

**TITLE 54. PROFESSIONS, VOCATIONS, AND BUSINESSES
CHAPTER 45. PUBLIC WORKS CONSTRUCTION MANAGEMENT
LICENSING ACT**

§ 54-4501. Short title

The provisions of this chapter shall be known and may be cited as the "Public Works Construction Management Licensing Act of 1998".

§ 54-4502. Legislative intent

In order to protect the public welfare and to promote the highest degree of professional conduct on the part of persons providing construction management services, the provisions of this chapter provide for the licensure of individuals and regulation of persons providing construction management services for public works projects.

§ 54-4503. Definitions

As used in this chapter:

- (1) **"Administrator means the administrator of the Idaho division of building safety.**
- (2) "Applicant" means an individual who applies for a license or interim license pursuant to the provisions of this chapter.
- (3) "Board" means the public works contractors state license board established in *section 54-1905, Idaho Code*.
- (4) **"Certificate of authority" is a certificate issued by the division of building safety acknowledging that a licensed construction manager has associated his license with a firm and that the construction manager is directly supervising the providing of construction management services by the firm.**
- (5) "Construction manager" means an individual who performs construction management services.
- (6) "Construction management services" means representation of an owner in public works construction by a person with substantial discretion and authority to plan including scheduling, estimating and approval, coordinate, manage or direct phases of a project for the construction, demolition, alteration, repair or reconstruction of any public work. This definition shall not include services for which the laws of this state require a person to be licensed as an architect or registered as a professional engineer, nor shall it include services traditionally and customarily provided by licensed architects or registered professional engineers. This definition shall not apply to highway, road or other transportation projects.

(7) "Firm" means any business organization, including individuals, partnerships, corporations, associations or any combination thereof acting as a unit.

(8) "Holding oneself or one's firm out as providing construction management services" or "offering to perform construction management services" includes, but is not limited to:

- a) Advertising to provide construction management services on public works construction projects; or
- b) Submitting responses to requests for qualifications for construction management services on public works construction projects; or
- c) Submitting proposals or bids to perform construction management services on public works construction projects.

(9) "Licensure" means the issuance of a license to an applicant under the provisions of this chapter authorizing such individual to offer and perform construction management services.

(10) "Person" includes an individual, partnership, corporation, association or other organization.

§ 54-4504. License required

(1) Except as otherwise provided herein, on and after the effective date [July 1, 1998] of this chapter, it shall be unlawful for any person to act as a construction manager in public works construction or to practice or perform or offer to perform construction management services in public works construction unless such construction management services are performed by or under the direct supervision of a licensed construction manager.

(2) Only an individual may be licensed as a construction manager. No firm may provide or hold itself out as providing construction management services unless it holds a certificate of authority issued by the board pursuant to *section 54-4509, Idaho Code*.

(3) Construction management services provided by a firm must be provided under the direct supervision and control of a licensed construction manager who is a principal or employee of the firm.

(4) An employee of an owner for which public works construction management services are to be performed shall not be required to obtain a license under this chapter in order to provide such services for his employer.

(5) A licensed architect, registered landscape architect or registered professional engineer shall not be required to obtain a license under this chapter in order to provide services for which the laws of this state require a person to be licensed as an architect, registered landscape architect or registered as a professional engineer or to provide services traditionally and customarily provided by licensed architects, registered landscape architects or registered professional engineers. Provided however, that such services shall not include the procurement of equipment or construction work required by law to be competitively bid for public works construction.

§ 54-4505. Requirements for licensure

(1) Any individual who wishes to become licensed as a construction manager shall make written application to the ~~administrator~~board on such forms or in such manner as the ~~administra-~~tor board may prescribe. Each applicant shall provide such proof as the board may require that he:

(a) Has a bachelor's degree in architecture, engineering or construction management from a college or university which has an educational program in architecture, engineering or construction management, as the case may be, accredited by a nationally recognized accrediting organization and that he has a minimum of four (4) years' experience in managing construction projects; or

(b) Has a minimum of five (5) years' experience in managing construction projects.

(2) If the ~~administrator~~board finds that the applicant meets the requirements for licensure set forth in subsection (1) of this section, ~~he~~it shall administer an examination to the applicant, which examination shall be offered at least once each year. The examination shall test the applicant's knowledge and proficiency in construction management issues, including health, environmental and safety regulations, interpretation of construction contracts, financing, scheduling and project administration for construction projects. The ~~administrator~~board shall establish a fee for administering the examination to each applicant which must be paid before the applicant may sit for the examination.

(3) An applicant who demonstrates knowledge and proficiency of construction management by virtue of passing the examination, ~~shall~~and upon the payment of an appropriate fee, ~~shall~~ be issued a license authorizing that individual to provide construction management services.

§ 54-4506. Interim and temporary licenses

~~(1) For a period of one (1) year following the effective date [July 1, 1998] of this chapter, each applicant who meets the requirements of section 54-4505(1), Idaho Code, shall be issued an interim construction manager's license pursuant to such application terms and conditions as the board may require. At the conclusion of the one (1) year period, following the effective date [July 1, 1998] of this chapter, such interim licenses shall expire and thereafter all licensed construction managers shall be required to meet the licensure requirements as set forth in section 54-4505, Idaho Code.~~

(12) The board may issue a temporary license for a period not to exceed one (1) year to an applicant who provides satisfactory proof of possession of a valid construction manager's license issued by another state pursuant to requirements substantially similar to those set forth in *section 54-4505, Idaho Code*.

(23) Interim and temporary licenses may not be renewed nor their terms extended beyond the period set forth in this section.

§ 54-4507. License renewal

(1) Each construction management license issued under the terms of this chapter shall expire and become invalid one (1) year after issuance unless renewed in the manner prescribed by the board.

(2) Upon application, the administratorboard may grant inactive status to the holder of a license who is no longer actively providing construction management services.

(3) The board may provide for reinstatement of an expired or inactive license upon such terms as it may determine by rule.

§ 54-4508. Disciplinary proceedings

(1) The administratorboard shall have the authority to deny or refuse to renew a license or certificate of authority, defer or precondition licensure, suspend or revoke a license, impose an administrative fine not to exceed twenty thousand dollars (\$20,000) per violation, impose the administrative costs of bringing the action before the board including, but not limited to, hearing officer fees, expert witness fees, attorney's fees, costs of hearing transcripts and copies, or impose probationary conditions on the holder of a license or certificate of authority, upon the following grounds:

(a) Fraud or deception in the procurement of a license or certificate of authority or in the taking of an examination required under the provisions of this chapter;

(b) Incompetence in the performance of a construction manager's duties;

(c) Holding oneself or one's firm out as a construction manager by engaging in any act meeting the definition or character of a construction manager as defined herein without a legally required license;

(d) Fraud or deceit in the performance of a construction manager's duties; or

(e) Willful violation of the provisions of this chapter or the rules promulgated by the board.

(2) Proceedings which may result in the suspension or revocation of a license or certificate of authority, or the imposition of probationary or other disciplinary conditions on the holder of a license or certificate of authority, shall be conducted in accordance with the provisions of *chapter 52, title 67, Idaho Code*; provided however, that the suspension of a certificate of authority, upon the notification by its holder that the construction manager it has designated to the administratorboard no longer is a principal or employee of the firm, shall not be required to be conducted in accordance with the provisions of *chapter 52, title 67, Idaho Code*.

(3) The board may, by rule, provide for the reinstatement of suspended or revoked licenses upon such terms as it may impose.

§ 54-4509. Certificates of authority for firms

(1) No firm shall provide or hold itself out as providing construction management services unless it has a certificate of authority issued by the administratorboard. If one (1) or more principals or employees of a firm are licensed construction managers the firm may apply to the administratorboard for a certificate of authority to provide and hold itself out as providing construction management services. An application for a certificate of authority shall:

(a) Designate the licensed construction manager or managers, who are principals or employees of the firm, specified to be in responsible charge of construction management services provided by the firm;

(b) Be accompanied by a statement signed by such licensed construction manager or managers accepting the responsibility and duty to provide construction management services for the firm; and

(c) Contain such other information as the administratorboard reasonably may require.

If the administratorboard concludes that the construction manager or managers designated by the firm is or are licensed in good standing and that the firm meets such other criteria reasonably established by the board, heit shall issue a certificate of authority to the firm authorizing it to provide and hold itself out as providing construction management services.

(2) If the construction manager or managers designated by the firm cease to be licensed or to be principals or employees of the firm, the firm shall immediately notify the administratorboard in writing and shall cease to hold itself out as qualified to offer construction management services. Upon receiving such notification the administratorboard shall suspend the firm's certificate of authority. If the firm is in the process of providing construction management services when its designated licensed construction manager becomes unable to provide those services, the firm shall complete the construction management services for the project by using the services of another licensed construction manager who need not be a principal or employee of the firm. The firm shall not provide or hold itself out as providing construction management services for other projects until the administratorboard has reinstated the firm's certificate of authority which the administratorboard shall do if the firm submits an application for reinstatement of its certificate of authority, which shall contain the information required for an original application together with such other information as the administratorboard reasonably may require, and the administratorboard finds such application to be satisfactory and complete.

§ 54-4510. Fees -- Disposition of funds

(1) The board shall adopt by rule reasonable fees not to exceed two hundred dollars (\$200) for each of the following:

- (a) Initial examination and licensing;
- (b) License renewal;
- (c) Inactive licenses;
- (d) License reinstatement; and
- (e) Issuance, suspension and reinstatement of a certificate of authority.

(2) All fees collected by the administratorboard shall be paid to the public works contractors license board and deposited in the state treasury, to the credit of the public works contractors license board fund, and shall be used only for the administration of the provisions of this chapter. All expenses incurred pursuant to the provisions of this chapter shall be paid from the public works contractors license board fund. All fees collected by the administratorboard under the provisions of this chapter are hereby appropriated for one (1) year following the effective [July 1, 1998] date of this chapter and thereafter as appropriated each year by the legislature for carrying out the purposes and objectives of this chapter and to pay all costs and expenses incurred in connection therewith.

Such moneys shall be paid out on warrants drawn by the state controller upon presentation of proper vouchers approved by the board.

§ 54-4511. Award of contracts -- Dual capacity

(1) Construction manager representative (CMR). A licensed construction manager and the firm of which he is a principal or full-time employee may be awarded a contract to act only as representative for an owner. In soliciting bids or awarding contracts for public works construction to be entered into by the owner, a licensed construction manager representative shall comply with all notice and bidding laws with which an owner would be required to comply if it were to do the same activities without the assistance of a construction manager. A licensed construction manager representative and the firm of which he is a principal or employee shall not provide construction management services for a construction project on which the licensed construction manager or his firm also provides design services or other construction related services, whether as a contractor or subcontractor. Provided however, that this section shall not preclude a licensed architect or registered professional engineer from providing public works construction management services which are normally provided by licensed architects or registered professional engineers for a project on which the person or firm has provided design services. Such public works construction management services provided by a licensed architect or registered professional engineer shall not include the procurement of equipment or construction work required by law to be competitively bid for public works construction.

(2) Construction manager/general contractor (CM/GC). A licensed construction manager and the firm of which he is a principal or full-time employee may be awarded a contract to act as both construction manager and general contractor provided the construction manager/general contractor has a valid public works contractor license as a general contractor pursuant to *section 54-1902, Idaho Code*.

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

(4) At such time as the design of a project or a phase of a project is available, the construction work, materials and equipment for construction of a project may be incorporated into the construction manager/general contractor contract based upon bids solicited from licensed public works contractors and from suppliers for all construction work, materials and equipment.

(5) For each portion of the work, competitive bids shall be solicited from not less than three (3) contractors or suppliers deemed to be qualified by the construction manager/general contractor. All bids shall be opened publicly in the presence of a representative of the public entity for whom the project is undertaken and, once opened, bids shall be subject to the public record requirements outlined in Title 74, Idaho Code.

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

(7) The construction manager/general contractor, or its subsidiaries and affiliated companies, may bid to perform construction work or to supply materials or equipment only if it holds a

valid license pursuant to section 54-1902, Idaho Code, and for which it customarily self-performs or supplies such construction work, materials or equipment; provided, the public entity may limit the amount of work the construction manager/general contractor, including its subsidiaries and affiliated companies, may perform under the contract. Bids from the construction manager/general contractor and its subsidiaries or affiliated companies must be opened at the opening of any other bids.

(8) When bidding for all phases of the project has been completed, a guaranteed maximum price for the entire project may be negotiated by the public entity.

(9) No public entity shall enter into a contract with any person or firm for construction management services as construction manager representative or as construction manager/general contractor if such person or firm is required to be licensed under this chapter unless:

(a) Such person holds a valid license or such firm holds a valid certificate issued pursuant to this chapter; and

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

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

§ 54-4512. Requirement of bond

A licensed construction manager representative or firm providing public works construction management services shall be required to post a payment and performance bond or bonds in the amount of the total construction management contract to secure the construction manager's obligations thereunder. A construction manager/general contractor shall provide payment and performance bonds to secure construction of the project in the amounts required in *section 54-1926, Idaho Code*.

§ 54-4513. Penalties

Any person who violates any provision of this chapter shall, upon conviction, be guilty of a misdemeanor, and shall 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.

§ 54-4514. Injunctive relief

The ~~administrator~~board may bring an action in the district court for a temporary restraining order, preliminary injunction or permanent injunction against any person who violates the provisions of this chapter.