

IN THE SENATE

SENATE BILL NO. 1219

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO PUBLIC WORKS CONTRACTS; AMENDING SECTION 54-4511, IDAHO CODE, TO  
2 PROVIDE FOR COMPENSATION OF CONSTRUCTION MANAGERS AND GENERAL CONTRAC-  
3 TORS, TO PROVIDE THAT CERTAIN COSTS MAY BE INCORPORATED INTO A CONTRACT,  
4 TO PROVIDE THAT CERTAIN BIDS SHALL BE HANDLED IN A PARTICULAR MANNER, TO  
5 CLARIFY HOW CONSTRUCTION MANAGERS AND GENERAL CONTRACTORS MAY BID, TO  
6 PROVIDE THAT CERTAIN TERMS SHALL BE INCLUDED IN CERTAIN CONTRACTS AND TO  
7 REMOVE A PROVISION RELATING TO COMPENSATION.  
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Section 54-4511, Idaho Code, be, and the same is hereby  
11 amended to read as follows:

12 54-4511. AWARD OF CONTRACTS -- DUAL CAPACITY. (1) Construction man-  
13 ager representative (CMR). A licensed construction manager and the firm of  
14 which he is a principal or full-time employee may be awarded a contract to  
15 act only as representative for an owner. In soliciting bids or awarding  
16 contracts for public works construction to be entered into by the owner, a  
17 licensed construction manager representative shall comply with all notice  
18 and bidding laws with which an owner would be required to comply if it were  
19 to do the same activities without the assistance of a construction manager.  
20 A licensed construction manager representative and the firm of which he is  
21 a principal or employee shall not provide construction management services  
22 for a construction project on which the licensed construction manager or his  
23 firm also provides design services or other construction related services,  
24 whether as a contractor or subcontractor. Provided however, that this sec-  
25 tion shall not preclude a licensed architect or registered professional  
26 engineer from providing public works construction management services which  
27 are normally provided by licensed architects or registered professional  
28 engineers for a project on which the person or firm has provided design ser-  
29 vices. Such public works construction management services provided by a  
30 licensed architect or registered professional engineer shall not include  
31 the procurement of equipment or construction work required by law to be com-  
32 petitively bid for public works construction.

33 (2) Construction manager/general contractor (CM/GC). A licensed con-  
34 struction manager and the firm of which he is a principal or full-time em-  
35 ployee may be awarded a contract to act as both construction manager and gen-  
36 eral contractor provided the construction manager/general contractor has a  
37 valid public works contractor license as a general contractor pursuant to  
38 section 54-1902, Idaho Code.

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

41 (4) At such time as the design of a project or a phase of a project is  
42 available, the construction work, materials and equipment for construction

1 of a project may be incorporated into the construction manager/general con-  
2 tractor contract based upon bids solicited from licensed public works con-  
3 tractors and from suppliers for all construction work, materials and equip-  
4 ment.

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

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

14 (7) The construction manager/general contractor, or its subsidiaries  
15 and affiliated companies, may bid to perform construction work or to sup-  
16 ply materials or equipment only if it holds a valid license pursuant to sec-  
17 tion 54-1902, Idaho Code, and for which it customarily self-performs or sup-  
18 plies such construction work, materials or equipment; provided, the public  
19 entity may limit the amount of work the construction manager/general con-  
20 tractor, including its subsidiaries and affiliated companies, may perform  
21 under the contract. Bids from the construction manager/general contractor  
22 and its subsidiaries or affiliated companies must be opened at the opening of  
23 any other bids.

24 (8) When bidding for all phases of the project has been completed, a  
25 guaranteed maximum price for the entire project may be negotiated by the pub-  
26 lic entity.

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

31 (a) Such person holds a valid license or such firm holds a valid cer-  
32 tificate issued pursuant to this chapter; and

33 (b) The selection of such construction manager representative or  
34 construction manager/general contractor is made pursuant to section  
35 67-2320, Idaho Code; and

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

39 (4) Compensation of a construction manager shall be determined pur-  
40 suant to section 67-2320, Idaho Code. At such time as the design of a project  
41 is available, the construction work, materials and equipment for construc-  
42 tion of a project may be incorporated into the construction manager/general  
43 contractor contract based upon bids solicited from licensed public works  
44 contractors and from suppliers. All construction work, materials and equip-  
45 ment shall be competitively bid to be opened publicly in the presence of a  
46 representative of the public body for whom the project is undertaken and  
47 shall be awarded to the lowest responsible bidders. The construction man-  
48 ager/general contractor, or its subsidiaries and affiliated companies, may  
49 bid to perform construction work or supply materials or equipment for which

1 ~~it holds a valid license pursuant to section 54-1902, Idaho Code, and which~~  
2 ~~it customarily self-performs or supplies.~~