

\*\*\*850.90 — Public Works Construction. This update reflects new dollar thresholds for public works construction purchases. It also reflects additional modifications made during the 2017 session relating to the need for public works contractors' licenses on projects less than \$50,000 and performance/payment bonds on projects less than \$50,000. Note: It is expected that the licensing requirement may change again next session due to an oversight by the state's Division of Building Services.

The board will comply with all public works construction requirements of Idaho law relating to the construction, alteration or repair of any and all school buildings and improvements. In addition, the board will follow the guidelines set forth in the District's Policies and Procedures Manual for the Administration of Federal Education Programs ("Federal Programs Manual"). For purposes of this Policy, "public works construction" and "public works contractor" shall have the meanings set forth in Idaho Code §54-1901(2).

#### **PUBLIC WORKS LICENSURE**

For any construction, alteration, improvement or repair involving any single project involving any number of trades or crafts with an estimated cost of less than fifty thousand dollars (\$50,000), a public works contractors' license is not required. For projects equal to or greater than fifty thousand dollars (\$50,000), the successful bidder must hold a valid public works contractors' license as required by Idaho law. If a portion or all of the funding for the public works project is federal funding, the district's notice of solicitation of bids will not require that the bidder hold a valid public works license at the time of submission of the bid. However, any successful bidder must hold such license at the time of award and execution of a resulting contract.

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Except as otherwise provided herein or by federal law, the successful bidder selected to complete construction, repair, or renovation of district facilities must hold a valid public works license and must agree to comply with the following guidelines as provided in -Idaho Code §§44-1001 *et seq.*:

1. The contractor or person in charge of public works construction must employ 95% bona fide Idaho residents as employees except for sole source procurements authorized by Idaho Code §67-2808(2).
2. Alternatively, if the total number of persons employed on the contract is fifty (50) or less, the contractor or person in charge must employ 90% bona fide Idaho residents, provided the contractor gives preference to the employment of bona fide Idaho residents in the performance of such work.
3. For purposes of the guidelines in this section, "bona fide resident of Idaho" means that the person has resided in Idaho for not less than one (1) year immediately prior to employment on the project.

4. In contracts involving the expenditure of federal aid funds the preference for bona fide Idaho residents will not be enforced in such a manner as to conflict with or be contrary to federal law prescribing a labor preference to honorably discharged soldiers, sailors, and marines, prohibiting as unlawful any other preference or discrimination among citizens of the United States.
5. An employee who is not a citizen of the United States, or has not declared an intention to become such, or is not eligible to become a citizen shall not be employed upon any public works construction project of the district.
6. Whenever applicable provisions of Idaho law require a public works contractor's license to bid upon a public construction project, the requirement will be deemed waived whenever a federal law prohibits requiring licensure as a precondition for submitting a bid.
7. Nothing in this policy prohibits the district from performing construction or repair work on its own facilities using its own employees.

**WRITTEN PLANS AND SPECIFICATIONS**

The board will make written plans and specifications of work to be performed or materials to be furnished on any public works construction project of the district, which plans and specifications will state, among other things pertinent to the work to be performed or materials furnished, the number, size, kind and quality of materials and service required for such contract. The plans and specifications will not specify or provide for the use of a specific brand or mark, or any patented apparatus or appliances when other materials are available for such purpose and when such requirements would prevent competitive bidding on the part of dealers or contractors in other articles or materials of equivalent value, utility or merit. All plans and specifications will be made available to all interested and prospective bidders, provided that the board may require prospective bidders to make a reasonable deposit for such plans and specifications.

**DESIGN-BUILD CONSTRUCTION**

The board may use the design-build method of construction in contracts for the construction, repair or improvement of district buildings. For purposes of this policy, a design-build contract is a contract between the board and contractor or other party in which the contractor agrees to both design and build a structure or other item specified in the contract.

Any design-build firm, regardless of its organizational structure, must comply with all requirements of Idaho Code §§54-1201 *et seq.*, relating to licensing of engineers and surveyors, and Idaho Code §§54-1901 *et seq.*, relating to public works contractor licensing. Any Idaho professional engineering licenses required shall be obtained prior to submittal of a design-build firm's proposal. The design-build firm shall also obtain any required Idaho public works licenses prior to submittal of a proposal, unless the project involves federal funds. If the project involves federal funds, then the design-build firm must obtain any required Idaho public works licenses prior to contract award.

**SUBCONTRACTORS TO BE LISTED ON BID OF GENERAL CONTRACTOR**

In all bids submitted for the construction, alteration or repair of district buildings and improvements which construction requires plumbing, HVAC work or electrical work, the general contractor is required to include in his bid the name(s) and address(es) of the subcontractors who will subcontract the plumbing, HVAC work and electrical work under the general contract.

In the event the general contract intends to self-perform the plumbing, HVAC work or electrical work, the general contractor must be properly licensed by the state of Idaho to perform such work. The general contractor must demonstrate compliance with this requirement by listing the valid contractor's license number for the plumbing, HVAC or electrical work to be self-performed by the general contractor on the bid form.

At the time subcontractors are named in accordance with this section, they must possess the appropriate licenses or certificates of competency issued by the state of Idaho covering the contractor work classification in which each respective subcontractor is named, except in cases where the project is financed in whole or in part by federal aid funds. In such cases, the subcontractor must possess the appropriate license or certificate at or prior to the award and execution of the contract.

The general contractor may not name any subcontractor in his bid unless he has received communication from the subcontractor by telephone, mail, facsimile, electronically or in person. In the event the general contractor who secures the contract cannot finalize the terms of the agreement between him and a named subcontractor for any reason other than cost, the general contractor shall name another subcontractor by written notification within ten (10) days of being awarded the contract. The general contractor shall disclose to the board the cost for the work to be performed by substitute contractor. If the amount of the substitute subcontractor's bid is less than the original subcontractor's bid, the reduction in cost shall be passed through to the benefit of the board.

Failure to name subcontractors or list the valid contractor's license number for plumbing, HVAC or electrical work being self-performed by the general contractor shall render any bid submitted by a general contractor unresponsive and void.

**PUBLIC WORKS AGREEMENTS – PAYMENT OF WAGES**

Except as provided in this section or as required by federal or state law, the district will not require that a contractor, subcontractor, material supplier or carrier engaged in the construction,

alteration, equipping, furnishing, maintenance, repair or improvement of public works to pay its employees a (i) predetermined amount of wages or wage rate; or (ii) a type, amount or rate of employee benefits. The foregoing requirement will not apply when federal law requires the payment of prevailing or minimum wages to persons working on projects funded in whole or in part by federal funds (e.g. Davis-Bacon Act wages). In addition, the district will ensure that neither it nor any construction manager acting on its behalf will:

1. In its bid documents, specifications, project agreements or other controlling documents for a public works construction contract, require or prohibit bidders, offerors, contractors, subcontractors, or material suppliers to enter into or adhere to prehire agreements, project labor agreements, collective bargaining agreement or any other agreement with one (1) or more labor organizations on the same or other related construction projects; or
2. Discriminate against, or treat differently, bidders, offerors, contractors, subcontractors or material suppliers for becoming or refusing to become ore remain signatories or otherwise to adhere to agreements with one (1) or more labor organizations on the same or other related construction projects.

Nothing in this section will prohibit bidders, offerors, contractors, subcontractors or material suppliers from voluntarily entering into agreements described in subparagraph 1 above.

The requirements of this section do not prohibit or interfere with the rights of employers or other parties to enter into agreements or engage in any other activity protected by the National Labor Relations Act, 29 U.S.C. §151 *et seq.*

**PUBLIC WORKS CONSTRUCTION UNDER \$50,000; LACK OF AVAILABLE LICENSED CONTRACTORS**

For any single contemplated public works construction project with an estimated total cost of less than fifty thousand dollars (\$50,000), where the board determines that there may be a lack of available licensed contractors, the district may publish a notice of intent to solicit bids in the newspaper of general circulation in the district, concurrently sending such notice to the public works contractors license board, soliciting statements of interest from licensed public works contractors to determine whether one or more licensed contractors is interested in submitting a bid.

Such notice will describe the project in sufficient detail to allow an experienced public works contractor to understand the construction project, the method(s) authorized for submitting bids (electronic or physical delivery), and the date and time by which a bid proposal must be received by the board clerk. The solicitation must provide a reasonable time to respond to the solicitation, provided that, except in the event of an emergency, such time shall not be less than three (3) business days. If no licensed public works contractor submits a statement of interest, the board may purchase public works construction from other than a licensed public works contractor by using the same procurement procedures otherwise specified herein.

**PUBLIC WORKS CONSTRUCTION BETWEEN \$~~2550,000~~ AND \$~~2100,000~~**

When the board contemplates public works construction valued in excess of ~~fiftytwenty-five~~ thousand dollars (\$~~5025,000~~) but not to exceed ~~twoone~~ hundred thousand dollars (\$~~2100,000~~), the following procedures will be used:

Solicitation for Bids

~~The solicitation for bids for the public works construction to be performed will be supplied to no fewer than three (3) owner-designated licensed public works contractors by written means, either by electronic or physical delivery. The solicitation will describe the construction work to be completed in~~ sufficient detail to allow an experienced public works contractor to understand the construction project ~~the district seeks to build~~, the method(s) authorized for submitting bids (electronic or physical delivery), and the date and time by which a bid proposal must be received by the board clerk ~~(or other authorized official), and shall~~ provide a reasonable time to respond to the solicitation, provided that, except in the event of an emergency, such time shall not be less than three (3) business days.

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Objections

The board clerk ~~(or other authorized official)~~ must receive written objections to specifications or bid procedures at least one (1) business day before the date and time upon which bids are scheduled to be received. *The board or designee will respond to any such objection in writing and communicate its response to all prospective bidders, adjusting bidding timeframes if necessary.* Any objection not submitted within the time required by this section will be deemed a waiver of any rights to raise such an objection thereafter.

Contract Award

When written bids have been received, ~~by either physical or electronic delivery,~~ they will be submitted to the board or ~~a~~ designee ~~of the board shall present the lowest responsive bid to the board for approval or, if authorized, approve the bid. The governing board or the board's designee shall~~ approve the ~~responsive bid proposing the lowest procurement price~~ or reject all bids and publish notice for bids, as before.

If the board finds that it is impractical or impossible to obtain three (3) bids for the proposed public works project, the board may acquire the work in any manner it deems best from a qualified public works contractor quoting the lowest price. When fewer than three (3) bids are considered, the board will document the efforts undertaken to procure at least three (3) bids, and such documentation shall be maintained for at least six (6) months after the decision is made. If two (2) or more price quotations offered by different licensed public works contractors are identical and constitute the lowest responsive bids, the board may accept the one it chooses.

**PUBLIC WORKS CONSTRUCTION IN EXCESS OF \$~~100~~200,000**

When the board contemplates public works construction valued in excess of ~~two~~ hundred thousand dollars (\$~~2~~100,000), the board will engage in a competitive sealed bid process and contract with the qualified public works contractor submitting the lowest bid price complying with bidding procedures and meeting any prequalifications established by the bid documents. The board may elect to solicit competitive bids for public works construction with or without requiring prequalifications.

**Soliciting Bids without Prequalification Requirements (Category A)**

The board will consider bids submitted from any licensed public works contractor desiring to bid upon a public works project. In awarding a contract, the board may only consider the amount bid, bidder compliance with administrative requirements of the bidding process, and whether the bidder holds the requisite license, and shall award the bid to the qualified bidder submitting the lowest responsive bid.

**Notice**

The request for bids shall set a date and place for the public opening of bids. Two (2) notices soliciting bids shall be published in the official newspaper of the district.\* The first notice shall be published at least two (2) weeks before the date for opening bids, with the second notice to be published in the succeeding week at least seven (7) days before the date that bids are scheduled to be opened. The notice will succinctly describe the project to be constructed. Copies of specifications, bid forms, bidder's instructions, contract documents, and general and special instructions will be made available upon request and payment of a reasonable plan copy fee by any interested bidder.

**Objections**

The board clerk (or other authorized official) must receive written objections to specifications or bid procedures at least three (3) business days before the date and time the bids are scheduled to be opened. The board clerk, other administrative officer or the board supervising the bidding process will respond to any objection(s) in writing and communicate such response to all prospective bidders, adjusting bidding timeframes if necessary. Any objection not submitted within the time required by this section will be deemed a waiver of any rights to raise such objection thereafter.

**Submission of Bids**

All bids must be presented or otherwise delivered under sealed cover to the board clerk or other authorized agent of the district designated by the information provided to bidders by the board with a concise statement marked on the outside generally identifying the project to which the bid pertains.

**Bid Security**

If the board deems it is in the district's best interest, it may require bidders to provide bid security in an amount equal to at least five percent (5%) of the amount bid. If required, a bid will not be considered unless one (1) of the forms of bidder's security is enclosed with it. The board may require that the bid security be in one of the following forms:

1. Cash;
2. A cashier's check payable to the district;
3. A certified check payable to the district; or
4. A bidder's bond executed by a qualified surety company, payable to the district.

Contract Award

Sealed bids will be opened in public at the date, time, and place specified in the notice, thereafter to be compiled and submitted to the board for award, or if a designee is authorized, for approval of the award. Any bid received by the board may not be withdrawn after the time set in the notice for opening of bids.

In its discretion, the board may reject all bids and re-bid, or may, after finding it to be a fact, pass a resolution declaring that the project can be performed more economically by purchasing goods and services on the open market. If two or more bids are the same and both constitute the lowest responsive bids, the board may accept the one it prefers. If no bids are received, the board may procure the construction goods and services without further competitive bidding procedures.

If the board chooses to award the contract to a bidder other than the apparent low bidder, the board will declare its reason(s) on the record and communicate such reason(s) in writing to all who have submitted a competing bid.

Failure to Execute the Contract

If the successful bidder fails to execute the contract, the amount of his bidder's security may be forfeited to the district at the sole discretion of the board and, thereafter, the proceeds may be deposited in a designated fund out of which the reasonable expenses for procuring substitute performance are paid.

The board may, on the refusal or failure of the successful bidder to execute the contract, award the contract to the qualified bidder submitting the next lowest responsive bid. If the board awards the contract to the next lowest qualified bidder, the amount of the lowest qualified bidder's security may be applied by the board to the difference between the lowest responsive bid and the next lowest responsive bid, and the surplus, if any, shall be returned to the lowest bidder if cash or check is used, or to the surety on the bidder's

bond if a bond is used, less reasonable administrative costs not to exceed twenty-five percent (25%) of the amount of the bidder's security.

#### Objection to Contract Award

If any participating bidder objects to the award of a contract, such bidder must submit a written response to the board's notice within seven (7) calendar days of the date of transmittal of the notice, setting forth in such response the express reason(s) that the award decision of the board is in error. Thereafter, staying performance of any procurement until after addressing the contentions raised by the objecting bidder, the board will review its decision and determine whether to affirm or modify the award, or re-bid the contract, setting forth its reason(s) therefore. After completion of the review process, the board may proceed as it deems to be in the public interest. Any objection or appeal not submitted within the time required by this section will be deemed a waiver of any rights to raise such objection or appeal thereafter.

#### Soliciting Bids with Prequalification Requirements (Category B)

The board may require that contractors "prequalify" prior to entering into competitive bidding for a public works project. Prequalification standards may be established by the board to consider the following issues: demonstrated technical competence, experience constructing similar facilities, prior experience with the district, available nonfinancial resources, equipment and personnel as they relate to the project, and overall performance history based upon a contractor's entire body of work. Any licensed contractors desiring to be prequalified to bid on a project must submit a written response to the board's request for qualifications. The board will then accept bids only from prequalified contractors.

The board will provide notice of the prequalification stage by publishing two (2) notices soliciting prequalification statements in the newspaper with general circulation in the district. The first notice must be published at least two (2) weeks before the date for opening prequalification statements, with the second notice to be published in the succeeding week at least seven (7) days before the date that bids are scheduled to be opened. The notice will succinctly describe the project to be constructed, the standards for evaluating the qualifications of prospective bidders, and the date and time by which qualification statements must be received.

#### Objection to Prequalification Procedures

The clerk of the board (or other authorized official) must receive written objections to prequalification procedures at least three (3) business days before the date and time of which prequalification statements are due. The board or designated administrative officer supervising the bidding process will respond to any such objections in writing and communicate its response to the objector and all other contractors seeking to prequalify, adjusting bidding timeframes if necessary. Any objection to prequalification procedures not submitted within the time required by this section will be deemed a waiver of any rights to raise such objection thereafter.



### Selection of Prequalified Contractors

After a review of qualification submittals, the board may select licensed contractors that meet the prequalification standards. If any licensed contractor submits a statement of qualifications but is not selected as a qualified bidder, the board will supply a written statement of the reason(s) why the contractor failed to meet prequalification standards.

### Appeal of Prequalification Determination

Any licensed contractor may appeal the determination that it does not meet the prequalification standards. Such appeal must be submitted to the board within seven (7) days after transmittal of the prequalification results. *The board will conduct the appeal by reviewing solely the written objection and accompanying documentation; the board will not meet with the licensed contractor.* If the board sustains its prior decision, it will state its reason(s) for the record. The board's decision concerning prequalification may be appealed to the public works contractors license board no more than fourteen (14) days following the board's decision on appeal, pursuant to the procedures set forth in Idaho Code §67-2805(2)(b)(iv). The public works contractors license board then has thirty-five (35) days to decide any such appeal. Failure to file a timely appeal of a prequalification determination will be deemed to constitute a waiver of any rights to file an appeal thereafter.

The board will stay the bidding process during the pendency of the prequalification appeal until the public works contractor's license board completes its review, but in no instance more than forty-nine (49) days after the board issued its final decision regarding the prequalification appeal. Any licensed public works contractor affected by a decision on appeal by the public works contractor's license board may, within twenty-eight (28) days of the final decision, seek judicial review as provided by Chapter 52, Title 67, Idaho Code.

Following the conclusion of the prequalification administrative procedures, the bidding stage shall proceed by the setting of a time, date, and place for the public opening of bids. In circumstances involving prequalified prime contractors, a notice soliciting bids shall be transmitted to prequalified bidders at least fourteen (14) days before the date of opening the bids. In circumstances involving prequalified specialty or subordinate contractors, notice shall be published in the official newspaper of the district twice, the first of which will be published at least two (2) weeks before the date for opening bids, and the second of which will be published in the succeeding week at least seven (7) days before the date that bids are scheduled to be opened. The notice shall succinctly describe the project to be constructed. Copies of specifications, bid forms, bidder's instructions, contract documents, and general and special instructions shall be made available upon request and payment of a reasonable plan copy fee by any prequalified bidder.

### Objections to Bid Specifications/Procedures

The clerk of the board (or other authorized official) must receive written objections to specifications or bidding procedures at least three (3) business days before the date and time upon which bids are scheduled to be opened. *The board or its designee will respond to any such*

objection in writing and communicate such response to the objector and all other plan holders, adjusting bidding timeframes if necessary. Any objection not submitted within the time required by this section will be deemed a waiver of any rights to raise such objection thereafter.

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#### Delivery of Bids

All bids must be presented or otherwise delivered under sealed cover to the clerk of the board or other authorized agent of the board designated by the instructions to bidders with a concise statement on the outside identifying the project to which the bid pertains.

#### Bid Security

If the board deems it is in the district's best interest, it may require the bidder to provide bid security in an amount equal to at least five percent (5%) of the amount bid. If required, a bid will not be considered unless the bidder's security is enclosed with it. The board may require that the bid security be in one of the following forms:

1. Cash;
2. Cashier's check, payable to the district;
3. Certified check, payable to the district; or
4. Bidder's bond executed by a qualified surety company, payable to the district.

#### Bid Opening

When sealed bids have been received, they shall be opened in public at a designated place and time. The board's designee shall thereafter compile and submit the bids to the board for award or, if authorized, approve the award. Any bid received by the board may not be withdrawn after the date and time set in the notice for opening of bids. *A bid will not be considered if it is not submitted in a form that substantially complies with the form provided by the board, and/or the bid security, if required, is not enclosed.*

#### Failure to Execute Contract

If the successful bidder fails to execute the contract, the amount of his bidder's security may be forfeited to the district at the sole discretion of the board and the proceeds deposited in a designated fund to pay the expenses of obtaining substitute performance.

The board may, on the refusal or failure of the successful bidder to execute the contract, award the contract to the qualified bidder submitting the next lowest responsive bid. If the board awards the contract to the next lowest qualified bidder, the amount of the lowest qualified bidder's security may be applied by the board to the difference between the lowest responsive bid and the next lowest responsive bid, and the surplus, if any, shall be returned to the lowest bidder if cash or check is used, or to the surety on the bidder's bond if a bond is used, less

reasonable administrative costs not to exceed twenty-five percent (25%) of the amount of the bidder's security to the owner.

#### Awarding the Contract

In its discretion, the board may accept a bid, reject all bids presented and re-bid, or, after finding it to be a fact, pass a resolution declaring that the project can be performed more economically by purchasing goods and services on the open market. If identical bids are received, the board may choose the bidder it prefers. If no bids are received, the board may procure the goods or services without further competitive bidding procedures. *The board will send written notice of its decision regarding the award of the contract to all contractors who submitted a bid.*

If the board chooses to award a competitively bid contract involving public works construction to a bidder other than the apparent low bidder, the board must declare its reason(s) on the record and communicate such reason(s) in writing to all persons who have submitted a competing bid.

#### Objections to Contract Award

Any participating bidder may object to the contract award by written response to the board's notice of a contract award. Such response must be submitted to the board clerk within seven (7) calendar days of the date of transmittal of the notice, and set forth the express reason(s) that form the objection to the award decision. The board will stay performance of the public works construction until it has addressed the contentions raised by the objecting bidder. The board will review its decision and determine whether to affirm its prior award, modify the award, or choose to re-bid, setting forth its reason(s) therefor *in writing*. After completion of the review process, the board may proceed as it deems to be in the public interest. Any objection not submitted within the time set forth in this section will be deemed a waiver of any rights to raise such objection thereafter.

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### **PAYMENT AND PERFORMANCE BONDS**

Before any contract equal to or greater than fifty thousand (\$50,000) for the construction, alteration or repair of any building or improvement is executed, the person to whom such contract was awarded shall furnish to the district bonds, as described in this section, that shall become binding upon the execution of the contract. The person to whom the contract was awarded shall be designated as "contractor." Each bond shall be executed by a surety company(ies) authorized to do business in Idaho or, in lieu of providing such surety company performance and payment bonds, the contractor may deposit a government obligation. A "government obligation" is 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. All payment and performance bonds shall be filed with the board clerk or other designated agent of the board. The following guidelines will apply to performance and payment bonds:

1. Performance Bonds. The board has discretion to set the amount of the performance bond, but in no case will it be set at less than eighty-five percent (85%) of the

contract amount. The performance bond will be conditioned on the faithful performance of the contract in accordance with the plans, specifications, and conditions thereof, and is issued solely for the protection of the board.

2. Payment Bonds. The board has discretion to set the amount of the payment bond, but in no case will it be set at less than eighty-five percent (85%) of the contract amount. The payment bond is issued 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.



**LEGAL REFERENCE:**

Idaho Code Sections

- 33-601
- 39-4108
- 39-4113
- 39-8001 *et seq.*
- 44-1001 *et seq.*
- 54-1201 *et seq.*
- 54-1901 *et seq.*
- 54-4501 *et seq.*
- 67-2309
- 67-2310
- 67-2804
- 67-2805

**ADOPTED:**

**AMENDED:**