

PUBLIC WORKS LICENSURE

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.

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 provisions of Idaho Code Sections 44-1001, et seq., requiring that:

1. 95% of the persons employed on the contract are Idaho residents or, if the total number of persons employed on the contract is fifty (50) or less, 90% are Idaho residents;
2. For purposes of this requirement, "resident" means that the person has resided in Idaho for not less than one (1) year immediately prior to employment on this project; and
3. No employee 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.

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 \$25,000 AND \$100,000

When the board contemplates public works construction valued in excess of twenty-five thousand dollars (\$25,000) but not to exceed one hundred thousand dollars (\$100,000), the following procedures will be used:

Solicitation for Bids

The board will draft a written solicitation for bids for the public works construction, describing 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. The solicitations will be delivered, by electronic or physical means, to no fewer than three (3) owner-designated licensed public works contractors.

Objections

The board clerk 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.

Contract Award

When written bids have been received, they will be submitted to the board or designee, which may approve the lowest responsive bid 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 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 \$100,000

When the board contemplates public works construction valued in excess of one hundred thousand dollars (\$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

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.

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 newspaper with general circulation in 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.

Soliciting Bids With Prequalification Requirements

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 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 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 designee 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.

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 Idaho Code Section 67-2805(3)(b).

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. A notice soliciting bids shall be transmitted to prequalified bidders at least fourteen (14) days before the date of opening the bids. 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 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 supervising the bidding process 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.

Delivery of Bids

All bids must be presented or otherwise delivered under sealed cover to the clerk of the board 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, thereafter to be compiled and submitted to the board for 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) therefore in writing. After completion of the review process, board may proceed as it deems to be in the public interest.

PAYMENT AND PERFORMANCE BONDS

The district shall require that all successful bidders submit payment and performance bonds. Such bonds are required elements of any resultant contracts for construction or construction management, naming the district as “Owner” and “Obligee.”



LEGAL REFERENCE:

- Idaho Code Sections
- 33-601
- 44-1001, et seq.
- 54-1901, et seq.
- 54-4501, et seq.
- 67-2805

ADOPTED: December 14, 1999

AMENDED: November 15, 2005
October 14, 2008

Note: The 2007 Legislature enacted a change to Idaho Code Section 33-402(g) that cross-references Idaho Code Section 33-601 regarding the notice calling for bids for acquisition, use, or disposal of real and personal property. This change clarifies that such notice must be published in a newspaper of general circulation, as required by Chapter 11, Title 60, Idaho Code. This code section requires that the “newspaper of general circulation” be limited to a newspaper of general interest of at least four pages published within the boundaries of the district which has the largest paid circulation as verified by the sworn statement of the owner or management. This may mean that the district is required to publish such notice in the local paper published within the district and also in a larger newspaper with greater circulation to assure that relevant vendors are aware of the notice.