

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 119

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO PUBLIC WORKS CONTRACTS; AMENDING SECTION 54-4511, IDAHO CODE,  
2 TO PROVIDE THAT CONSTRUCTION MANAGERS AND GENERAL CONTRACTORS SHALL  
3 PERFORM ONLY A CERTAIN AMOUNT OF WORK UNDER A CONTRACT, TO PROVIDE THAT  
4 A GUARANTEED MAXIMUM PRICE SHALL BE NEGOTIATED AND TO REQUIRE CERTAIN  
5 BONDS, TO CLARIFY THAT CERTAIN BIDS SHALL BE MADE CONSISTENT WITH AN  
6 EXISTING STATUTE, TO CLARIFY THAT CONSTRUCTION MANAGERS AND GENERAL  
7 CONTRACTORS MAY BID ONLY IF THEY MEET CERTAIN QUALIFICATIONS AND MAKE  
8 CERTAIN DISCLOSURES, TO ESTABLISH REQUIREMENTS RELATING TO CONTINGENCY  
9 RESERVES AND INCENTIVES AND TO MAKE A TECHNICAL CORRECTION.  
10

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

12 SECTION 1. That Section 54-4511, Idaho Code, be, and the same is hereby  
13 amended to read as follows:

14 54-4511. AWARD OF CONTRACTS -- DUAL CAPACITY. (1) Construction man-  
15 ager representative (CMR). A licensed construction manager and the firm of  
16 which he is a principal or full-time employee may be awarded a contract to  
17 act only as representative for an owner. In soliciting bids or awarding  
18 contracts for public works construction to be entered into by the owner, a  
19 licensed construction manager representative shall comply with all notice  
20 and bidding laws with which an owner would be required to comply if it were  
21 to do the same activities without the assistance of a construction manager.  
22 A licensed construction manager representative and the firm of which he is  
23 a principal or employee shall not provide construction management services  
24 for a construction project on which the licensed construction manager or his  
25 firm also provides design services or other construction related services,  
26 whether as a contractor or subcontractor. Provided however, that this sec-  
27 tion shall not preclude a licensed architect or registered professional  
28 engineer from providing public works construction management services which  
29 are normally provided by licensed architects or registered professional  
30 engineers for a project on which the person or firm has provided design ser-  
31 vices. Such public works construction management services provided by a  
32 licensed architect or registered professional engineer shall not include  
33 the procurement of equipment or construction work required by law to be com-  
34 petitively bid for public works construction.

35 (2) Construction manager/general contractor (CM/GC). A licensed con-  
36 struction manager and the firm of which he is a principal or full-time em-  
37 ployee may be awarded a contract to act as both construction manager and gen-  
38 eral contractor provided the construction manager/general contractor has a  
39 valid public works contractor license as a general contractor pursuant to  
40 section 54-1902, Idaho Code, and further provided that the construction man-  
41 ager/general contractor, including its subsidiaries and affiliated compa-  
42 nies, shall perform no more than thirty percent (30%) of the work under the

1 contract, as measured by the guaranteed maximum price required by subsection  
2 (3) of this section.

3 (3) No public entity shall enter into a contract with any person or firm  
4 for construction management services as construction manager representa-  
5 tive or as construction manager/general contractor if such person or firm is  
6 required to be licensed under this chapter unless:

7 (a) Such person holds a valid license or such firm holds a valid cer-  
8 tificate issued pursuant to this chapter; and

9 (b) The selection of such construction manager representative or  
10 construction manager/general contractor is made pursuant to section  
11 67-2320, Idaho Code; and

12 (c) A guaranteed maximum price is negotiated, for which the public  
13 entity shall require performance and payment bonds in amounts fixed by  
14 the public entity. The guaranteed maximum price shall be negotiated be-  
15 tween the public body and the construction manager/general contractor  
16 when the construction documents and specifications are at least ninety  
17 percent (90%) complete.

18 (4) Compensation of a construction manager shall be determined pur-  
19 suant to section 67-2320, Idaho Code. At such time as the design of a project  
20 is available, the construction work, materials and equipment for construc-  
21 tion of a project may be incorporated into the construction manager/general  
22 contractor contract based upon bids solicited from licensed public works  
23 contractors and from suppliers. All construction work, materials and equip-  
24 ment shall be competitively bid to be opened publicly in the presence of a  
25 representative of the public body for whom the project is undertaken and  
26 shall be awarded to the lowest responsible bidders, consistent with the pro-  
27 visions of section 67-2805, Idaho Code, and subject to the appeal procedures  
28 set forth in that section. The construction manager/general contractor, or  
29 its subsidiaries and affiliated companies, may bid to perform construction  
30 work or to supply materials or equipment for which only if it holds a valid  
31 license pursuant to section 54-1902, Idaho Code, and which it customarily  
32 self-performs or supplies such construction work, materials or equipment.  
33 The construction manager/general contractor shall disclose its intent to  
34 bid when soliciting bids and shall further disclose its relationship to any  
35 subsidiaries or affiliated companies that intend to bid.

36 (5) Contingency reserves and incentives. No public entity shall en-  
37 ter into a contract with any person or firm subject to this section, which  
38 contract includes terms for contingency reserves or incentives, unless all  
39 terms relating to such contingency reserves or incentives, including the  
40 disbursement of remaining contingency moneys and the amount of any incen-  
41 tives that may be granted, are agreed upon in writing at the time the contract  
42 is awarded. No incentives granted may exceed five percent (5%) of the guar-  
43 anteed maximum price, and no incentives may be paid from any contingency fund  
44 established for coordination of the construction documents or coordination  
45 of the work. If the construction is completed for less than the guaranteed  
46 maximum price, any savings not negotiated as part of the incentive shall ac-  
47 cruer to the public entity. If the construction is completed for more than the  
48 guaranteed maximum price, the additional cost shall be the responsibility of  
49 the construction manager/general contractor.