

IN THE SENATE

SENATE BILL NO. 1081

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO PUBLIC CONTRACTS; AMENDING SECTION 67-2320, IDAHO CODE, TO RE-
2 VISE PROVISIONS REGARDING THE SECURING OF CERTAIN PUBLIC CONTRACTS; AND
3 DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
4

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

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

8 67-2320. PROFESSIONAL SERVICE CONTRACTS WITH DESIGN PROFESSIONALS,
9 CONSTRUCTION MANAGERS, AND PROFESSIONAL LAND SURVEYORS. (1) Notwithstand-
10 ing any other provision of law to the contrary, it shall be the policy of this
11 state that all public agencies and political subdivisions of the state of
12 Idaho and their agents shall make selections for professional engineering,
13 architectural, landscape architecture, construction management, and pro-
14 fessional land surveying services, including services by persons licensed
15 pursuant to chapters 3, 12, 30, and 45, title 54, Idaho Code, on the basis of
16 qualifications and demonstrated competence and shall negotiate contracts or
17 agreements for such services.

18 (2) In carrying out this policy, public agencies and political subdi-
19 visions of the state shall use the following minimum guidelines in securing
20 contracts for engineering, architectural, landscape architecture, con-
21 struction management, and land surveying services on projects for which the
22 professional service fee is anticipated to exceed the total sum of fifty
23 thousand dollars (\$50,000), excluding professional services contracts
24 previously awarded for an associated or phased project, and for which the
25 expenditure is otherwise exempt from the bidding process provided by law. To
26 implement this policy, the public agency and political subdivisions shall:

27 (a) Provide a general description of the services being solicited and
28 encourage persons or firms engaged in the services being solicited to
29 submit statements of qualifications and past performance data;

30 (b) Establish and make available to the public a request for qualifica-
31 tions that includes the criteria and the procedures to be used for mea-
32 surable scoring, ranking, and selection of qualified persons or firms
33 to perform such services;

34 (c) After receiving responses to a request for qualifications, score
35 and rank the responding persons or firms based on their qualifica-
36 tions and demonstrated competence pursuant to the public agency's or
37 political subdivision's established criteria and procedures. The
38 list of ranked respondents, including the scoring used to develop the
39 ranking, shall be made available to the public. Some examples of se-
40 lection criteria for consideration may include but are not limited
41 to: a description of the firm, including location and longevity; past
42 performance; project manager and key staff experience, education,

1 and training; experience with similar projects; specific approach to
 2 project or assignment; proposed schedule, if applicable; and quality
 3 control procedures;

4 (d) Except when precluded by federal law, require a fee schedule from
 5 all respondents to be included in the response. The evaluation of such
 6 fee schedules shall, at the discretion of the public agency or political
 7 subdivision, account for up to twenty-five percent (25%) of the overall
 8 scoring to determine the ranking of each respondent; and

9 (e) Comply with the following procedures if the submission or discus-
 10 sion of fee schedules during the evaluation process is prohibited by
 11 federal law:

12 ~~(d)~~ (i) Select for negotiation the persons or firms whom the pub-
 13 lic agency or political subdivision determines to be the highest-
 14 ranked (best qualified);

15 ~~(e)~~ (ii) Negotiate with the highest-ranked person or firm for a
 16 contract or an agreement to perform such services at a price deter-
 17 mined by the public agency or political subdivision to be reason-
 18 able and fair to the public after considering the estimated value,
 19 scope, complexity, schedule, and nature of the services required;

20 ~~(f)~~ (iii) When unable to negotiate a satisfactory contract or
 21 agreement with the highest-ranked person or firm, formally ter-
 22 minate negotiations and undertake negotiations with the next
 23 highest-ranked person or firm, following the procedure prescribed
 24 in ~~paragraph (e) of this subsection~~ subparagraph (ii) of this
 25 paragraph; and

26 ~~(g)~~ (iv) When unable to negotiate a satisfactory contract or
 27 agreement with any of the selected persons or firms, recommence
 28 negotiations as described in ~~paragraphs (e) and (f) of this sub-~~
 29 ~~section~~ subparagraphs (ii) and (iii) of this paragraph until a
 30 contract or agreement is reached or cancel the procurement;

31 ~~(h)~~ (3) When a public agency or political subdivision solicits a
 32 request for qualifications for engineering, architectural, landscape ar-
 33 chitecture, construction management, or land surveying services for which
 34 the professional service fee is anticipated to exceed the total sum of fifty
 35 thousand dollars (\$50,000), it shall publish public notice in the same man-
 36 ner as required for procurement of public works construction projects under
 37 section 67-2805(2), Idaho Code;

38 ~~(i)~~ (4) In fulfilling the requirements of ~~paragraphs (a) through (h)~~
 39 subsection (2) (a) through (e) of this subsection, a public agency or po-
 40 litical subdivision may establish and select from a list of two (2) or more
 41 persons or firms selected and preapproved for consideration by the public
 42 agency or political subdivision. In establishing a preapproved list, a
 43 public agency or political subdivision shall publish notice as set forth in
 44 ~~paragraph (h) subsection (3) of this subsection~~. When selecting from such
 45 list, no notice shall be required; and

46 ~~(j)~~ (5) Any list established under ~~paragraph (i) subsection (4) of this~~
 47 subsection shall remain valid for a maximum of five (5) years and may be can-
 48 celed by the public agency or political subdivision prior to the list's expi-
 49 ration if the public agency or political subdivision determines that cancel-
 50 lation would be in the public's interest.

1 ~~(3)~~ (6) In securing contracts for engineering, architectural, land-
2 scape architecture, construction management, or land surveying services on
3 projects for which the professional service fee is anticipated to be less
4 than the total sum of fifty thousand dollars (\$50,000), the public agency or
5 political subdivision may use the guidelines set forth in subsections (2)
6 through (5) of this section or establish its own guidelines for selection
7 based on demonstrated competence and qualifications to perform the type of
8 services required, followed by negotiation of the fee at a price determined
9 by the public agency or political subdivision to be fair and reasonable after
10 considering the estimated value, scope, complexity, schedule, and nature of
11 services required.

12 ~~(4)~~ (7) When a public agency or political subdivision of the state has
13 previously awarded a professional services contract to a person or firm for
14 an associated or phased project, the public agency or political subdivision
15 may, at its discretion and in accordance with all provisions of section
16 59-1026, Idaho Code, negotiate an extended or new professional services
17 contract with that person or firm.

18 ~~(5)~~ (8) For the purposes of this section:

19 (a) "Public agency" means the state of Idaho and any departments, com-
20 missions, boards, authorities, bureaus, universities, colleges, edu-
21 cational institutions, or other state agencies that have been created
22 by or pursuant to statute other than courts and their agencies and di-
23 visions, ~~and~~ the judicial council, and the district magistrates commis-
24 sion; and

25 (b) "Political subdivision" means any entity defined as a political
26 subdivision under section 6-902, Idaho Code, or any other district or
27 municipality of any nature whatsoever having the power to levy taxes or
28 assessment, organized under any general or special law of this state.
29 The enumeration of certain districts in this section shall not be
30 construed to exclude other districts or municipalities from this defi-
31 nition.

32 SECTION 2. An emergency existing therefor, which emergency is hereby
33 declared to exist, this act shall be in full force and effect on and after
34 July 1, 2025.