

IN THE SENATE

SENATE BILL NO. 1433

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO PUBLIC WORKS; AMENDING SECTION 54-1903, IDAHO CODE, TO REVISE  
2 AN EXEMPTION; AMENDING SECTION 67-2803, IDAHO CODE, TO REVISE AN EX-  
3 CLUSION; AMENDING SECTION 67-2805, IDAHO CODE, TO REVISE PROVISIONS  
4 REGARDING PROCUREMENT OF PUBLIC WORKS CONSTRUCTION; AND DECLARING AN  
5 EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
6

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

8 SECTION 1. That Section 54-1903, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 54-1903. EXEMPTIONS. This chapter shall not apply to:

11 (1) An authorized representative of the United States government, the  
12 state of Idaho, or any incorporated town, city, county, irrigation district,  
13 reclamation district or other municipal or political corporation or subdivi-  
14 sion of this state.

15 (2) Officers of a court when they are acting within the scope of their  
16 office.

17 (3) Public utilities operating under the jurisdiction of the public  
18 utilities commission of the state of Idaho on construction, maintenance and  
19 development work incidental to their own business.

20 (4) The sale or installation of any finished products, materials or ar-  
21 ticles of merchandise, which are not actually fabricated into and do not be-  
22 come a permanent fixed part of the structure.

23 (5) Any construction, alteration, improvement or repair of personal  
24 property.

25 (6) Any construction, alteration, improvement or repair carried on  
26 within the limits and boundaries of any site or reservation, the title of  
27 which rests in the federal government.

28 (7) Any construction or operation incidental to the construction and  
29 repair of irrigation and drainage ditches of regularly constituted irriga-  
30 tion districts, drainage districts or reclamation districts, except when  
31 performed by a person required to be licensed under this chapter.

32 (8) Duly licensed architects, licensed engineers, and land surveyors  
33 when acting solely in their professional capacity.

34 (9) Any construction, alteration, improvement or repair involving any  
35 single project involving any number of trades or crafts with an estimated  
36 cost of less than ~~fifty thousand dollars (\$50,000)~~ one hundred thousand dol-  
37 lars (\$100,000).

38 (10) Any construction, operation, alteration or maintenance of a solid  
39 waste disposal site including those operated by, for, or at the direction of  
40 a city or a county.

41 (11) Any construction, operation or repair carried on in response to an  
42 emergency that has been officially declared by the governor pursuant to the

1 provisions of chapter 10, title 46, Idaho Code, or an emergency that has been  
2 declared by a governing body (city or county) in anticipation of a governor's  
3 declaration, for a period of time not to exceed seven (7) calendar days.

4 SECTION 2. That Section 67-2803, Idaho Code, be, and the same is hereby  
5 amended to read as follows:

6 67-2803. EXCLUSIONS. The procurement requirements established in  
7 this chapter shall not be applicable to:

8 (1) The acquisition of personal property when the procurement dupli-  
9 cates the price and substance of a contract for like goods or services that  
10 has been competitively bid by the state of Idaho, one (1) of its political  
11 subdivisions, or an agency of the federal government;

12 (2) Contracts or purchases where expenditures to procure public works  
13 construction are less than ~~fifty thousand dollars (\$50,000)~~ one hundred  
14 thousand dollars (\$100,000) or where expenditures to procure services or  
15 personal property are less than seventy-five thousand dollars (\$75,000),  
16 provided such contracts or purchases shall be guided by the best interests of  
17 the political subdivision procuring the goods and services as determined by  
18 the governing board;

19 (3) Disbursement of wages or compensation to any employee, official or  
20 agent of a political subdivision for the performance of personal services  
21 for the political subdivision;

22 (4) Procurement of personal or professional services to be performed by  
23 an independent contractor for the political subdivision;

24 (5) Procurement of an interest in real property;

25 (6) Procurement of insurance;

26 (7) Costs of participation in a joint powers agreement with other units  
27 of government;

28 (8) Procurement of used personal property;

29 (9) Procurement from federal government general services administra-  
30 tion (GSA) schedules or federal multiple award schedules (MAS);

31 (10) Procurement of personal property or services through contracts en-  
32 tered into by the division of purchasing of the department of administration  
33 of the state of Idaho;

34 (11) Procurement of goods for direct resale;

35 (12) Procurement of travel and training;

36 (13) Procurement of goods and services from Idaho correctional indus-  
37 tries;

38 (14) Procurement of repair for heavy equipment;

39 (15) Procurement of software maintenance, support and licenses of an  
40 existing system or platform that was bid in compliance with state law;

41 (16) Procurement of public utilities;

42 (17) Procurement of food for use in jails or detention facilities; or

43 (18) Procurement of used equipment at an auction if authorized by the  
44 governing board.

45 SECTION 3. That Section 67-2805, Idaho Code, be, and the same is hereby  
46 amended to read as follows:

1           67-2805. PROCUREMENT OF PUBLIC WORKS CONSTRUCTION. (1) When a po-  
2 litical subdivision contemplates an expenditure to procure public works  
3 construction valued at or in excess of ~~fifty thousand dollars (\$50,000) but~~  
4 ~~not to exceed two hundred thousand dollars (\$200,000) one hundred thousand~~  
5 dollars (\$100,000) but not to exceed two hundred fifty thousand dollars  
6 (\$250,000), the procurement procedures of this subsection shall apply:

7           (a) The solicitation for bids for the public works construction to be  
8 performed shall be supplied to no fewer than three (3) owner-desig-  
9 nated licensed public works contractors by written means, either by  
10 electronic or physical delivery. The solicitation shall describe the  
11 construction work to be completed in sufficient detail to allow an expe-  
12 rienced public works contractor to understand the construction project  
13 the political subdivision seeks to build.

14           (b) The solicitation for bids shall describe the electronic or physi-  
15 cal delivery method or methods authorized to submit a bid, the date and  
16 time by which a bid proposal must be received by the clerk, secretary or  
17 other authorized official of the political subdivision, and shall provide  
18 a reasonable time to respond to the solicitation, provided that ex-  
19 cept in the event of an emergency, such time shall not be less than three  
20 (3) business days.

21           (c) Written objections to specifications or bid procedures must be re-  
22 ceived by the clerk, secretary or other authorized official of the po-  
23 litical subdivision at least one (1) business day before the date and  
24 time upon which bids are scheduled to be received.

25           (d) When written bids have been received, by either physical or elec-  
26 tronic delivery, they shall be submitted to the governing board or a de-  
27 signee of the governing board who shall present the lowest responsive  
28 bid to the governing board for approval or, if authorized, approve the  
29 bid. The governing board or the board's designee shall approve the re-  
30 sponsive bid proposing the lowest procurement price or reject all bids  
31 and publish notice for bids, as before.

32           (e) If the political subdivision finds that it is impractical or impos-  
33 sible to obtain three (3) bids for the proposed public works procure-  
34 ment, the political subdivision may acquire the work in any manner the  
35 political subdivision deems best from a qualified public works contrac-  
36 tor quoting the lowest price. When fewer than three (3) bids are consid-  
37 ered, a description of the efforts undertaken to procure at least three  
38 (3) bids shall be documented by the political subdivision and such docu-  
39 mentation shall be maintained for at least six (6) months after the pro-  
40 curement decision is made. If two (2) or more price quotations offered  
41 by different licensed public works contractors are the same and the low-  
42 est responsive bids, the governing board or governing-board authorized  
43 official may accept the one (1) it chooses.

44           (2) When a political subdivision contemplates an expenditure to pur-  
45 chase public works construction valued in excess of ~~two hundred thousand~~  
46 ~~dollars (\$200,000) two hundred fifty thousand dollars (\$250,000)~~, the  
47 procurement procedures of this subsection shall apply. The purchase of  
48 construction services shall be made pursuant to a competitive sealed bid  
49 process with the purchase to be made from the qualified public works contrac-  
50 tor submitting the lowest bid price complying with bidding procedures and

1 meeting the prequalifications, if any are provided, established by the bid  
2 documents. Competitive bidding for public works may proceed through either  
3 of two (2) alternative procedures as set forth below:

4 (a) Category A. Competitive bidding procedures shall be open to receipt  
5 of bids from any licensed public works contractor desiring to bid upon a  
6 public works project. For a category A bid, the political subdivision  
7 may only consider the amount bid, bidder compliance with administrative  
8 requirements of the bidding process, and whether the bidder holds the  
9 requisite license, and shall award the bid to the qualified bidder sub-  
10 mitting the lowest responsive bid.

11 (i) The request for bids for a category A procurement shall set  
12 a date and place for the public opening of bids. Two (2) notices  
13 soliciting bids shall be published in the official newspaper of  
14 the political subdivision. The first notice shall be published  
15 at least two (2) weeks before the date for opening bids, with the  
16 second notice to be published in the succeeding week at least seven  
17 (7) days before the date that bids are scheduled to be opened. The  
18 notice shall succinctly describe the project to be constructed.  
19 Copies of specifications, bid forms, bidder's instructions, con-  
20 tract documents, and general and special instructions shall be  
21 made available upon request and payment of a reasonable plan copy  
22 fee by any interested bidder.

23 (ii) Written objections to specifications or bidding procedures  
24 must be received by the clerk, secretary or other authorized of-  
25 ficial of the political subdivision at least three (3) business  
26 days before the date and time upon which bids are scheduled to  
27 be opened. The administrative officer or governing board super-  
28 vising the bidding process shall respond to any such objection  
29 in writing and communicate such response to the objector and all  
30 other plan holders, adjusting bidding timeframes if necessary.

31 (iii) All bids shall be presented or otherwise delivered under  
32 sealed cover to the clerk of the political subdivision or other au-  
33 thorized agent of the political subdivision designated by the in-  
34 formation provided to bidders by the political subdivision with a  
35 concise statement marked on the outside generally identifying the  
36 project to which the bid pertains.

37 (iv) If the political subdivision deems it is in the political  
38 subdivision's best interest, it may require the bidder to provide  
39 bid security in an amount equal to at least five percent (5%) of the  
40 amount bid. If required, a bid shall not be considered unless one  
41 (1) of the forms of bidder's security is enclosed with it, and un-  
42 less the bid is submitted in a form which substantially complies  
43 with the form provided by the political subdivision. The politi-  
44 cal subdivision may require that the bid security be in one (1) of  
45 the following forms:

46 (A) Cash;

47 (B) A cashier's check made payable to the political subdivi-  
48 sion;

49 (C) A certified check made payable to the political subdivi-  
50 sion; or

1 (D) A bidder's bond executed by a qualified surety company,  
2 made payable to the political subdivision.

3 (v) Any bid received by the political subdivision may not be  
4 withdrawn after the date and time set in the notice for opening of  
5 bids. When sealed bids have been received, they shall be opened in  
6 public at a designated place and time, thereafter to be compiled  
7 and submitted to the governing board for award or, if a designee is  
8 authorized, for approval of the award.

9 (vi) If the successful bidder fails to execute the contract, the  
10 amount of his bidder's security may be forfeited to the political  
11 subdivision at the sole discretion of the political subdivision  
12 and the proceeds shall be deposited in a designated fund out of  
13 which the expenses of procuring substitute performance are paid.

14 (vii) The political subdivision may, on the refusal or failure of  
15 the successful bidder to execute the contract, award the contract  
16 to the qualified bidder submitting the next lowest responsive bid.  
17 If the governing board awards the contract to the next lowest qual-  
18 ified bidder, the amount of the lowest qualified bidder's secu-  
19 rity may be applied by the political subdivision to the difference  
20 between the lowest responsive bid and the next lowest responsive  
21 bid, and the surplus, if any, shall be returned to the lowest bid-  
22 der if cash or check is used, or to the surety on the bidder's bond  
23 if a bond is used, less reasonable administrative costs not to ex-  
24 ceed twenty-five percent (25%) of the amount of the bidder's secu-  
25 rity to the owner.

26 (viii) In its discretion, the governing board may reject all bids  
27 presented and re-bid, or the governing board may, after finding it  
28 to be a fact, pass a resolution declaring that the project sought  
29 to be accomplished by the expenditure can be performed more eco-  
30 nomically by purchasing goods and services on the open market. If  
31 identical bids are received, the governing board may choose the  
32 bidder it prefers. If no bids are received, the governing board  
33 may procure the goods or services without further competitive bid-  
34 ding procedures.

35 (ix) If the governing board of any political subdivision chooses  
36 to award a competitively bid contract involving the procurement of  
37 public works construction to a bidder other than the apparent low  
38 bidder, the political subdivision shall declare its reason or rea-  
39 sons on the record and shall communicate such reason or reasons in  
40 writing to all persons who have submitted a competing bid.

41 (x) If any participating bidder objects to such award, such bid-  
42 der shall respond in writing to the notice from the political sub-  
43 division within seven (7) calendar days of the date of transmittal  
44 of the notice, setting forth in such response the express reason  
45 or reasons that the award decision of the governing board is in er-  
46 ror. Thereafter, staying performance of any procurement until af-  
47 ter addressing the contentions raised by the objecting bidder, the  
48 governing board shall review its decision and determine whether to  
49 affirm its prior award, modify the award, or choose to re-bid, set-  
50 ting forth its reason or reasons therefor. After completion of the

1 review process, the political subdivision may proceed as it deems  
2 to be in the public interest.

3 (b) Category B. Competitive bidding procedures shall be open to li-  
4 censed public works contractors only after meeting preliminary supple-  
5 mental qualifications established by the political subdivision. The  
6 solicitation for bids in a category B procurement shall consist of two  
7 (2) stages, an initial stage determining supplemental prequalifica-  
8 tions for licensed contractors, either prime or specialty contractors,  
9 followed by a stage during which bid prices will be accepted only from  
10 prequalified contractors.

11 (i) Notice of the prequalification stage of the category B com-  
12 petitive bidding process shall be given in the same manner that  
13 notice of competitive bidding is provided for a category A com-  
14 petitive bid request, providing a specific date and time by which  
15 qualifications statements must be received. Political subdivi-  
16 sions may establish prequalification standards premised upon  
17 demonstrated technical competence, experience constructing simi-  
18 lar facilities, prior experience with the political subdivision,  
19 available nonfinancial resources, equipment and personnel as  
20 they relate to the subject project, and overall performance his-  
21 tory based upon a contractor's entire body of work. Such request  
22 must include the standards for evaluating the qualifications of  
23 prospective bidders.

24 (ii) During the initial stage of the category B bidding process,  
25 licensed contractors desiring to be prequalified to bid on a  
26 project must submit a written response to a political subdivi-  
27 sion's request for qualifications.

28 (iii) Written objections to prequalification procedures must be  
29 received by the clerk, secretary or other authorized official of  
30 the political subdivision at least three (3) business days before  
31 the date and time upon which prequalification statements are due.  
32 The administrative officer or governing board supervising the  
33 bidding process shall respond to any such objection in writing  
34 and communicate such response to the objector and all other con-  
35 tractors seeking to prequalify, adjusting bidding timeframes if  
36 necessary. After a review of qualification submittals, the po-  
37 litical subdivision may select licensed contractors that meet the  
38 prequalification standards. If any licensed contractor submits  
39 a statement of qualifications but is not selected as a qualified  
40 bidder, the political subdivision shall supply a written state-  
41 ment of the reason or reasons why the contractor failed to meet  
42 prequalification standards.

43 (iv) Any licensed contractor that fails the prequalification  
44 stage can appeal any such determination to the governing board  
45 within seven (7) days after transmittal of the prequalification  
46 results to contest the determination. If the governing board  
47 sustains the decision that a contractor fails to meet prequali-  
48 fication standards, it shall state its reason or reasons for the  
49 record. A governing board decision concerning prequalification  
50 may be appealed to the public works contractors license board

1 no more than fourteen (14) days following any decision on appeal  
2 made by the governing board. The public works contractors license  
3 board shall decide any such appeal within thirty-five (35) days  
4 of the filing of a timely appeal. The public works contractors  
5 license board shall allow participation, written or oral, by the  
6 appealing contractor and the political subdivision, either by  
7 employing a hearing officer or otherwise. The public works con-  
8 tractors license board shall not substitute its judgment for that  
9 of the political subdivision, limiting its review to determining  
10 whether the decision of the governing board is consistent with the  
11 announced prequalification standards, whether the prequalifi-  
12 cation standards comport with the law and whether the governing  
13 board's decision is supported by the entirety of the record. The  
14 decision of the public works contractors license board shall be  
15 written and shall state the reason or reasons for the decision.  
16 Category B prequalification procedures that are appealed shall be  
17 stayed during the pendency of the prequalification appeal until  
18 the public works contractors license board completes its review,  
19 but in no instance more than forty-nine (49) days after the appel-  
20 late decision of the governing board regarding prequalification.  
21 Any licensed public works contractor affected by a decision on  
22 appeal by the public works contractors license board may, within  
23 twenty-eight (28) days of the final decision, seek judicial review  
24 as provided by chapter 52, title 67, Idaho Code.

25 (v) Following the conclusion of the prequalification adminis-  
26 trative procedures, the bidding stage shall proceed by the setting  
27 of a time, date and place for the public opening of bids. In cir-  
28 cumstances involving prequalified prime contractors, a notice  
29 soliciting bids shall be transmitted to prequalified bidders at  
30 least fourteen (14) days before the date of opening the bids. In  
31 circumstances involving prequalified specialty or subordinate  
32 contractors, the notice soliciting bids shall be published in the  
33 same manner applicable to category A bids. The notice shall suc-  
34 cinctly describe the project to be constructed. Copies of speci-  
35 fications, bid forms, bidder's instructions, contract documents,  
36 and general and special instructions shall be made available upon  
37 request and payment of a reasonable plan copy fee by any eligible  
38 bidder.

39 (vi) Written objections to specifications or bidding procedures  
40 must be received by the clerk, secretary or other authorized of-  
41 ficial of the political subdivision at least three (3) business  
42 days before the date and time upon which bids are scheduled to be  
43 opened.

44 (vii) All category B bids shall be presented or otherwise deliv-  
45 ered under sealed cover to the clerk or other authorized agent  
46 of the political subdivision designated by the instructions to  
47 bidders with a concise statement marked on the outside generally  
48 identifying the project to which the bid pertains.

49 (viii) If the political subdivision deems it is in the political  
50 subdivision's best interest, it may require the bidder to provide

1 bid security in an amount equal to at least five percent (5%) of the  
2 amount bid. If required, a bid shall not be considered unless one  
3 (1) of the forms of bidder's security is enclosed with it, and un-  
4 less the bid is submitted in a form which substantially complies  
5 with the form provided by the political subdivision. The politi-  
6 cal subdivision may require that the bid security be in one (1) of  
7 the following forms:

8 (A) Cash;

9 (B) A cashier's check made payable to the political subdivi-  
10 sion;

11 (C) A certified check made payable to the political subdivi-  
12 sion; or

13 (D) A bidder's bond executed by a qualified surety company,  
14 made payable to the political subdivision.

15 (ix) Any category B bid received by a political subdivision may  
16 not be withdrawn after the date and time set in the notice for open-  
17 ing of bids. When sealed bids have been received, they shall be  
18 opened in public by the governing board or the board's designee at  
19 a designated place and time. The governing board's designee shall  
20 thereafter compile and submit to the governing board for award or,  
21 if authorized, approve the award. If identical bids are received,  
22 the governing board may choose the bidder it prefers. If the suc-  
23 cessful bidder fails to execute the contract, the amount of his  
24 bidder's security may be forfeited to the political subdivision,  
25 in the sole discretion of the political subdivision, and the pro-  
26 ceeds shall be deposited in a designated fund out of which the ex-  
27 penses for procuring substitute performance are paid.

28 (x) The political subdivision may, on the refusal or failure of  
29 the successful bidder to execute the contract, award the contract  
30 to the qualified bidder submitting the next lowest responsive bid.  
31 If the governing board awards the contract to the next lowest qual-  
32 ified bidder, the amount of the lowest qualified bidder's secu-  
33 rity, if forfeited, shall be applied by the political subdivision  
34 to the difference between the lowest responsive bid and the next  
35 lowest responsive bid, and the surplus, if any, shall be returned  
36 to the lowest bidder if cash or check is used, or to the surety on  
37 the bidder's bond if a bond is used, less reasonable administra-  
38 tive costs not to exceed twenty-five percent (25%) of the amount of  
39 the bidder's security.

40 (xi) In its discretion, the governing board may reject all bids  
41 presented and re-bid, or the governing board may, after finding it  
42 to be a fact, pass a resolution declaring that the project sought  
43 to be accomplished by the expenditure can be performed more eco-  
44 nomically by purchasing goods and services on the open market. If  
45 no bids are received, the governing board may make the expenditure  
46 without further competitive bidding procedures.

47 (xii) If the governing board of any political subdivision chooses  
48 to award a competitively bid contract involving the procurement of  
49 public works construction to a bidder other than the apparent low  
50 bidder, the political subdivision shall declare its reason or rea-



1           sons on the record and shall communicate such reason or reasons in  
2 writing to all persons who have submitted a competing bid.

3           (xiii) If any participating bidder objects to such award, such  
4 bidder shall respond in writing to the notice from the political  
5 subdivision within seven (7) calendar days of the date of trans-  
6 mittal of the notice, setting forth in such response the express  
7 reason or reasons that the award decision of the governing board  
8 is in error. Thereafter, staying performance of any procurement  
9 until after addressing the contentions raised by the objecting  
10 bidder, the governing board shall review its decision and deter-  
11 mine whether to affirm its prior award, modify the award, or choose  
12 to re-bid, setting forth its reason or reasons therefor. After  
13 completion of the review process, the political subdivision may  
14 proceed as it deems to be in the public interest.

15           SECTION 4. An emergency existing therefor, which emergency is hereby  
16 declared to exist, this act shall be in full force and effect on and after  
17 July 1, 2024.