

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 446

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

RELATING TO PUBLIC CONTRACTS; AMENDING SECTION 67-2320, IDAHO CODE, TO RE-
VISE PROVISIONS REGARDING CERTAIN PROFESSIONAL SERVICE CONTRACTS.

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) Notwithstand-
ing 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 engineer-
ing, architectural, landscape architecture, construction management, and
professional land surveying services, including services by persons li-
censed pursuant to chapters 3, 12, 30, and 45, title 54, Idaho Code, on the
basis of qualifications, and demonstrated competence, and shall negotiate
competitive cost. Solicitation, selection, and negotiation shall occur
only after consideration of the estimated value, the scope, the complexity,
and the nature of the services. Ceontracts or agreements for such services
shall be negotiated on the basis of demonstrated competence, competitive
cost, and qualifications for the type of services required at fair and rea-
sonable prices.

(2) In carrying out this policy, public agencies and political subdivi-
sions of the state shall use the following minimum guidelines in securing
contracts for engineering, architectural, landscape architecture, con-
struction management, and land surveying services on projects for which
the professional service fee is anticipated to exceed the total sum of
~~twenty-five~~ fifty thousand dollars (\$250,000), excluding professional ser-
vices 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 measurable criteria
and procedures used for the selection of qualified persons or firms to
perform such services. Examples include fees or competitive cost, dis-
tance from the project, specific experience or expertise, education and
training, longevity of a company, number of prior projects of similar
scope, bonding rates, and prior bid tabulations;

(c) ~~Select~~ Score the persons or firms whom the public agency or politi-
cal subdivision determines to be best qualified to provide the required
services, ranked in order of preference based on established measur-
able criteria, pursuant to the public agency or political subdivision's

1 ~~established criteria and procedures.~~ The criteria and scores must be
 2 available to the public;

3 (d) Negotiate with the highest ~~ranked~~ scored person or firm for a con-
 4 tract or an agreement to perform such services at a competitive price
 5 determined by the public agency or political subdivision to be reason-
 6 able and fair to the public ~~after considering the estimated value, the~~
 7 ~~scope, the complexity and the nature of the services;~~

8 (e) When unable to negotiate a satisfactory contract or agreement,
 9 formally terminate negotiations and undertake negotiations with the
 10 next highest ~~ranked~~ scored person or firm, following the procedure pre-
 11 scribed in ~~subsection (2) paragraph~~ (d) of this subsection;

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

16 (g) When public agencies or political subdivisions solicit proposals
 17 for engineering, architectural, landscape architecture, construc-
 18 tion management, or land surveying services for which the professional
 19 service fee is anticipated to exceed the total sum of ~~twenty-five~~
 20 fifty thousand dollars (\$250,000), they shall publish public notice in
 21 the same manner as required for bidding of public works construction
 22 projects-;

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

32 (i) In fulfilling the requirements of ~~subsections (2) paragraphs~~ (a)
 33 through ~~(2) (g)~~ of this subsection, a public agency or political subdivi-
 34 sion ~~may~~ must request information concerning a person's or firm's
 35 rates, overhead, and multipliers, ~~if any, however s.~~ Such informa-
 36 tion shall ~~not~~ be used by the public agency or political subdivision
 37 for the purpose of ~~ranking in order of preference~~ scoring as required
 38 in ~~subsection (2) paragraph~~ (c) of this subsection. Competitive cost
 39 shall count for no less than fifty percent (50%) of the scoring crite-
 40 ria.

41 (3) In securing contracts for engineering, architectural, landscape
 42 architecture, construction management, or land surveying services on
 43 projects for which the professional service fee is anticipated to be less
 44 than the total sum of ~~twenty-five~~ fifty thousand dollars (\$250,000), the
 45 public agency or political subdivision may use the guidelines set forth in
 46 ~~paragraphs (a) through (g) of subsection (2) of this section~~ or establish its
 47 own guidelines for selection based on demonstrated competence and qualifi-
 48 cations to perform the type of services required, followed by negotiation of
 49 the fee at a price determined by the public agency or political subdivision

1 to be fair and reasonable after considering the estimated value, the scope,
2 the complexity, and the nature of services.

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

8 (5) (a) For the purposes of this section, "public agency" shall mean the
9 state of Idaho and any departments, commissions, boards, authorities,
10 bureaus, universities, colleges, educational institutions, or other
11 state agencies ~~which~~ that have been created by or pursuant to statute
12 other than courts and their agencies and divisions, and the judicial
13 council and the district magistrate's commission;

14 (b) For the purposes of this section, "political subdivision" shall
15 mean a county, city, airport, airport district, school district, health
16 district, road district, cemetery district, community college dis-
17 trict, hospital district, irrigation district, sewer district, fire
18 protection district, or any other district or municipality of any na-
19 ture whatsoever having the power to levy taxes or assessment, organized
20 under any general or special law of this state. The enumeration of cer-
21 tain districts herein shall not be construed to exclude other districts
22 or municipalities from this definition.