

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 40

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO PROFESSIONAL SERVICE CONTRACTS; AMENDING SECTION 67-2320, IDAHO CODE, TO REVISE PROVISIONS REGARDING SELECTIONS FOR CERTAIN PROFESSIONAL SERVICE CONTRACTS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 67-2320, Idaho Code, be, and the same is hereby amended to read as follows:

67-2320. PROFESSIONAL SERVICE CONTRACTS WITH DESIGN PROFESSIONALS, CONSTRUCTION MANAGERS AND PROFESSIONAL LAND SURVEYORS. (1) Notwithstanding any other provision of law to the contrary, it shall be the policy of this state that all public agencies and political subdivisions of the state of Idaho and their agents shall make selections for professional engineering, architectural, landscape architecture, construction management and professional land surveying services, including services by persons licensed pursuant to chapters 3, 12, 30 and 45, title 54, Idaho Code, on the basis of qualifications and demonstrated competence and shall negotiate contracts or agreements for such services on the basis of demonstrated competence and qualifications for the type of services required at fair and reasonable prices.

(2) In carrying out this policy, public agencies and political subdivisions of the state shall use the following minimum guidelines in securing contracts for engineering, architectural, landscape architecture, construction management and land surveying services on projects for which the professional service fee is anticipated to exceed the total sum of twenty-five thousand dollars (\$25,000), excluding professional services contracts previously awarded for an associated or phased project, and the expenditure is otherwise exempt from the bidding process provided by law:

(a) Encourage persons or firms engaged in the services being solicited to submit statements of qualifications and performance data;

(b) Establish and make available to the public the criteria and procedures used for the selection of qualified persons or firms to perform such services;

(c) Select the persons or firms ~~whom~~ who the public agency or political subdivision determines to be best qualified to provide the required services, ranked in order of preference, pursuant to the public agency or political subdivision's established criteria and procedures;

(d) Negotiate with the highest ranked person or firm for a contract or agreement to perform such services at a price determined by the public agency or political subdivision to be reasonable and fair to the public after considering the estimated value, the scope, the complexity and the nature of the services;

1 (e) When unable to negotiate a satisfactory contract or agreement, for-
 2 mally terminate negotiations and undertake negotiations with the next
 3 highest ranked person or firm, following the procedure prescribed in
 4 ~~subsection (2) paragraph~~ (d) of this subsection;

5 (f) When unable to negotiate a satisfactory contract or agreement with
 6 any of the selected persons or firms, continue with the selection and
 7 negotiation process provided in this section until a contract or agree-
 8 ment is reached;

9 (g) When public agencies or political subdivisions solicit proposals
 10 for engineering, architectural, landscape architecture, construction
 11 management or land surveying services for which the professional ser-
 12 vice fee is anticipated to exceed the total sum of twenty-five thousand
 13 dollars (\$25,000), they shall publish public notice in the same manner
 14 as required for bidding of public works construction projects-;

15 (h) In fulfilling the requirements of ~~subsections (2) paragraphs~~ (a)
 16 through ~~(2) (g)~~ of this subsection, a public agency or political subdivi-
 17 sion may ~~limit its selection~~ establish and select from a list of at
 18 least three (3) persons or firms selected and preapproved for consider-
 19 ation by the public agency or political subdivision. In establishing
 20 a preapproved list, a public agency or political subdivision shall
 21 publish notice as set forth in ~~subsection (2) paragraph~~ (g) of this
 22 subsection. When selecting from such list, no notice shall be re-
 23 quired-; and

24 (i) In fulfilling the requirements of ~~subsections (2) paragraphs~~ (a)
 25 through ~~(2) (g)~~ of this subsection, a public agency or political subdivi-
 26 sion may ~~request not use~~ request not use information concerning a person's or firm's
 27 fees, rates, overhead and multipliers, if any, however such informa-
 28 tion shall not be used by the public agency or political subdivision for
 29 the purpose of ranking in order of preference as required in subsection
 30 (2) (e) of this section when evaluating qualifications. Such informa-
 31 tion may be used during the subsequent negotiations of a contract or
 32 agreement.

33 (3) In securing contracts for engineering, architectural, land-
 34 scape architecture, construction management or land surveying services on
 35 projects for which the professional service fee is anticipated to be less
 36 than the total sum of twenty-five thousand dollars (\$25,000), the public
 37 agency or political subdivision may use the guidelines set forth in para-
 38 graphs (a) through ~~(g)~~ of subsection (2) of this section or establish its
 39 own guidelines for selection based on demonstrated competence and qualifi-
 40 cations to perform the type of services required, followed by negotiation of
 41 the fee at a price determined by the public agency or political subdivision
 42 to be fair and reasonable after considering the estimated value, the scope,
 43 the complexity and the nature of services.

44 (4) When a public agency or political subdivision of the state has pre-
 45 viously awarded a professional services contract to a person or firm for an
 46 associated or phased project, the public agency or political subdivision
 47 may, at its discretion, negotiate an extended or new professional services
 48 contract with that person or firm.

49 (5) (a) For the purposes of this section, "public agency" shall mean the
 50 state of Idaho and any departments, commissions, boards, authorities,

1 bureaus, universities, colleges, educational institutions or other
2 state agencies which have been created by or pursuant to statute other
3 than courts and their agencies and divisions, and the judicial council
4 and the district magistrate's commission;

5 (b) For the purposes of this section, "political subdivision" shall
6 mean a county, city, airport, airport district, school district, health
7 district, road district, cemetery district, community college dis-
8 trict, hospital district, irrigation district, sewer district, fire
9 protection district, or any other district or municipality of any na-
10 ture whatsoever having the power to levy taxes or assessment, organized
11 under any general or special law of this state. The enumeration of cer-
12 tain districts herein shall not be construed to exclude other districts
13 or municipalities from this definition.