

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 607, As Amended in the Senate

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO PUBLIC BUILDINGS AND WORKS; AMENDING CHAPTER 57, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5711E, IDAHO CODE, TO ESTABLISH A PROCESS FOR BIDDERS OR THE ADMINISTRATOR TO CHALLENGE CERTAIN MATTERS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 57, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5711E, Idaho Code, and to read as follows:

67-5711E. CHALLENGES. (1) As used in this section:

(a) "Administrator" means the administrator of the division of public works.

(b) "Director" means the director of the department of administration.

(c) "Hearing officer" has the same meaning as provided for in section 67-5201, Idaho Code.

(d) "Nonresponsive bid" means a bid that does not comply with a bid invitation and specifications and does not include a bidder whose bid is considered but who is determined not to be the lowest responsible bidder.

(2) An entity that was a primary bidder or primary proposer may challenge the administrator's decision pursuant to the provisions of this section under the following circumstances:

(a) A bidder's bid was found nonresponsive;

(b) A bidder's bid was considered pursuant to section 67-5711C, Idaho Code, and the bidder was found not to be the lowest responsible bidder;

(c) A professional service firm's proposal was considered pursuant to section 67-2320, Idaho Code, and was not selected for award; or

(d) A design-build firm's proposal was considered pursuant to section 67-5711A, Idaho Code, and was not selected for award.

(3) The administrator may, on his own initiative, file a challenge seeking resolution of any matter presented to the administrator for a decision.

(4) Challenges shall be submitted to the director within five (5) business days of the notice of the challenged decision. The challenge shall set forth in specific terms the reasons why the bidder challenges the administrator's decision as erroneous and shall provide available documentation supporting such reasons.

(5) Upon receipt, the director shall act pursuant to this subsection within five (5) business days.

(a) Upon receipt of a challenge where no request for qualifications was issued the director shall:

1 (i) Affirm the decision of the administrator, which shall be con-  
2 sidered the final agency decision;  
3 (ii) Modify the decision of the administrator;  
4 (iii) Affirm the challenge and issue recommendations to the admin-  
5 istrator; or  
6 (iv) Request a hearing officer to review the record and recommend  
7 to the director to affirm, modify, or reverse the administrator's  
8 decision.

9 (b) Upon receipt of a challenge where a request for qualifications was  
10 issued the director shall request a hearing officer to:

11 (i) Review the record and recommend to the director to affirm,  
12 modify, or reverse the administrator's decision; or  
13 (ii) Conduct a contested case hearing.

14 (c) A hearing officer appointed pursuant to paragraph (b) (ii) of this  
15 subsection shall conduct a contested case hearing and upon conclusion  
16 of the hearing shall prepare findings of fact, conclusions of law, and  
17 a recommended order for the director. Upon receipt of the findings of  
18 fact, conclusions of law, and recommended order, the director shall en-  
19 ter a final order affirming, modifying, or reversing the decision of the  
20 administrator.

21 (d) In addition to the requirements of section 67-5270, Idaho Code, the  
22 challenging bidder shall also file a protest bond in an amount equal to  
23 twenty-five percent (25%) of the allocated budget for the construction  
24 of the public works capital improvements.

25 (i) If the allocated budget was not included in the request for  
26 qualifications, the director shall set the value of the protest  
27 bond at a reasonable amount that does not exceed twenty-five per-  
28 cent (25%) of the anticipated capital expenditures to complete the  
29 public works improvements.

30 (ii) If the challenge is successful, the protest bond will be re-  
31 turned to the challenging bidder within fourteen (14) days of the  
32 final decision having been made.

33 (iii) If the challenge is not successful, a claim may be made  
34 against the protest bond by the public entity in an amount equal  
35 to the expenses incurred by the public entity because of the chal-  
36 lenge. Such expenses must be documented and may include but are  
37 not limited to legal fees, court costs, escalated material prices,  
38 and other direct damages related to the challenge. The remainder  
39 of the bond shall be released after the claim has been satisfied.

40 (6) When a challenge is submitted under this section, the administrator  
41 shall not execute a contract until the challenge is concluded. However, the  
42 director shall have the power to allow a contract to be awarded to the suc-  
43 cessful bidder if he determines such award to be in the best interest of the  
44 state.

45 SECTION 2. An emergency existing therefor, which emergency is hereby  
46 declared to exist, this act shall be in full force and effect on and after  
47 July 1, 2024.