin soliciting contracts using these alternative contracting methods for projects, which might be designed and completed faster than standard projects.

PROCEDURAL HISTORY:

ATTACHMENTS: Copy of proposed legislation
STATEMENT OF PURPOSE

RS

This legislation defines the procedures to allow the Idaho Transportation Department to solicit and award contracts using design-build or construction manager/general contractor methods of procurement for highway projects. Design-build projects were authorized for public-works projects in 1987 by Section 67-5711A, Idaho Code. However, Section 40-902(3), Idaho Code specifically states that contracts for highways be “let to the lowest responsible bidder.” This legislation will allow the department to solicit and award design-build or construction manager/general contractor contracts.

If enacted, this legislation will allow the department to begin soliciting contracts using these alternative contracting methods for projects, which might be designed and completed faster than standard projects. Shorter project-completion times could potentially save money due to lower contractor costs and the reduced effects of inflation on construction materials.

FISCAL IMPACT

There is no impact to the General Fund. The impact on the Idaho Transportation Department’s budget is that no more than twenty percent (20%) of the department’s annual highway construction budget for the state transportation improvement program shall be used for design-build and Construction Manager/General Contractor contracts combined. Based on approximately $300 million available in the FY10 budget, this would provide for approximately $60 million for such projects. The amount available would fluctuate with available revenues.
IN THE __________________
BILL NO. __________________
BY ____________________

AN ACT

Section 1. That Section 40-102, Idaho Code, be, and the same is hereby amended to read as follows:

40-102.DEFINITIONS -- A.
(1) "Activities, commercial or industrial." (See "Unzoned commercial or industrial areas," section 40-122, Idaho Code)
(2) "Advertising business, outdoor." (See "Outdoor advertising business," section 40-116, Idaho Code)
(3) "Advertising display" means advertising structures and signs.
(4) "Advertising structure(s)" or "structure(s)" or "sign(s)" means any thing designed, intended or used to advertise or inform. "Advertising structure" or "sign" does not include:
(a) Official notices issued by any court or public body or officer.
(b) Notices posted by any public officer in performance of a public duty or by any person in giving legal notice.
(c) Directional, warning or information structures required by or authorized by law, informational or directional signs regarding telephone service, emergency telephone signs, buried or underground cable markers and above cable closures.
(d) An official or public structure erected near a city or county, and within its territorial or zoning jurisdiction, which contains the name of the city or county, provided the same is maintained wholly at public expense. Where a city has been bypassed, but remains within five (5) miles of an interstate highway or primary freeway, the Idaho transportation board, in its discretion, may grant the city the right to erect and maintain a billboard displaying the name of the city at a location not to exceed one (1) mile from an interchange primarily serving that city. Billboards erected must be at locations consistent with department regulations and safety standards.
(5) "Agency," as applied to highway relocation assistance as provided by chapter 20, title 40, Idaho Code, means any subdivision or entity of state or local government in the state of Idaho authorized by law to engage in any highway program or perform any highway project in which the acquisition of real property may result in the displacement of any person.
(6) “Alternate technical concept (ATC)” means an alternative to the base technical concept which promotes innovation and is equal or better in quality or effect, as determined by the department in its sole discretion.
(7) "Areas, commercial or industrial, unzoned." (See "Unzoned commercial or industrial areas," section 40-122, Idaho Code)
(8) "Areas, urban." (See "Urban areas," section 40-122, Idaho Code)
(9) "Automobile graveyard" means any establishment or place of business which is maintained, used, or operated, for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.
(10) "Average annual net earnings," for the purposes of section 40-2004, Idaho Code, mean one-half (1/2) of any net earnings of the business or farm operations, before federal, state and local income taxes, during the two (2) taxable years immediately preceding the taxable year in which the business or farm operation moves from the real property acquired for the project, or during any other period as the agency determines to be more equitable for establishing the earnings, and includes any compensation paid by the business or farm operation to the owner, his
spouse, or his dependents during the two (2) year period, or any other period as determined by
the agency.

Section 2. That Section 40-103, Idaho Code, be, and the same is hereby amended to read as
follows:

40-103.DEFINITIONS -- B.
(1) “Base technical concept” means the project-specific concepts and technical information
provided in the request for proposals upon which design-build firms will develop their technical
and price proposals.
(2) “Best value selection” means any selection process in which proposals contain both price
and qualitative components and award is based upon a combination of price and qualitative
considerations.
(32) "Board" means the Idaho transportation board.
(43) "Business" means any lawful activity, excepting a farm operation, conducted primarily for
the purchase, resale, lease and rental of personal and real property, and for the manufacture,
processing or marketing of products, commodities, or other personal property; for the sale of
services to the public; or solely for the purpose of section 40-2004(1), Idaho Code, for assisting
in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities,
personal property, or services by the erection and maintenance of an outdoor advertising display
or displays, whether or not displays are located on the premises on which any of the activities are
conducted.
(5) “Business Entity” means a corporation, professional corporation, limited liability company,
professional limited liability company, general partnership, limited partnership, limited liability
partnership, professional limited liability partnership or any other form of business except a sole
proprietorship.

Section 3. That Section 40-104, Idaho Code, be, and the same is hereby amended to read as
follows:

40-104.DEFINITIONS -- C.
(1) "City system" means all public highways within the corporate limits of a city, with a
functioning street department, except those highways which are under federal control, a part of
the state highway system, part of a highway district system or an extension of a rural major
collector route as specified in section 40-607, Idaho Code.
(2) "Commercial activities." (See "Unzoned commercial or industrial areas," section 40-122,
Idaho Code)
(3) "Commercial areas, unzoned." (See "Unzoned commercial or industrial areas," section 40-
122, Idaho Code)
(4) "Commissioners" means the board of county commissioners of a county of this state.
(5) “Construction Manager/General Contractor Firm” means a business entity with which the
department has contracted to provide services prior to the final design phase and provide for the
construction of the project during the construction phase.
(6) “Construction Manager/General Contractor Project” means a project where the department
retains a consultant or has on staff an Idaho licensed professional engineer to develop the design
and also hires a Construction Manager/General Contractor firm to provide services prior to the
final design. If a guaranteed maximum price is negotiated successfully, the Construction
Manager/General Contractor firm also provides for construction of the project.

(7) “Consultant” means an individual or business entity possessing the qualifications to provide
licensed architectural, licensed engineering, or licensed land surveying services or possessing
specialized credentials and qualifications.

(8) "Controlled-access facility" means a highway especially designed for through traffic to
which owners or occupants of abutting land have no right or easement or only a controlled right
or easement of access by reason of the fact that their property abuts upon the controlled-access
facility. These highways may be freeways open to use by all customary forms of highway traffic,
or they may be parkways from which trucks, buses and other commercial vehicles shall be
excluded.

(9) "County highway system" or "county secondary highways" mean all public highways in a
county except those included within the state highway system, those under another state agency,
those included within city highway systems of incorporated cities, those included within a
highway district highway system, and those under federal control.

Section 4. That Section 40-105, Idaho Code, be, and the same is hereby amended to read as
follows:

40-105. DEFINITIONS -- D.

(1) “Department” means the Idaho Transportation Department.

(2) “Design-build contract” means a single contract between the department and a design-build
firm to furnish the architectural or engineering and related design services, labor, material,
supplies, equipment, and construction services for the highway project.

(3) “Design-build firm” means a sole proprietorship, partnership, limited liability partnership,
joint venture, corporation, any type of limited liability company, professional corporation, or
legal entity qualified to design and build highway projects.

(4) “Design-build project” means a project for which both the design and construction of the
project are procured by the department in a single contract with a design-build firm capable of
providing the necessary design services and construction.

(5) “Designer” means a duly licensed individual or business entity who performs the engineering
design and related design work for a design-build firm.

(6) “Designer Qualifications” means the criteria used to evaluate the design build firm’s
designer(s).

(7) “Director” means the director of the Idaho transportation department.

(8) “Displaced person” means any individual, family, business or farm operation which moves
from real property or moves personal property from real property acquired for a program or
project of a state or local agency, in whole or in part, or as the result of a written order of an
acquiring agency to vacate real property for a program or project of a state or local agency, and,
solely for the purposes of section 40-2004, Idaho Code, as a result of a written order of an
acquiring agency to vacate other real property, on which a person conducts a business or farm
operation, for a program or project of any state or local agency.

(9) “Draw” means making a cash demand on the proceeds of transportation bonds or notes
issued by the Idaho housing and finance association as it pertains to section 40-718, Idaho Code.

(10) “Dump” means any place or area, not operated as a business, where junk is deposited,
stored or kept.
Section 5. That Section 40-107, Idaho Code, be, and the same is hereby amended to read as follows:

40-107.DEFINITIONS – F.

(1) "Facilities" mean tracks, pipes, mains, conduits, cables, wires, towers, poles, equipment and appliances.
(2) "Family" means two (2) or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption or legal guardianship.
(3) "Farm operation" means any activity conducted primarily for the production of agricultural products or commodities, including timber, for sale and home use, and producing agricultural products or commodities in sufficient quantity to contribute materially to the operator’s support.
(4) "Feeder highway" means any highway which, in the opinion of the transportation board, is needed to create or facilitate access to a turnpike project upon which a toll is charged for transit.
(5) "Federal land rights of way" mean rights of way on federal land within the context of Revised Statute 2477, codified as 43 United States Code 932, and other federal access grants and shall be considered to be any road, trail, access or way upon which construction has been carried out to the standard in which public rights of way were built within historic context. These rights of way may include, but not be limited to, horse paths, cattle trails, irrigation canals, waterways, ditches, pipelines or other means of water transmission and their attendant access for maintenance, wagon roads, jeep trails, logging roads, homestead roads, mine to market roads and all other ways.
(6) “Final design” means any design activities following preliminary design and expressly includes the preparation of final construction plans and detailed specifications for the performance of construction work.
(7) “Fixed price-best design” means a selection process in which the contract price is established by the department and stated in the Request for Proposals. Design solutions and other qualitative factors are evaluated and rated, with award going to the design-build firm offering the best qualitative proposal for the established price.

Section 6. That Section 40-108, Idaho Code, be, and the same is hereby amended to read as follows:

40-108.DEFINITIONS – G.

(1) "GARVEE" means grant anticipation revenue vehicle, a debt financing instrument which enables states to finance state transportation infrastructure projects and to pay debt service and other bond-related expenses with future federal-aid highway apportionments.
(2) “Guaranteed maximum price (GMP)” means the total maximum price that includes all reimbursable costs and fees, except for material changes in the scope of work, for completion of a Constructions Manger/General Contractor contract that is provided by the selected contractor and accepted by the department.

Section 7. That Section 40-113, Idaho Code, be, and the same is hereby amended to read as follows:

40-113.DEFINITIONS – L.
(1) "Lawfully maintained" means a sign maintained on private land in accordance with state law and with the consent or acquiescence of the owner, or his agent, of the property upon which the sign is located.

(2) "Local highway technical assistance council" means the public agency created in chapter 24, title 40, Idaho Code.

(3) "Local highway jurisdiction" means a county with jurisdiction over a highway system, a city with jurisdiction over a highway system, or a highway district.

(4) “Lowest price-technically acceptable selection” means a type of process for selection of a design-build firm in which the department identifies evaluation factors that establish the minimum requirements of acceptability. Proposals are evaluated for acceptability based on qualitative factors (not cost or price) but are not ranked. The contract award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for qualitative factors.

Section 8. That Section 40-114, Idaho Code, be, and the same is hereby amended to read as follows:

Section 9. That Section 40-116, Idaho Code, be, and the same is hereby amended to read as follows:

40-116.DEFINITIONS -- O.

(1) “Organizational conflict of interest” means that, because of other activities or relationships with other persons or entities, a person or entity is unable or potentially unable to render impartial assistance or advice to the department or the person’s or entity’s objectivity in performing the contract work is or might be otherwise impaired, or a person or entity has an unfair competitive advantage.

(2) "Outdoor advertising business" means the business or occupation of placing, erecting, constructing or maintaining advertising structures or signs. The term does not include the placing, erecting, constructing or maintaining of advertising displays exclusively pertaining to the business of the person placing the advertising display, but does include a person whenever he personally or through employees places advertising displays containing advertising which does not pertain exclusively to his own business.

(3) "Owner" means all persons and all political subdivisions of the state having any title or interest in any property, rights, easements and interests authorized to be acquired by chapter 3, title 40, Idaho Code.

Section 10. That Section 40-117, Idaho Code, be, and the same is hereby amended to read as follows:

40-117.DEFINITIONS -- P.

(1) "Person" includes every natural person, firm, fiduciary, copartnership, association, corporation, trustee, receiver or assignee for the benefit of creditors.

(2) "Place." (See "Maintain," section 40-114, Idaho Code)

(3) “Preliminary design”, as used in Section 40-904, Idaho Code means the general project location and design concepts. It includes, but is not limited to, preliminary engineering and other
activities and analyses, such as environmental assessments, topographic surveys, metes and bounds surveys, geotechnical investigations, hydrologic analyses, hydraulic analyses, utility engineering, traffic studies, financial plans, revenue estimates, hazardous materials assessments, general estimates of the types and quantities of materials, and other work needed to establish parameters for the final design.

(4) “Price proposal” means the price submitted by a design-build firm to provide the required design and construction services described in the request for proposals or the price submitted by a Construction Manager/General Contractor firm to provide the required construction services described in the request for proposal.

(5) "Primary system" or "primary highway" means any portion of the highways of the state, as officially designated, or as may hereafter be so designated, by the Idaho transportation board, and approved by the secretary of transportation, pursuant to the provisions of title 23, U.S. Code, "Highways."

(6) "Public highway agency" means the state transportation department, any city, county, highway district or other political subdivision of the state with jurisdiction over public highway systems and public rights-of-way.

(7) "Public highways" means all highways open to public use in the state, whether maintained by the state or by any county, highway district, city, or other political subdivision. (Also see "Highways," section 40-109, Idaho Code)

(8) "Public right-of-way" means a right-of-way open to the public and under the jurisdiction of a public highway agency, where the public highway agency has no obligation to construct or maintain, but may expend funds for the maintenance of, said public right-of-way or post traffic signs for vehicular traffic on said public right-of-way. In addition, a public right-of-way includes a right-of-way which was originally intended for development as a highway and was accepted on behalf of the public by deed of purchase, fee simple title, authorized easement, eminent domain, by plat, prescriptive use, or abandonment of a highway pursuant to section 40-203, Idaho Code, but shall not include federal land rights-of-way, as provided in section 40-204A, Idaho Code, that resulted from the creation of a facility for the transmission of water. Public rights-of-way shall not be considered improved highways for the apportionment of funds from the highway distribution account.

(9) "Public transportation services" means, but is not limited to, fixed transit routes, scheduled or unscheduled transit services provided by motor vehicle, bus, rail, van, aerial tramway and other modes of public conveyance; paratransit service for the elderly and disabled; shuttle and commuter service between cities, counties, health care facilities, employment centers, educational institutions or park-and-ride locations; subscription van and car pooling services; transportation services unique to social service programs; and the management and administration thereof.

Section 11. That Chapter 40, Title 1, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 40-119, Idaho Code, and to read as follows:

40-119. DEFINITIONS -- R.

(1) “Request for proposals” (RFP)” means a document used to solicit proposals from design-build firms to design and construct a highway project or to solicit proposals from Construction
Manager/General Contractor firms to provide services prior to final design and then construct a highway project.

(2) “Request for qualifications (RFQ)” means a document issued by the department in the first step of a two-step selection process that describes the project in enough detail to let potential design-build firms determine if they wish to compete and forms the basis for developing a shortlist of the most qualified design-build firms.

(3) “Responsive proposals” mean proposals submitted by responsive proposers that comply with the request for proposals and all prescribed procurement procedures and requirements.

Section 12. That Section 40-120, Idaho Code, be, and the same is hereby amended to read as follows:

40-120. DEFINITIONS -- S.

(1) “Safety rest area” means an area or site established and maintained within or adjacent to the right of way by or under public supervision or control, for convenience of the traveling public.

(2) “Short listing” means the narrowing of the field of potential design-build firms through the selection of the most qualified design-build firms who have responded to a request for qualifications.

(3) “Sign.” (See ”Advertising structure,” section 40-102, Idaho Code.)

(4) “Single county wide highway district” means all public highways within the county, including those within all cities of the county, but excepting those within the state highway system and those under federal control.

(5) “State highway system” means the principal highway arteries in the state, including connecting arteries and extensions through cities, and includes roads to every county seat in the state.

(6) “State law” means a provision of the constitution or statutes of this state, or an ordinance, rule or regulation enacted or adopted by an agency or political subdivision of this state pursuant to the constitution or statutes.

(7) “Stipend” means a monetary amount that may be paid to unsuccessful design-build firms who have submitted responsive proposals in response to an RFP. The purpose of a stipend is to encourage competition by offering to compensate responsive but unsuccessful design-build firms for a portion of the proposal development costs.

(8) “Structure.” (See ”Advertising structure,” section 40-102, Idaho Code)

(9) “System, city.” (See ”City system,” section 40-104, Idaho Code)

Section 13. That Section 40-121, Idaho Code, be, and the same is hereby amended to read as follows:

40-121. DEFINITIONS -- T.

(1) “Technical proposal” means that portion of a design-build firm proposal which contains design solutions and other qualitative factors that are provided in response to a request for proposals.

(2) “Tourist related advertising sign” means any sign which advertises a specific public or private facility, accommodation or service, at a particular location or site, including: overnight lodging, a camp site, food service, recreational facility, tourist attraction, education or historical site or feature, automotive service, facility or garage.
"Turnpike project" means any express highway or bridge at locations and between terminals as may be established by the board and constructed or to be constructed under the provisions of chapter 4, title 40, Idaho Code, and shall include all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service areas, service stations, service facilities, communication facilities, and administration, storage and other buildings, which the board may deem necessary for the operation of a project, together with all property, rights, easements, and interests which may be acquired by the board for the construction or the operation of a project.

"Turnpike revenue bonds" mean bonds of the transportation board authorized under the provisions of section 40-412, et seq., Idaho Code.

"Two-step selection" means a procurement process in which the first step consists of short listing based on statements of qualifications submitted in response to a request for qualifications and the second step consists of the submission of price and technical proposals in response to a request for proposals.

Section 14. That Section 40-102, Idaho Code, be, and the same is hereby amended to read as follows:

**40-902. BIDS — STATE HIGHWAY SYSTEM.**

(1) Whenever work on the state highway system is let by contract, advertisement for sealed bids must be provided called for by public advertisement in for at least two (2) consecutive weeks in one (1) weekly issues in a weekly newspaper or five (5) issues in a daily newspaper, having a general circulation in the county or one (1) of the counties, where the work is to be done. In addition, the department may use any medium reasonably determined to reach prospective bidders.

(2) Each bid must be accompanied by a cashier’s check or a certified check in favor of the department on some bank in the state of Idaho, or by a bidder’s bond, for the sum of five percent (5%) of the amount of the bid, to be forfeited if the bidder, upon acceptance of his bid, fails or refuses to enter into a contract within fifteen (15) days after the presentation of the contract by the department to him for execution and to furnish the required bond. Checks and bonds of unsuccessful bidders shall be returned immediately after the contract is awarded. If the contracting agency allows electronically submitted bid documents, then a bid bond in electronic form with valid electronic signatures shall accompany the submittal of the electronic bid documents.

(3) Except as allowed by 40-904 and 40-905, Idaho Code bids shall be opened publicly at the time and place specified in the advertisement and the contract let to the lowest responsible bidder, but the department has the right to reject any and all bids, or to let the contract for a part or all of the work.

(4) If no satisfactory bid is received, new bids may be called for, or the work may be performed by day labor, or as may be determined by the department.

(5) Except as allowed by 40-904 and 40-905, Idaho Code a bidder who did not submit the lowest responsible bid as determined by the department may within five (5) calendar days of bid opening file a written application to challenge the department’s determination of the lowest responsible bidder and apply to the department’s chief engineer for the appointment of a hearing officer to hold a contested case hearing. The application shall set forth in specific terms the reasons why the department’s decision is thought to be erroneous. Upon receipt of an
application, the chief engineer shall appoint a hearing officer with the authority to conduct a
contested case hearing in accordance with the provisions of chapter 52, title 67, Idaho Code.
Upon receipt from the hearing officer of findings of fact, conclusions of law and a recommended
order, the chief engineer shall review the same and enter a final order sustaining or reversing the
decision of the department on the selection of the lowest responsible bidder. Following entry of
the final order, the chief engineer shall have the authority to award the contract to the bidder
determined in the final order to be the lowest responsible bidder at a time and in a manner which
shall be in the best interest of the state.

Section 15. That Chapter 40, Title 9, Idaho Code, be, and the same is hereby amended by the
addition thereto of a new section, to be known and designated as Section 40-904, Idaho Code,
and to read as follows:

40-904. CONTRACTS – DESIGN BUILD.
(1) The preferred contracting method of the department shall be as described in Section 40-
902, Idaho Code. The department may select design-build firms and award contracts for
design-build projects if the board determines that the projects are of appropriate size and scope,
that awarding a design-build contract will serve the public interest, and that the method is
superior to that described in 40-902, Idaho Code. The following criteria shall be used as the
minimum basis for determining when to use design-build contract procedures:
(a) Project suitability for
design-build method contracting regarding time constraints, costs, and quality
factors;
(b) The availability, capability and experience of potential design-build firms;
(c) The department’s ability to manage design-build projects, including
employing experienced personnel or outside consultants; and
(d) Other criteria the department deems relevant and states in writing in its
determination to use design-build contract procedures.

(2) No more than twenty percent (20%) of the department’s annual highway construction
budget for the state transportation improvement program shall be used for design-build and
Construction Manager/General Contractor contracts combined.

(3) No less than thirty percent (30%) of any design-build contract awarded shall be self-
performed by the design-build firm awarded such contract.

(4) A professional engineer licensed in the state of Idaho shall have responsible charge of
preparing the request for qualifications (RFQ) and request for proposals (RFP) including the base
technical concept. Responsible charge shall be as defined in Section 54-1202(12), Idaho Code.
The professional engineer shall not be affiliated with any design-build firm submitting proposals
on the project.

(5) For each proposed design-build project, the department shall designate an evaluation
committee. The evaluation committee shall include at least five (5) members who are qualified
by education and experience, and at least two of whom shall be professional engineers licensed
in the State of Idaho. To assist in the evaluation process, the evaluation committee may retain the services of non-voting members.

(6) Any design-build firm, regardless of its organizational structure, must comply with all applicable requirements of Title 54-12, Idaho Code. The designer shall employ a professional engineer licensed in the state of Idaho who is in responsible charge of all engineering on the design-build project for the design-build firm. Responsible charge shall be as defined in Section 54-1202(12), Idaho Code.

(7) Any design-build firm regardless of its organizational structure, must comply with all applicable requirements of Title 54-19, Idaho Code.

(8) Any Idaho professional engineering licenses required shall be obtained prior to submittal of a design-build firm’s proposal. Any Idaho public works licenses required shall be obtained prior to contract award.

(9) The department shall have the authority to discontinue the design-build firm selection process at any time prior to the opening of price proposals, subject to any applicable obligation to pay a stipend.

(10) After shortlist selection and contract award, and upon written request, all unsuccessful design-build firms shall be afforded the opportunity for a debriefing. Debriefings shall be provided at the earliest feasible time after a design-build firm has been selected for award. The debriefing shall:

(a) Be limited to discussion of the unsuccessful design-build firm’s proposal and shall not include specific discussion of a competing proposal.

(b) Provide information on areas in which the unsuccessful design-build firm’s proposal had weaknesses or deficiencies.

(c) Maintain the confidentiality of evaluation committee members and other design-build firms shall be maintained.

(11) The department shall establish and determine the appropriate design-build contract method to select design-build firms and award contracts on a project-by-project basis. The method shall be stated in the request for proposals, and in the request for qualifications when applicable. The department shall use a two-step selection process for all projects. Design-build selection and contract methods that may be used are:

(a) Best value;

(b) Fixed price-best design; or

(c) Lowest price-technically acceptable. The department may only use the lowest price-technically acceptable method when:

(i) The preliminary design is completed and the design-build firm’s role is limited to completing the final design and constructing the design-build project;

(ii) No right-of-way must be acquired by the design-build firm;

(iii) No utility or railroad permits must be obtained by the design-build firm.

(iv) The department obtains the required environmental clearances; and
The department has determined that meeting the minimum technical and
designer qualification requirements is sufficient for the project and that
innovation or alternatives are not required.

(12) The department shall advertise for request for qualifications and request for proposals in
accordance with the procedures outline in Section 40-902(1), Idaho Code.

(13) The RFQ and RFP shall address potential organizational conflicts of interest.
(a) No person or business entity that assisted the department in preparing the
solicitation documents will be allowed to participate as a design-build firm or as a
member of the design-build firm’s team; however, the department may determine
that there is not an organizational conflict of interest where:
   (i) The role of the person or business entity was limited to provision of
       preliminary design, reports, or similar “low-level” documents that may be
       incorporated into the solicitation but did not include assistance in the
       development of instructions to design-build firms or evaluation criteria, or
   (ii) Where all documents and reports delivered to the department by the person or
       entity are made available to all potential design-build firms.
(b) The design-build firm shall disclose all relevant facts concerning any past, present,
or currently planned interests which may present an organizational conflict of
interest.
(c) If at any time during the selection process or during the contract period a
previously undetermined organizational conflict of interest arises, the design-
build firm must disclose that information as soon as discovered and mitigate or
eliminate the conflict.

(14) At a minimum, the following shall be included in each request for qualifications (RFQ)
(a) Minimum design-build firm qualifications necessary to meet the project’s design-
build requirements;
   (i) Relevant construction-related experience and performance;
   (ii) Financial, personnel, and equipment resources available for construction;
   (iii) Designer qualifications:
       (1) Experience and performance of the designer on similar projects;
       (2) Qualifications and relevant experience of the designer’s project
           manager and key personnel;
       (3) Available resources of the designer.
   (b) Scope of work statement and schedule;
   (c) Documents defining the project requirements;
   (d) Maximum time allowed for project design and construction;
   (e) Estimated cost of project design and construction;
   (f) Requirements for key personnel;
   (g) Scoring criteria for evaluating the qualifications submitted; and
   (h) The number of firms to be short listed. The number of firms shortlisted shall be
       no less than two or more than five.

(15) The criteria for evaluation of qualifications may include, without limitation:
(a) Technical qualifications for construction, such as specialized experience and technical competence, including key personnel;
(b) Capability to perform construction, including the availability of key personnel;
(c) Designer qualifications;
(d) The proposed plan of the design-build firm to manage the design and construction of the project;
(e) Understanding of and approach to the project;
(f) Organizational conflicts of interest.
(g) Other appropriate qualifications-based selection factors.

(16) The RFQ shall not include any price-related factors. The scoring weight for designer qualification shall be no less than thirty five percent of the total score. The department shall develop a short list of the most-qualified design-build firms from the proposals submitted in response to the request for qualifications. If only a single design-build firm responds to the RFQ or remains on the short list, the department may issue a new RFQ or cancel the solicitation.

(17) The department shall provide to each design-build firm that submitted qualifications the summary of scores of all proposers and the design-build firms’ evaluation worksheets within 3 business days following notification of the short-list. The confidentiality of the evaluation committee members and other design-build firms shall be maintained.

(18) Design-build firms that submit qualifications and that do not qualify for the shortlist generated by the department may challenge the department’s determination in accordance with the procedures outlined in Section 40-902(5), Idaho Code. A challenge must be filed with the department within seven (7) calendar days of the date the department transmitted the evaluation scores and worksheets.

(19) The department shall prepare a request for proposals (RFP) for each design-build contract. The RFP shall address the base technical concept for the design-build contract.

(20) The RFP shall define the base technical concept, the mandatory project scope elements, deliverables and the project schedule including but not limited to:

(a) Performance and technical requirements;
(b) Conceptual design;
(c) Specifications;
(d) Functional and operational elements for the delivery of the completed project;
(e) Description of the selection and award criteria, including the weight or relative order, or both, of each criterion;
(f) Copies of the contract documents the selected bidder will be expected to sign;
(g) Maximum time allowed for project design and construction;
(h) Estimated cost of design and construction or fixed price;
(i) A requirement that all proposals be submitted to the department in two parts:
   (1) a technical proposal, and
   (2) a price proposal;
(j) A requirement that all proposals be submitted in a separately sealed, clearly identified package that includes the date and time of the submittal deadline;

(k) A requirement that the technical proposal include a critical path method and bar schedule of the work to be performed, or similar schematic; design plans and specifications; technical reports; calculations; permit requirements; applicable development fees; designer qualifications as they relate to the technical proposal and other data requested in the request for proposals;

(l) A requirement that the price proposal contain all design, construction, engineering, quality control and assurance, and construction costs of the proposed project;

(m) The terms and conditions for stipends including waiving of the stipend and when the stipend shall be paid.

(n) The date, time, and location of the public opening of the sealed price proposals;

(o) The basis for design-build firm selection and contract award;

(p) When applicable the alternate technical concept deadline; and

(q) Other information relevant to the project.

(21) The RFP selection and award criteria shall include price, shall include the design-build firm’s design and construction qualifications, and may include time of completion, innovation, design and construction quality and other technical or quality related criteria. The Qualification Based Selection process mandated under Section 67-2320, Idaho Code in obtaining certain consultant services is not applicable. When applicable, the percent weighting of the technical proposal score that is assigned to the designer qualifications shall be based on the project’s level of design completeness prior to the RFP and the opportunity for design innovation and alternatives.

(22) As part of the RFP, and when available, the department shall make available any project specific documentation, drawings, files, reports, and other pertinent materials which would be of use to the eligible design-build firms.

(23) The RFP shall address and identify contract provisions, including but not limited to:

(a) Allocation of known risks according to the type and location of the project, and the following risk factors shall be considered:

(i) Governmental risks;

(ii) Regulatory compliance risks;

(iii) Construction phase risks;

(iv) Post-construction risks; and

(v) Right-of-way risks;

(b) Payment and performance bonds;

(c) Proposal guaranty;

(d) General and professional liability insurance;

(e) Meetings regarding the preconstruction services;

(f) The department’s standards, rules, guidelines, and special provisions requirements;
(g) Environmental regulatory requirements, including whether the department or
the design-build firm will acquire any or all of the permits required for
construction; and

(h) Design and construction requirements, including specifications; and

(i) The final documents to be provided by the design-build firm upon completion
of the project, which may include as-built plans, engineering reports, shop
drawings, test results, documentation, daily reports, and item quantities.

(j) The date for submittal of the technical and price proposals.

9k) The date for opening the sealed price proposals.

(24) The RFP may allow design-build firms to submit one or more alternate technical
concepts (ATCs).

(a) ATCs will only be considered if they are determined by the department at its sole
discretion to be equal to or better than the base technical concept. Typically,
ATCs will improve project quality and/or reduce project costs. The department
may allow pre-approved ATCs as part of the design-build firm’s proposal.

(b) A proposed ATC is not acceptable if it merely seeks to reduce quantities,
performance, or reliability, or seeks a relaxation of the contract requirements.
ATCs shall be submitted by the design-build firm by the date specified within the
RFP and pre-approved in writing by the department prior to the proposal
submittal date. All technical proposals must include the department’s preapproval
letters for consideration of the ATCs.

(c) A design-build firm may incorporate one or more pre-approved ATCs into its
technical and price proposal. Each design-build firm shall submit only one proposal.

(d) The price proposal shall reflect any incorporated ATCs. Except for incorporating
approved ATCs, the proposal may not otherwise contain exceptions to or deviations
from the requirements of the RFP.

(e) The RFP will not distinguish between proposals that do not include any ATCs and
proposals that include ATCs. Both types of proposals shall be evaluated against the
same technical criteria, and a best value determination is shall be made in the same
manner.

(f) An approved ATC that is incorporated into a design-build firm’s proposal will
become part of the design-build contract upon award of the design-build contract to
that design-build firm.

(g) ATCs properly submitted by a design-build firm and all subsequent
communications regarding its ATCs shall be considered confidential prior to the
award of the design-build contract.
(25) Prior to proposal submittal, the department shall offer design-build firms equal opportunity to participate in one-on-one meetings with the department regarding their proposals if the department determines that such discussions are needed. The department shall disclose to all design-build firms issues impacting the scope of work or base technical concept that are relevant to the RFP. The department shall not disclose information pertaining to an individual design-build firm’s ATCs or confidential business strategies.

(26) The technical proposal and price proposal shall be submitted concurrently. The technical proposal and price proposal shall be submitted to the department in separate sealed envelopes marked in strict accordance with the requirements and timeline contained in the RFP, or as it may be amended.

(27) After proposals are submitted, and prior to opening the price proposals, the evaluation committee shall open, review, and score or otherwise evaluate the technical proposals and any other required technical information in accordance with the evaluation criteria established in the RFP.

(28) After proposals are submitted, and prior to opening the sealed price proposals, the department may hold discussions with design-build firms during the technical proposal evaluations. Discussions shall be held with all design-build firms that submitted proposals. The department shall disclose to all design-build firms issues impacting the scope of work or base technical concept that are relevant to the RFP. The department shall not disclose information pertaining to a design-build firm’s proposal, ATCs or other technical concepts. The department may issue a revised RFP that may or may not include changes in the scope, contract requirements or stipend amount. All design-build firms shall be given an opportunity to submit revised technical and price proposals that may result from the discussions.

(29) Sealed price proposals shall be kept in a secure location until read publicly. When applicable, the technical scores and best values shall be read publicly at the same time.

(30) If an RFP includes a time factor with the selection criteria, the department shall adjust the price using a department established value of the time factor. The department established value of the time factor shall be expressed as a value per day. The total time value shall be the total number of days to complete the project multiplied by the time factor. The time-adjusted price is the total time value plus the total price proposal amount.

(30) The basis for design-build firm selection and contract award shall be as follows:

(a) Best Value Method: Each proposal’s price proposal (time adjusted, if applicable) is divided by the technical proposal score to obtain a total score. The department shall award the contract to the design-build firm whose total score is lowest.

(b) Fixed Price – Best Design Method: The department shall award the contract to the design-build form whose technical proposal score is highest.
(c) Lowest Price – Technically Acceptable Method: The department shall award the contract to the design-build firm who meets the minimum technical and designer qualifications requirements identified in the RFP and whose price proposal is lowest.

(31) Proposals that are not responsive to the RFP may be excluded from consideration. The criteria used for determining whether a proposal is not responsive shall be defined in the RFP. Design-build firms whose proposals are excluded from consideration are not eligible for payment of a stipend.

(32) At the discretion of the department, a stipend may be paid to eligible design build firms who submit responsive but unsuccessful proposals in response to the RFP. The decision to do so shall be based on the department’s analysis of the estimated proposal development costs, the complexity of the project, and the anticipated degree of competition during the procurement process. The department shall pay the stipend within 45 calendar days after award of a contract or the decision not to award a contract.

(33) If a stipend is provided to an unsuccessful design-build firm, the work produced within that design-build firm’s proposal for the project shall be provided to the department for its use in connection with the contract awarded for the project, or in connection with a subsequent procurement, without any additional compensation to the unsuccessful design-build firm.

(34) In consideration for paying the stipend, the department may use any ideas or information contained in the submitted proposals with no obligation to pay any additional compensation to the unsuccessful bidders.

(35) The department may either:
   (a) Reject all proposals; or
   (b) Award a design-build contract to the design-build firm; or
   (c) Award to the next ranked design-build firm if the selected design-build firm declines the award and forfeits the proposal guaranty.

(36) The department is not required to award a contract. If the department does award a contract, a contract shall be executed and a notice to proceed shall be given to the successful design-build firm.

(37) When applicable, the department shall provide to each design-build firm that submitted proposals the summary of scores of all proposers and the design-build firms’ evaluation worksheets within 3 business days following notification of intent to award. The confidentiality of the evaluation committee members and other design-build firms shall be maintained.

(38) Design-build firms that submit proposals and are not selected for the award of the contract may challenge the department’s determination in accordance with the procedures outlined in Section 40-902(5), Idaho Code. A challenge must be filed with the Department within seven (7) calendar days of the date the department transmitted the evaluation scores and worksheets.
Section 16. That Chapter 9, Title 40, Idaho Code, be, and the same is hereby amended by the
addition thereto of a new section, to be known and designated as Section 40-905, Idaho Code,
and to read as follows:

40-905. CONTRACTS – CONSTRUCTION MANAGER/GENERAL CONTRACTOR

(1) The preferred contracting method of the department shall be as described in Section
40-902, Idaho Code. The department may select Construction Manager/General Contractor
(CM/GC) firms and award contracts for highway projects as provided herein. CM/GC highway
projects shall be of appropriate size and scope to encourage maximum competition and
participation by qualified firms. CM/GC procedures may be used for a specific highway project
only after the board determines that awarding a CM/GC contract will serve the public interest
and is superior to that described in 40-902, Idaho Code. The following criteria shall be used as
the minimum basis for determining when to use CM/GC contract procedures:
(a) Project suitability for CM/GC contracting regarding time constraints, costs,
and quality factors;
(b) The availability, capability and experience of potential CM/GC firms;
(c) The department’s ability to manage CM/GC projects, including employing
experienced personnel or outside consultants; and
(d) Other criteria the department deems relevant and states in writing in its
determination to use CM/GC contract procedures.

(2) No more than twenty percent (20%) of the department’s annual highway
construction budget for the state transportation improvement program shall be used for design-
built and CM/GC contracts combined.

(3) No less than thirty percent (30%) of any CM/GC contract awarded shall be self-
performed by the CM/GC firm awarded such contract.

(4) A professional engineer licensed in the state of Idaho shall have responsible charge
of preparing the request for proposals (RFP). Responsible charge shall be as defined in Section
54-1202(12), Idaho Code. The professional engineer shall not be affiliated with any CM/GC
firm submitting proposals on the project.

(5) Any CM/GC firm shall comply with all applicable requirements of Title 54-19,
Idaho Code. The requirements of Title 54-45, Idaho Code do not apply.

(6) For each proposed CM/GC project, the department shall designate an evaluation
committee. The members of the evaluation committee shall include at least five (5) members
who are qualified by education and experience. To assist in the evaluation process, the evaluation
committee may retain the services of non-voting members.
(7) After award of the contract, and upon written request, all unsuccessful CM/GC firms shall be afforded the opportunity for a debriefing. Debriefings shall be provided at the earliest feasible time after a CM/GC firm has been selected for award. The debriefing shall:

(a) be limited to discussion of the unsuccessful CM/GC firm’s proposal and shall not include specific discussion of a competing proposal.
(b) provide information on areas in which the unsuccessful CM/GC firm’s proposal had weaknesses or deficiencies.
(c) Maintain the confidentiality of the evaluation committee members and the other CM/GC firms shall be maintained.

(8) Contracts for the services of a CM/GC shall be awarded through a competitive process requiring the public solicitation of requests for proposals for CM/GC services. The request for proposals shall include price components and meeting requirements as stated in the request for proposals.

(9) The department shall advertise requests for proposals in accordance with the procedures outlined in Section 40-902(1), Idaho Code.

(10) The RFP shall address potential organizational conflicts of interest.

(a) No person or business entity that assisted the department in preparing the solicitation documents will be allowed to participate as a CM/GC firm or as a member of the CM/GC firms’ team; however, the department may determine that there is not an organizational conflict of interest where:

1. The role of the person or business entity was limited to provision of preliminary design, reports, or similar “low-level” documents that may be incorporated into the solicitation but did not include assistance in the development of instructions to CM/GC firms or evaluation criteria, or
2. where all documents and reports delivered to the department by the person or business entity are made available to all potential CM/GC firms.

(b) The CM/GC firm shall disclose all relevant facts concerning any past, present, or currently planned interests which may present an organizational conflict of interest.

(c) If at any time during the selection process or during the contract period a previously undetermined organizational conflict of interest arises, the CM/GC firm must disclose that information as soon as discovered and mitigate or eliminate the conflict.

(11) At a minimum, the request for proposals shall include:

(a) A description of the project, including programmatic, performance, and technical requirements and specifications when available;
(b) A description of the qualifications to be required of the firm;
(c) A description of the requirements of key personnel;
(d) A description of the process the department will use to evaluate qualifications and proposals, including evaluation and scoring criteria;
(e) Schedule of items for which the CM/GC firm shall submit unit prices;

(f) A requirement that the CM/GC firm describe their approach to pricing,

(g) The form of the contract, including any contract for preconstruction services, to be awarded.

(12) Evaluation factors for selection of the CM/GC shall include, but not be limited to:

(a) Ability of the firm’s key personnel;

(b) Financial, labor and equipment resources available for the project;

(c) Ability of the firm to meet time and budget requirements;

(d) The scope of work the firm proposes to self-perform and its ability to perform that work;

(e) The firm’s approach to working collaboratively with the department, and the department’s consultant(s) when applicable, and to executing the project.

(f) Construction experience in similar projects;

(g) The submitted unit prices;

(h) The approach to pricing; and

(i) Organizational conflicts of interest.

(13) The basis for selection shall be stated in the request for proposal. Selection shall be based on the responsible proposer whose proposal is evaluated as providing the best value to the department.

(14) The contract shall be awarded in two phases. The first is for services during the design phase that may include life-cycle cost considerations, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work. The second phase is for construction services. The second phase will be awarded after the plans have been sufficiently developed and a guaranteed maximum price for construction services has been successfully negotiated. Incremental construction phases may be awarded after guaranteed maximum prices are negotiated for each phase.

(a) For the first phase, the department may either:

(i) Reject all proposals; or

(ii) Award a contract to the best evaluated CM/GC firm; or

(iii) Award to the next best evaluated CM/GC firm if the best evaluated CM/GC firm is determined to be non-responsive, declines the award and forfeits the proposal guaranty or the parties are unable to reach a mutually acceptable contract.

(b) For the second phase, the department may either:

(i) Award a construction contract or incremental construction contracts upon successful negotiations of a guaranteed maximum price; or

(ii) Advertise, bid and award in accordance with Section 40-902, Idaho Code.

(15) The CM/GC shall provide performance and payment bonds during construction phases.
(16) The department is not required to award a contract. If awarded, however, a contract shall be executed and notice given to proceed with the work.

(17) The department shall provide to each CM/GC firm that submitted proposals the summary of scores of all proposers and the CM/GC firms’ evaluation worksheets within 3 business days following notification of intent to award. The confidentiality of the evaluation committee members and other CM/GC firms shall be maintained.

(18) CM/GC firms that submit proposals and are not selected for the award of the contract may challenge the department's determination in accordance with the procedures outlined in Section 40-902(5), Idaho Code. A challenge must be filed with the Department within seven (7) calendar days following the date the department transmitted the evaluation scores and worksheets.