

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 577

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO HIGHWAYS, BRIDGES AND CONTRACTS; AMENDING SECTION 40-102,
2 IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE A TECHNICAL CORRECTION;
3 AMENDING SECTION 40-103, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING
4 SECTION 40-104, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION
5 40-105, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 40-107,
6 IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS;
7 AMENDING SECTION 40-108, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING
8 SECTION 40-113, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION
9 40-116, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 40-117,
10 IDAHO CODE, TO REVISE DEFINITIONS; AMENDING CHAPTER 1, TITLE 40,
11 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-119, IDAHO CODE, TO
12 PROVIDE DEFINITIONS; AMENDING SECTION 40-120, IDAHO CODE, TO REVISE
13 DEFINITIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION
14 40-121, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 40-902,
15 IDAHO CODE, TO REVISE PROVISIONS RELATING TO BIDS AND ADVERTISEMENTS
16 FOR SEALED BIDS AND TO PROVIDE FOR EXCEPTIONS; AMENDING CHAPTER 9,
17 TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-904, IDAHO
18 CODE, TO PROVIDE FOR A PREFERRED CONTRACTING METHOD, TO PROVIDE FOR
19 THE SELECTION OF DESIGN-BUILD FIRMS AND FOR THE AWARD OF DESIGN-BUILD
20 CONTRACTS, TO PROVIDE CRITERIA, TO PROVIDE CONSTRUCTION BUDGET LIMITS
21 ON CERTAIN CONTRACTS, TO PROVIDE MINIMUMS TO BE PERFORMED BY THE
22 DESIGN-BUILD FIRM, TO PROVIDE FOR RESPONSIBLE CHARGE, TO PROVIDE
23 FOR AN EVALUATION COMMITTEE, TO PROVIDE FOR COMPLIANCE OF LAWS, TO
24 PROVIDE FOR THE EMPLOYMENT OF A PROFESSIONAL ENGINEER, TO PROVIDE THAT
25 CERTAIN LICENSES MUST BE OBTAINED AT CERTAIN TIMES, TO PROVIDE THAT
26 THE DEPARTMENT MAY DISCONTINUE A SELECTION PROCESS, TO PROVIDE FOR
27 DEBRIEFING, TO PROVIDE THAT THE DEPARTMENT MAY ESTABLISH AND DETERMINE
28 CERTAIN METHODS TO SELECT FIRMS AND AWARD CONTRACTS, TO PROVIDE FOR
29 A TWO-STEP SELECTION PROCESS, TO PROVIDE FOR DESIGN-BUILD SELECTION
30 AND CONTRACT METHODS THAT MAY BE USED, TO PROVIDE THAT THE DEPARTMENT
31 SHALL ADVERTISE, TO PROVIDE THAT THE REQUEST FOR QUALIFICATIONS AND
32 THE REQUEST FOR PROPOSAL ADDRESS CONFLICTS OF INTEREST, TO PROVIDE
33 THAT EACH REQUEST FOR QUALIFICATIONS INCLUDE CERTAIN INFORMATION,
34 TO PROVIDE CRITERIA FOR EVALUATION, TO PROVIDE THAT THE REQUEST FOR
35 QUALIFICATION SHALL NOT INCLUDE CERTAIN FACTORS, TO PROVIDE FOR A
36 SUMMARY OF SCORES, TO PROVIDE FOR A CHALLENGE, TO PROVIDE THAT THE
37 DEPARTMENT SHALL PREPARE A REQUEST FOR PROPOSALS, TO PROVIDE THAT
38 THE REQUEST FOR PROPOSAL INCLUDE CERTAIN INFORMATION, TO PROVIDE
39 THAT THE REQUEST FOR PROPOSAL SELECTION AND AWARD CRITERIA INCLUDE
40 CERTAIN INFORMATION, TO PROVIDE THAT THE DEPARTMENT MAKE CERTAIN
41 MATERIALS AVAILABLE, TO PROVIDE THAT THE REQUEST FOR PROPOSAL ADDRESS
42 AND IDENTIFY CERTAIN CONTRACT PROVISIONS, TO PROVIDE FOR ALTERNATE
43 TECHNICAL CONCEPTS, TO PROVIDE FOR ONE-ON-ONE MEETINGS, TO PROVIDE FOR
44 DISCLOSURE OF CERTAIN INFORMATION, TO PROVIDE THAT THE DEPARTMENT SHALL
45

1 NOT DISCLOSE CERTAIN INFORMATION, TO PROVIDE FOR SUBMITTAL, TO PROVIDE
2 FOR SCORING OR OTHERWISE EVALUATING CERTAIN PROPOSALS, TO PROVIDE
3 FOR DISCUSSIONS, TO PROVIDE THAT CERTAIN PROPOSALS BE KEPT SECURE, TO
4 PROVIDE THAT SCORES AND BEST VALUES SHALL BE READ PUBLICLY, TO PROVIDE
5 FOR ADJUSTMENT OF PRICE, TO PROVIDE FOR THE BASIS FOR DESIGN-BUILD FIRM
6 SELECTION AND CONTRACT AWARD, TO PROVIDE FOR EXCLUDING REQUESTS FOR
7 PROPOSALS, TO PROVIDE PROVISIONS RELATING TO A STIPEND, TO PROVIDE FOR
8 THE DEPARTMENT TO ACT ON PROPOSALS, TO PROVIDE THAT THE DEPARTMENT IS
9 NOT REQUIRED TO AWARD A CONTRACT, TO PROVIDE FOR A SUMMARY OF SCORES AND
10 TO PROVIDE FOR A CHALLENGE TO THE DEPARTMENT'S DETERMINATION; AMENDING
11 CHAPTER 9, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-905,
12 IDAHO CODE, TO PROVIDE FOR A PREFERRED CONTRACTING METHOD, TO PROVIDE
13 THAT THE DEPARTMENT MAY SELECT CONSTRUCTION MANAGER/GENERAL CONTRACTOR
14 FIRMS AND AWARD CERTAIN CONTRACTS, TO PROVIDE CRITERIA FOR DETERMINING
15 WHEN TO USE CM/GC CONTRACT PROCEDURES, TO PROVIDE CONSTRUCTION BUDGET
16 LIMITS ON CERTAIN CONTRACTS, TO PROVIDE MINIMUMS TO BE PERFORMED BY
17 THE CM/GC FIRM, TO PROVIDE FOR A PROFESSIONAL ENGINEER AND TO PROVIDE
18 FOR RESPONSIBLE CHARGE, TO PROVIDE FOR APPLICATION OF LAWS, TO PROVIDE
19 FOR AN EVALUATION COMMITTEE, TO PROVIDE FOR A DEBRIEFING, TO PROVIDE
20 FOR THE AWARD OF CERTAIN CONTRACTS AND THE PUBLIC SOLICITATION OF
21 REQUEST FOR PROPOSALS, TO PROVIDE THAT THE DEPARTMENT SHALL ADVERTISE
22 REQUESTS FOR PROPOSALS, TO PROVIDE THAT THE REQUEST FOR PROPOSAL SHALL
23 ADDRESS CERTAIN CONFLICTS OF INTEREST, TO PROVIDE THAT THE REQUEST FOR
24 PROPOSAL SHALL INCLUDE CERTAIN INFORMATION, TO PROVIDE FOR EVALUATION
25 FACTORS, TO PROVIDE FOR THE BASIS OF SELECTION, TO PROVIDE THAT THE
26 CONTRACT SHALL BE AWARDED IN TWO PHASES, TO PROVIDE FOR PERFORMANCE
27 AND PAYMENT BONDS, TO PROVIDE THAT THE DEPARTMENT IS NOT REQUIRED TO
28 AWARD A CONTRACT, TO PROVIDE FOR NOTICE, TO PROVIDE FOR A SUMMARY OF
29 SCORES, TO PROVIDE FOR A CHALLENGE TO THE DEPARTMENT'S DETERMINATION;
30 AND DECLARING AN EMERGENCY.

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

32 SECTION 1. That Section 40-102, Idaho Code, be, and the same is hereby
33 amended to read as follows:

34 40-102. DEFINITIONS -- A.

35 (1) "Activities, commercial or industrial." (See "Unzoned commercial
36 or industrial areas," section 40-122, Idaho Code)

37 (2) "Advertising business, outdoor." (See "Outdoor advertising
38 business," section 40-116, Idaho Code)

39 (3) "Advertising display" means advertising structures and signs.

40 (4) "Advertising structure(s)" or "structure(s)" or "sign(s)" means
41 any thing designed, intended or used to advertise or inform. "Advertising
42 structure" or "sign" does not include:

43 (a) Official notices issued by any court or public body or officer.

44 (b) Notices posted by any public officer in performance of a public duty
45 or by any person in giving legal notice.

46 (c) Directional, warning or information structures required by or
47 authorized by law, informational or directional signs regarding

1 telephone service, emergency telephone signs, buried or underground
2 cable markers and above cable closures.

3 (d) An official or public structure erected near a city or county,
4 and within its territorial or zoning jurisdiction, which contains the
5 name of the city or county, provided the same is maintained wholly at
6 public expense. Where a city has been bypassed, but remains within
7 five (5) miles of an interstate highway or primary freeway, the Idaho
8 transportation board, in its discretion, may grant the city the right
9 to erect and maintain a billboard displaying the name of the city at
10 a location not to exceed one (1) mile from an interchange primarily
11 serving that city. Billboards erected must be at locations consistent
12 with department regulations and safety standards.

13 (5) "Agency," as applied to highway relocation assistance as provided
14 by chapter 20, title 40, Idaho Code, means any subdivision or entity of state
15 or local government in the state of Idaho authorized by law to engage in any
16 highway program or perform any highway project in which the acquisition of
17 real property may result in the displacement of any person.

18 (6) "Alternate technical concept (ATC)" means an alternative to the
19 base technical concept that promotes innovation and is equal or better in
20 quality or effect, as determined by the department in its sole discretion.

21 (7) "Areas, commercial or industrial, unzoned." (See "Unzoned
22 commercial or industrial areas," section 40-122, Idaho Code)

23 (78) "Areas, urban." (See "Urban areas," section 40-122, Idaho Code)

24 (89) "Automobile graveyard" means any establishment or place of
25 business which is maintained, used, or operated, for storing, keeping,
26 buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles
27 or motor vehicle parts.

28 (910) "Average annual net earnings," for the purposes of section
29 40-2004, Idaho Code, means one-half (1/2) of any net earnings of the business
30 or farm operations, before federal, state and local income taxes, during
31 the two (2) taxable years immediately preceding the taxable year in which
32 the business or farm operation moves from the real property acquired for
33 the project, or during any other period as the agency determines to be more
34 equitable for establishing the earnings, and includes any compensation paid
35 by the business or farm operation to the owner, his spouse, or his dependents
36 during the two (2) year period, or any other period as determined by the
37 agency.

38 SECTION 2. That Section 40-103, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 40-103. DEFINITIONS -- B.

41 (1) "Base technical concept" means the project specific concepts and
42 technical information provided in the request for proposals upon which
43 design-build firms will develop their technical and price proposals.

44 (2) "Best value selection" means any selection process in which
45 proposals contain both price and qualitative components and award is based
46 upon a combination of price and qualitative considerations.

47 (3) "Board" means the Idaho transportation board.

48 (24) "Business" means any lawful activity, excepting a farm operation,
49 conducted primarily for the purchase, resale, lease and rental of personal

1 and real property, and for the manufacture, processing or marketing of
 2 products, commodities, or other personal property; for the sale of services
 3 to the public; or solely for the purpose of section 40-2004(1), Idaho Code,
 4 for assisting in the purchase, sale, resale, manufacture, processing, or
 5 marketing of products, commodities, personal property, or services by the
 6 erection and maintenance of an outdoor advertising display or displays,
 7 whether or not displays are located on the premises on which any of the
 8 activities are conducted.

9 (5) "Business entity" means a corporation, professional corporation,
 10 limited liability company, professional limited liability company,
 11 general partnership, limited partnership, limited liability partnership,
 12 professional limited liability partnership or any other form of business
 13 except a sole proprietorship.

14 SECTION 3. That Section 40-104, Idaho Code, be, and the same is hereby
 15 amended to read as follows:

16 40-104. DEFINITIONS -- C.

17 (1) "City system" means all public highways within the corporate limits
 18 of a city, with a functioning street department, except those highways which
 19 are under federal control, a part of the state highway system, part of a
 20 highway district system or an extension of a rural major collector route as
 21 specified in section 40-607, Idaho Code.

22 (2) "Commercial activities." (See "Unzoned commercial or industrial
 23 areas," section 40-122, Idaho Code)

24 (3) "Commercial areas, unzoned." (See "Unzoned commercial or
 25 industrial areas," section 40-122, Idaho Code)

26 (4) "Commissioners" means the board of county commissioners of a county
 27 of this state.

28 (5) "Construction manager/general contractor firm" means a business
 29 entity with which the department has contracted to provide services prior to
 30 the final design phase and provide for the construction of the project during
 31 the construction phase.

32 (6) "Construction manager/general contractor project" means a
 33 project where the department retains a consultant or has on staff an Idaho
 34 licensed professional engineer to develop the design and also hires a
 35 construction manager/general contractor firm to provide services prior to
 36 the final design. If a guaranteed maximum price is negotiated successfully,
 37 the construction manager/general contractor firm also provides for
 38 construction of the project.

39 (7) "Consultant" means an individual or business entity possessing the
 40 qualifications to provide licensed architectural, licensed engineering, or
 41 licensed land surveying services or possessing specialized credentials and
 42 qualifications.

43 (8) "Controlled-access facility" means a highway especially designed
 44 for through traffic to which owners or occupants of abutting land have
 45 no right or easement or only a controlled right or easement of access by
 46 reason of the fact that their property abuts upon the controlled-access
 47 facility. These highways may be freeways open to use by all customary forms
 48 of highway traffic, or they may be parkways from which trucks, buses and
 49 other commercial vehicles shall be excluded.

1 ~~(69)~~ "County highway system" or "county secondary highways" mean all
 2 public highways in a county except those included within the state highway
 3 system, those under another state agency, those included within city highway
 4 systems of incorporated cities, those included within a highway district
 5 highway system, and those under federal control.

6 SECTION 4. That Section 40-105, Idaho Code, be, and the same is hereby
 7 amended to read as follows:

8 40-105. DEFINITIONS -- D.

9 (1) "Department" means the Idaho transportation department.

10 (2) "Design-build contract" means a single contract between the
 11 department and a design-build firm to furnish the architectural or
 12 engineering and related design services, labor, material, supplies,
 13 equipment, and construction services for the highway project.

14 (3) "Design-build firm" means a sole proprietorship, partnership,
 15 limited liability partnership, joint venture, corporation, any type of
 16 limited liability company, professional corporation or legal entity
 17 qualified to design and build highway projects.

18 (4) "Design-build project" means a project for which both the design
 19 and construction of the project are procured by the department in a single
 20 contract with a design-build firm capable of providing the necessary design
 21 services and construction.

22 (5) "Designer" means a duly licensed individual or business entity who
 23 performs the engineering design and related design work for a design-build
 24 firm.

25 (6) "Designer qualifications" means the criteria used to evaluate the
 26 design-build firm's designer(s).

27 (7) "Director" means the director of the Idaho transportation
 28 department.

29 ~~(38)~~ "Displaced person" means any individual, family, business or farm
 30 operation which moves from real property or moves personal property from
 31 real property acquired for a program or project of a state or local agency, in
 32 whole or in part, or as the result of a written order of an acquiring agency
 33 to vacate real property for a program or project of a state or local agency,
 34 and, solely for the purposes of section 40-2004, Idaho Code, as a result of a
 35 written order of an acquiring agency to vacate other real property, on which
 36 a person conducts a business or farm operation, for a program or project of
 37 any state or local agency.

38 ~~(49)~~ "Draw" means making a cash demand on the proceeds of
 39 transportation bonds or notes issued by the Idaho housing and finance
 40 association as it pertains to section 40-718, Idaho Code.

41 ~~(510)~~ "Dump" means any place or area, not operated as a business, where
 42 junk is deposited, stored or kept.

43 SECTION 5. That Section 40-107, Idaho Code, be, and the same is hereby
 44 amended to read as follows:

45 40-107. DEFINITIONS -- F.

46 (1) "Facilities" mean tracks, pipes, mains, conduits, cables, wires,
 47 towers, poles, equipment and appliances.

1 (2) "Family" means two (2) or more persons living together in the same
2 dwelling unit who are related to each other by blood, marriage, adoption or
3 legal guardianship.

4 (3) "Farm operation" means any activity conducted primarily for the
5 production of agricultural products or commodities, including timber, for
6 sale and home use, and producing agricultural products or commodities in
7 sufficient quantity to contribute materially to the operator's support.

8 (4) "Feeder highway" means any highway which, in the opinion of the
9 transportation board, is needed to create or facilitate access to a turnpike
10 project upon which a toll is charged for transit.

11 (5) "Federal land rights-of-way" mean rights-of-way on federal land
12 within the context of ~~R~~revised ~~S~~statute 2477, codified as 43 ~~United States~~
13 ~~Code~~ U.S.C. 932, and other federal access grants and shall be considered
14 to be any road, trail, access or way upon which construction has been
15 carried out to the standard in which public rights-of-way were built within
16 historic context. These rights-of-way may include, but not be limited
17 to, horse paths, cattle trails, irrigation canals, waterways, ditches,
18 pipelines or other means of water transmission and their attendant access
19 for maintenance, wagon roads, jeep trails, logging roads, homestead roads,
20 mine to market roads and all other ways.

21 (6) "Final design" means any design activities following preliminary
22 design and includes the preparation of final construction plans and detailed
23 specifications for the performance of construction work.

24 (7) "Fixed price-best design" means a selection process in which the
25 contract price is established by the department and stated in the request
26 for proposals. Design solutions and other qualitative factors are evaluated
27 and rated, with award going to the design-build firm offering the best
28 qualitative proposal for the established price.

29 SECTION 6. That Section 40-108, Idaho Code, be, and the same is hereby
30 amended to read as follows:

31 40-108. DEFINITIONS -- G.

32 (1) "GARVEE" means grant anticipation revenue vehicle, a debt
33 financing instrument which enables states to finance state transportation
34 infrastructure projects and to pay debt service and other bond-related
35 expenses with future federal-aid highway apportionments.

36 (2) "Guaranteed maximum price (GMP)" means the total maximum price that
37 includes all reimbursable costs and fees, except for material changes in the
38 scope of work, for completion of a construction manager/general contractor
39 contract that is provided by the selected contractor and accepted by the
40 department.

41 SECTION 7. That Section 40-113, Idaho Code, be, and the same is hereby
42 amended to read as follows:

43 40-113. DEFINITIONS -- L.

44 (1) "Lawfully maintained" means a sign maintained on private land in
45 accordance with state law and with the consent or acquiescence of the owner,
46 or his agent, of the property upon which the sign is located.

1 (2) "Local highway technical assistance council" means the public
2 agency created in chapter 24, title 40, Idaho Code.

3 (3) "Local highway jurisdiction" means a county with jurisdiction
4 over a highway system, a city with jurisdiction over a highway system, or a
5 highway district.

6 (4) "Lowest price technically acceptable selection" means a type
7 of process for selection of a design-build firm in which the department
8 identifies evaluation factors that establish the minimum requirements
9 of acceptability. Proposals are evaluated for acceptability based on
10 qualitative factors, not cost or price, but are not ranked. The contract
11 award will be made on the basis of the lowest evaluated price of proposals
12 meeting or exceeding the acceptability standards for qualitative factors.

13 SECTION 8. That Section 40-116, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 40-116. DEFINITIONS -- O.

16 (1) "Organizational conflict of interest" means that, because of
17 other activities or relationships with other persons or entities, a person
18 or entity is unable or potentially unable to render impartial assistance
19 or advice to the department or the person's or entity's objectivity in
20 performing the contract work is or might be otherwise impaired, or a person
21 or entity has an unfair competitive advantage.

22 (2) "Outdoor advertising business" means the business or occupation
23 of placing, erecting, constructing or maintaining advertising structures
24 or signs. The term does not include the placing, erecting, constructing
25 or maintaining of advertising displays exclusively pertaining to the
26 business of the person placing the advertising display, but does include
27 a person whenever he personally or through employees places advertising
28 displays containing advertising which does not pertain exclusively to his
29 own business.

30 (23) "Owner" means all persons and all political subdivisions of the
31 state having any title or interest in any property, rights, easements and
32 interests authorized to be acquired by chapter 3, title 40, Idaho Code.

33 SECTION 9. That Section 40-117, Idaho Code, be, and the same is hereby
34 amended to read as follows:

35 40-117. DEFINITIONS -- P.

36 (1) "Person" includes every natural person, firm, fiduciary,
37 copartnership, association, corporation, trustee, receiver or assignee for
38 the benefit of creditors.

39 (2) "Place." (See "Maintain," section 40-114, Idaho Code)

40 (3) "Preliminary design," as used in section 40-904, Idaho Code, means
41 the general project location and design concepts. It includes, but is not
42 limited to, preliminary engineering and other activities and analyses,
43 such as environmental assessments, topographic surveys, metes and bounds
44 surveys, geotechnical investigations, hydrologic analyses, hydraulic
45 analyses, utility engineering, traffic studies, financial plans, revenue
46 estimates, hazardous materials assessments, general estimates of the types

1 and quantities of materials and other work needed to establish parameters
 2 for the final design.

3 (4) "Price proposal" means the price submitted by a design-build
 4 firm to provide the required design and construction services described
 5 in the request for proposals or the price submitted by a construction
 6 manager/general contractor firm to provide the required construction
 7 services described in the request for proposal.

8 ~~(35)~~ "Primary system" or "primary highway" means any portion of the
 9 highways of the state, as officially designated, or as may hereafter be so
 10 designated, by the Idaho transportation board, and approved by the secretary
 11 of transportation, pursuant to the provisions of title 23, U.S. Code,
 12 "Highways."

13 ~~(46)~~ "Public highway agency" means the state transportation
 14 department, any city, county, highway district or other political
 15 subdivision of the state with jurisdiction over public highway systems and
 16 public rights-of-way.

17 ~~(57)~~ "Public highways" means all highways open to public use in the
 18 state, whether maintained by the state or by any county, highway district,
 19 city, or other political subdivision. (Also see "Highways," section 40-109,
 20 Idaho Code)

21 ~~(68)~~ "Public right-of-way" means a right-of-way open to the public
 22 and under the jurisdiction of a public highway agency, where the public
 23 highway agency has no obligation to construct or maintain, but may expend
 24 funds for the maintenance of, said public right-of-way or post traffic
 25 signs for vehicular traffic on said public right-of-way. In addition, a
 26 public right-of-way includes a right-of-way which was originally intended
 27 for development as a highway and was accepted on behalf of the public by
 28 deed of purchase, fee simple title, authorized easement, eminent domain,
 29 by plat, prescriptive use, or abandonment of a highway pursuant to section
 30 40-203, Idaho Code, but shall not include federal land rights-of-way, as
 31 provided in section 40-204A, Idaho Code, that resulted from the creation of
 32 a facility for the transmission of water. Public rights-of-way shall not be
 33 considered improved highways for the apportionment of funds from the highway
 34 distribution account.

35 ~~(79)~~ "Public transportation services" means, but is not limited to,
 36 fixed transit routes, scheduled or unscheduled transit services provided
 37 by motor vehicle, bus, rail, van, aerial tramway and other modes of public
 38 conveyance; paratransit service for the elderly and disabled; shuttle
 39 and commuter service between cities, counties, health care facilities,
 40 employment centers, educational institutions or park-and-ride locations;
 41 subscription van and car pooling services; transportation services unique
 42 to social service programs; and the management and administration thereof.

43 SECTION 10. That Chapter 1, Title 40, Idaho Code, be, and the same is
 44 hereby amended by the addition thereto of a NEW SECTION, to be known and
 45 designated as Section 40-119, Idaho Code, and to read as follows:

46 40-119. DEFINITIONS -- R.

47 (1) "Request for proposals (RFP)" means a document used to solicit
 48 proposals from design-build firms to design and construct a highway project
 49 or to solicit proposals from construction manager/general contractor firms

1 to provide services prior to final design and then construct a highway
2 project.

3 (2) "Request for qualifications (RFQ)" means a document issued by the
4 department in the first step of a two-step selection process that describes
5 the project in enough detail to let potential design-build firms determine
6 if they wish to compete and forms the basis for developing a short-list of the
7 most qualified design-build firms.

8 (3) "Responsive proposals" mean proposals submitted by responsive
9 proposers that comply with the request for proposals and all prescribed
10 procurement procedures and requirements.

11 SECTION 11. That Section 40-120, Idaho Code, be, and the same is hereby
12 amended to read as follows:

13 40-120. DEFINITIONS -- S.

14 (1) "Safety rest area" means an area or site established and maintained
15 within or adjacent to the right-of-way by or under public supervision or
16 control, for convenience of the traveling public.

17 (2) "Short-listing" means the narrowing of the field of potential
18 design-build firms through the selection of the most qualified design-build
19 firms who have responded to a request for qualifications.

20 (3) "Sign." (See "Advertising structure," section 40-102, Idaho Code.)

21 ~~(4)~~ "Single county wide countywide highway district" means all public
22 highways within the county, including those within all cities of the county,
23 but excepting those within the state highway system and those under federal
24 control.

25 ~~(5)~~ "State highway system" means the principal highway arteries in
26 the state, including connecting arteries and extensions through cities, and
27 includes roads to every county seat in the state.

28 ~~(6)~~ "State law" means a provision of the constitution or statutes of
29 this state, or an ordinance, rule or regulation enacted or adopted by an
30 agency or political subdivision of this state pursuant to the constitution
31 or statutes.

32 (7) "Stipend" means a monetary amount that may be paid to unsuccessful
33 design-build firms who have submitted responsive proposals in response to
34 an RFP. The purpose of a stipend is to encourage competition by offering to
35 compensate responsive but unsuccessful design-build firms for a portion of
36 the proposal development costs.

37 ~~(8)~~ "Structure." (See "Advertising structure," section 40-102, Idaho
38 Code)

39 ~~(79)~~ "System, city." (See "City system," section 40-104, Idaho Code)

40 SECTION 12. That Section 40-121, Idaho Code, be, and the same is hereby
41 amended to read as follows:

42 40-121. DEFINITIONS -- T.

43 (1) "Technical proposal" means that portion of a design-build firm
44 proposal that contains design solutions and other qualitative factors that
45 are provided in response to a request for proposals.

46 (2) "Tourist related advertising sign" means any sign which advertises
47 a specific public or private facility, accommodation or service, at a

1 particular location or site, including: overnight lodging, a camp site,
2 food service, recreational facility, tourist attraction, education or
3 historical site or feature, automotive service, facility or garage.

4 ~~(23)~~ "Turnpike project" means any express highway or bridge at
5 locations and between terminals as may be established by the board and
6 constructed or to be constructed under the provisions of chapter 4, title
7 40, Idaho Code, and shall include all bridges, tunnels, overpasses,
8 underpasses, interchanges, entrance plazas, approaches, toll houses,
9 service areas, service stations, service facilities, communication
10 facilities, and administration, storage and other buildings, which the
11 board may deem necessary for the operation of a project, together with all
12 property, rights, easements, and interests which may be acquired by the
13 board for the construction or the operation of a project.

14 ~~(34)~~ "Turnpike revenue bonds" mean bonds of the transportation board
15 authorized under the provisions of section 40-412, et seq., Idaho Code.

16 (5) "Two-step selection" means a procurement process in which the
17 first step consists of short-listing based on statements of qualifications
18 submitted in response to a request for qualifications and the second step
19 consists of the submission of price and technical proposals in response to
20 a request for proposals.

21 SECTION 13. That Section 40-902, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 40-902. BIDS -- STATE HIGHWAY SYSTEM. (1) Whenever work on the state
24 highway system is let by contract, advertisement for sealed bids must
25 be called for by public advertisement in provided for at least two (2)
26 consecutive ~~weekly issues in a weekly newspaper or five (5) issues in a daily~~
27 weeks in one (1) newspaper, having a general circulation in the county or
28 one (1) of the counties, where the work is to be done. In addition, the
29 department may use any medium reasonably determined to reach prospective
30 bidders.

31 (2) Each bid must be accompanied by a cashier's check or a certified
32 check in favor of the department on some bank in the state of Idaho, or by
33 a bidder's bond, for the sum of five percent (5%) of the amount of the bid,
34 to be forfeited if the bidder, upon acceptance of his bid, fails or refuses
35 to enter into a contract within fifteen (15) days after the presentation
36 of the contract by the department to him for execution and to furnish the
37 required bond. Checks and bonds of unsuccessful bidders shall be returned
38 immediately after the contract is awarded. If the contracting agency allows
39 electronically submitted bid documents, then a bid bond in electronic
40 form with valid electronic signatures shall accompany the submittal of the
41 electronic bid documents.

42 (3) Except as allowed by the provisions of sections 40-904 and 40-905,
43 Idaho Code, bBids shall be opened publicly at the time and place specified
44 in the advertisement and the contract let to the lowest responsible bidder,
45 but the department has the right to reject any and all bids, or to let the
46 contract for a part or all of the work.

47 (4) If no satisfactory bid is received, new bids may be called for,
48 or the work may be performed by day labor, or as may be determined by the
49 department.

1 (5) Except as allowed by the provisions of sections 40-904 and 40-905,
2 Idaho Code, a bidder who did not submit the lowest responsible bid as
3 determined by the department may within five (5) calendar days of bid opening
4 file a written application to challenge the department's determination
5 of the lowest responsible bidder and apply to the department's chief
6 engineer for the appointment of a hearing officer to hold a contested case
7 hearing. The application shall set forth in specific terms the reasons
8 why the department's decision is thought to be erroneous. Upon receipt of
9 an application, the chief engineer shall appoint a hearing officer with
10 the authority to conduct a contested case hearing in accordance with the
11 provisions of chapter 52, title 67, Idaho Code. Upon receipt from the
12 hearing officer of findings of fact, conclusions of law and a recommended
13 order, the chief engineer shall review the same and enter a final order
14 sustaining or reversing the decision of the department on the selection
15 of the lowest responsible bidder. Following entry of the final order, the
16 chief engineer shall have the authority to award the contract to the bidder
17 determined in the final order to be the lowest responsible bidder at a time
18 and in a manner which shall be in the best interest of the state.

19 SECTION 14. That Chapter 9, Title 40, Idaho Code, be, and the same is
20 hereby amended by the addition thereto of a NEW SECTION, to be known and
21 designated as Section 40-904, Idaho Code, and to read as follows:

22 40-904. CONTRACTS -- DESIGN BUILD. (1) The preferred contracting
23 method of the department shall be as described in section 40-902, Idaho
24 Code. The department may select design-build firms and award contracts
25 for design-build projects if the board determines that the projects are of
26 appropriate size and scope, that awarding a design-build contract will serve
27 the public interest, and that the method is superior to that described in
28 section 40-902, Idaho Code. The following criteria shall be used as the
29 minimum basis for determining when to use design-build contract procedures:

30 (a) Project suitability for design-build method contracting regarding
31 time constraints, costs and quality factors;

32 (b) The availability, capability and experience of potential
33 design-build firms;

34 (c) The department's ability to manage design-build projects,
35 including employing experienced personnel or outside consultants; and

36 (d) Other criteria the department deems relevant and states in writing
37 in its determination to use design-build contract procedures.

38 (2) No more than twenty percent (20%) of the department's annual
39 highway construction budget for the state transportation improvement
40 program shall be used for design-build and construction manager/general
41 contractor contracts combined.

42 (3) No less than thirty percent (30%) of any design-build contract
43 awarded shall be self-performed by the design-build firm awarded such
44 contract.

45 (4) A professional engineer licensed in the state of Idaho shall have
46 responsible charge of preparing the request for qualifications (RFQ) and
47 request for proposals (RFP) including the base technical concept. The term
48 "responsible charge" shall be as defined in section 54-1202, Idaho Code. The

1 professional engineer shall not be affiliated with any design-build firm
2 submitting proposals on the project.

3 (5) For each proposed design-build project, the department shall
4 designate an evaluation committee. The evaluation committee shall include
5 at least five (5) members who are qualified by education and experience,
6 and at least two (2) of whom shall be professional engineers licensed in
7 the state of Idaho. To assist in the evaluation process, the evaluation
8 committee may retain the services of nonvoting members.

9 (6) Any design-build firm, regardless of its organizational structure,
10 must comply with all applicable requirements of chapter 12, title 54,
11 Idaho Code. The designer shall employ a professional engineer licensed
12 in the state of Idaho who is in responsible charge of all engineering on
13 the design-build project for the design-build firm. The term "responsible
14 charge" shall be as defined in section 54-1202, Idaho Code.

15 (7) Any design-build firm regardless of its organizational structure,
16 must comply with all applicable requirements of chapter 19, title 54, Idaho
17 Code.

18 (8) Any Idaho professional engineering licenses required shall be
19 obtained prior to submittal of a design-build firm's proposal. Any Idaho
20 public works licenses required shall be obtained prior to contract award.

21 (9) The department shall have the authority to discontinue the
22 design-build firm selection process at any time prior to the opening of price
23 proposals, subject to any applicable obligation to pay a stipend.

24 (10) After short-list selection and contract award, and upon written
25 request, all unsuccessful design-build firms shall be afforded the
26 opportunity for a debriefing. Debriefings shall be provided at the earliest
27 feasible time after a design-build firm has been selected for award. The
28 debriefing shall:

29 (a) Be limited to discussion of the unsuccessful design-build firm's
30 proposal and shall not include specific discussion of a competing
31 proposal.

32 (b) Provide information on areas in which the unsuccessful
33 design-build firm's proposal had weaknesses or deficiencies.

34 (c) Maintain the confidentiality of evaluation committee members and
35 other design-build firms shall be maintained.

36 (11) The department shall establish and determine the appropriate
37 design-build contract method to select design-build firms and award
38 contracts on a project-by-project basis. The method shall be stated in
39 the request for proposals, and in the request for qualifications when
40 applicable. The department shall use a two-step selection process for all
41 projects. Design-build selection and contract methods that may be used are:

42 (a) Best value;

43 (b) Fixed price-best design; or

44 (c) Lowest price-technically acceptable. The department may only use
45 the lowest price-technically acceptable method when:

46 (i) The preliminary design is completed and the design-build
47 firm's role is limited to completing the final design and
48 constructing the design-build project;

49 (ii) No right-of-way must be acquired by the design-build firm;

1 (iii) No utility or railroad permits must be obtained by the
2 design-build firm;

3 (iv) The department obtains the required environmental
4 clearances; and

5 (v) The department has determined that meeting the minimum
6 technical and designer qualification requirements is sufficient
7 for the project and that innovation or alternatives are not
8 required.

9 (12) The department shall advertise for request for qualifications and
10 request for proposals in accordance with the procedures outlined in section
11 40-902(1), Idaho Code.

12 (13) The RFQ and RFP shall address potential organizational conflicts
13 of interest.

14 (a) No person or business entity that assisted the department in
15 preparing the solicitation documents will be allowed to participate
16 as a design-build firm or as a member of the design-build firm's
17 team; however, the department may determine that there is not an
18 organizational conflict of interest where:

19 (i) The role of the person or business entity was limited to
20 provision of preliminary design, reports, or similar "low-level"
21 documents that may be incorporated into the solicitation but
22 did not include assistance in the development of instructions to
23 design-build firms or evaluation criteria; or

24 (ii) All documents and reports delivered to the department by the
25 person or entity are made available to all potential design-build
26 firms.

27 (b) The design-build firm shall disclose all relevant facts concerning
28 any past, present, or currently planned interests that may present an
29 organizational conflict of interest.

30 (c) If at any time during the selection process or during the contract
31 period a previously undetermined organizational conflict of interest
32 arises, the design-build firm must disclose that information as soon as
33 discovered and mitigate or eliminate the conflict.

34 (14) At a minimum, the following shall be included in each request for
35 qualifications (RFQ):

36 (a) Minimum design-build firm qualifications necessary to meet the
37 project's design-build requirements;

38 (i) Relevant construction-related experience and performance;

39 (ii) Financial, personnel and equipment resources available for
40 construction;

41 (iii) Designer qualifications;

42 1. Experience and performance of the designer on similar
43 projects;

44 2. Qualifications and relevant experience of the designer's
45 project manager and key personnel;

46 3. Available resources of the designer.

47 (b) Scope of work statement and schedule;

48 (c) Documents defining the project requirements;

49 (d) Maximum time allowed for project design and construction;

50 (e) Estimated cost of project design and construction;

- 1 (f) Requirements for key personnel;
2 (g) Scoring criteria for evaluating the qualifications submitted; and
3 (h) The number of firms to be short-listed. The number of firms
4 short-listed shall be no less than two (2) or more than five (5).
- 5 (15) The criteria for evaluation of qualifications may include, without
6 limitation:
- 7 (a) Technical qualifications for construction, such as specialized
8 experience and technical competence, including key personnel;
9 (b) Capability to perform construction, including the availability of
10 key personnel;
11 (c) Designer qualifications;
12 (d) The proposed plan of the design-build firm to manage the design and
13 construction of the project;
14 (e) Understanding of and approach to the project;
15 (f) Organizational conflicts of interest;
16 (g) Other appropriate qualifications-based selection factors.
- 17 (16) The RFQ shall not include any price-related factors. The scoring
18 weight for designer qualification shall be no less than thirty-five percent
19 (35%) of the total score. The department shall develop a short-list of the
20 most qualified design-build firms from the proposals submitted in response
21 to the request for qualifications. If only a single design-build firm
22 responds to the RFQ or remains on the short-list, the department may issue a
23 new RFQ or cancel the solicitation.
- 24 (17) The department shall provide to each design-build firm that
25 submitted qualifications the summary of scores of all proposers and the
26 design-build firms' evaluation worksheets within three (3) business
27 days following notification of the short-list. The confidentiality of
28 the evaluation committee members and other design-build firms shall be
29 maintained.
- 30 (18) Design-build firms that submit qualifications and that do not
31 qualify for the short-list generated by the department may challenge the
32 department's determination in accordance with the procedures outlined in
33 section 40-902(5), Idaho Code. A challenge must be filed with the department
34 within seven (7) calendar days of the date the department transmitted the
35 evaluation scores and worksheets.
- 36 (19) The department shall prepare a request for proposals (RFP) for each
37 design-build contract. The RFP shall address the base technical concept for
38 the design-build contract.
- 39 (20) The RFP shall define the base technical concept, the mandatory
40 project scope elements, deliverables and the project schedule including,
41 but not limited to:
- 42 (a) Performance and technical requirements;
43 (b) Conceptual design;
44 (c) Specifications;
45 (d) Functional and operational elements for the delivery of the
46 completed project;
47 (e) Description of the selection and award criteria, including the
48 weight or relative order, or both, of each criterion;
49 (f) Copies of the contract documents the selected bidder will be
50 expected to sign;

- 1 (g) Maximum time allowed for project design and construction;
- 2 (h) Estimated cost of design and construction or fixed price;
- 3 (i) A requirement that all proposals be submitted to the department in
- 4 two (2) parts:
- 5 1. A technical proposal; and
- 6 2. A price proposal;
- 7 (j) A requirement that all proposals be submitted in a separately
- 8 sealed, clearly identified package that includes the date and time of
- 9 the submittal deadline;
- 10 (k) A requirement that the technical proposal include a critical
- 11 path method and bar schedule of the work to be performed, or similar
- 12 schematic, design plans and specifications, technical reports,
- 13 calculations, permit requirements, applicable development fees,
- 14 designer qualifications as they relate to the technical proposal and
- 15 other data requested in the request for proposals;
- 16 (l) A requirement that the price proposal contain all design,
- 17 construction, engineering, quality control and assurance, and
- 18 construction costs of the proposed project;
- 19 (m) The terms and conditions for stipends, including waiving of the
- 20 stipend, and when the stipend shall be paid;
- 21 (n) The date, time and location of the public opening of the sealed
- 22 price proposals;
- 23 (o) The basis for design-build firm selection and contract award;
- 24 (p) When applicable, the alternate technical concept deadline; and
- 25 (q) Other information relevant to the project.
- 26 (21) The RFP selection and award criteria shall include price, shall
- 27 include the design-build firm's design and construction qualifications,
- 28 and may include time of completion, innovation, design and construction
- 29 quality and other technical or quality related criteria. The qualification
- 30 based selection process required pursuant to section 67-2320, Idaho Code, in
- 31 obtaining certain consultant services is not applicable. When applicable,
- 32 the percent weighting of the technical proposal score that is assigned to
- 33 the designer qualifications shall be based on the project's level of design
- 34 completeness prior to the RFP and the opportunity for design innovation and
- 35 alternatives.
- 36 (22) As part of the RFP, and when available, the department shall make
- 37 available any project specific documentation, drawings, files, reports and
- 38 other pertinent materials that would be of use to the eligible design-build
- 39 firms.
- 40 (23) The RFP shall address and identify contract provisions including,
- 41 but not limited to:
- 42 (a) Allocation of known risks according to the type and location of the
- 43 project, and the following risk factors shall be considered:
- 44 (i) Governmental risks;
- 45 (ii) Regulatory compliance risks;
- 46 (iii) Construction phase risks;
- 47 (iv) Postconstruction risks; and
- 48 (v) Right-of-way risks;
- 49 (b) Payment and performance bonds;
- 50 (c) Proposal guaranty;

- 1 (d) General and professional liability insurance;
- 2 (e) Meetings regarding the preconstruction services;
- 3 (f) The department's standards, rules, guidelines, and special
4 provisions requirements;
- 5 (g) Environmental regulatory requirements, including whether the
6 department or the design-build firm will acquire any or all of the
7 permits required for construction;
- 8 (h) Design and construction requirements, including specifications;
- 9 (i) The final documents to be provided by the design-build firm
10 upon completion of the project, which may include "as built" plans,
11 engineering reports, shop drawings, test results, documentation, daily
12 reports and item quantities;
- 13 (j) The date for submittal of the technical and price proposals; and
- 14 (k) The date for opening the sealed price proposals.
- 15 (24) The RFP may allow design-build firms to submit one (1) or more
16 alternate technical concepts (ATCs).
- 17 (a) ATCs will only be considered if they are determined by the
18 department at its sole discretion to be equal to or better than the base
19 technical concept. Typically, ATCs will improve project quality and/or
20 reduce project costs. The department may allow preapproved ATCs as part
21 of the design-build firm's proposal.
- 22 (b) A proposed ATC is not acceptable if it merely seeks to reduce
23 quantities, performance or reliability, or seeks a relaxation of the
24 contract requirements. ATCs shall be submitted by the design-build
25 firm by the date specified within the RFP and preapproved in writing
26 by the department prior to the proposal submittal date. All technical
27 proposals must include the department's preapproval letters for
28 consideration of the ATCs.
- 29 (c) A design-build firm may incorporate one (1) or more preapproved
30 ATCs into its technical and price proposal. Each design-build firm
31 shall submit only one (1) proposal.
- 32 (d) The price proposal shall reflect any incorporated ATCs. Except for
33 incorporating approved ATCs, the proposal may not otherwise contain
34 exceptions to or deviations from the requirements of the RFP.
- 35 (e) The RFP will not distinguish between proposals that do not include
36 any ATCs and proposals that include ATCs. Both types of proposals shall
37 be evaluated against the same technical criteria, and a best value
38 determination shall be made in the same manner.
- 39 (f) An approved ATC that is incorporated into a design-build firm's
40 proposal will become part of the design-build contract upon award of the
41 design-build contract to that design-build firm.
- 42 (g) ATCs properly submitted by a design-build firm and all subsequent
43 communications regarding its ATCs shall be considered confidential
44 prior to the award of the design-build contract.
- 45 (25) Prior to proposal submittal, the department shall offer
46 design-build firms equal opportunity to participate in one-on-one meetings
47 with the department regarding their proposals if the department determines
48 that such discussions are needed. The department shall disclose to all
49 design-build firms issues impacting the scope of work or base technical
50 concept that are relevant to the RFP. The department shall not disclose

1 information pertaining to an individual design-build firm's ATCs or
2 confidential business strategies.

3 (26) The technical proposal and price proposal shall be submitted
4 concurrently. The technical proposal and price proposal shall be submitted
5 to the department in separate sealed envelopes marked in strict accordance
6 with the requirements and timeline contained in the RFP, or as it may be
7 amended.

8 (27) After proposals are submitted, and prior to opening the price
9 proposals, the evaluation committee shall open, review and score or
10 otherwise evaluate the technical proposals and any other required technical
11 information in accordance with the evaluation criteria established in the
12 RFP.

13 (28) After proposals are submitted, and prior to opening the sealed
14 price proposals, the department may hold discussions with design-build
15 firms during the technical proposal evaluations. Discussions shall be held
16 with all design-build firms that submitted proposals. The department shall
17 disclose to all design-build firms issues impacting the scope of work or base
18 technical concept that are relevant to the RFP. The department shall not
19 disclose information pertaining to a design-build firm's proposal, ATCs or
20 other technical concepts. The department may issue a revised RFP that may
21 or may not include changes in the scope, contract requirements or stipend
22 amount. All design-build firms shall be given an opportunity to submit
23 revised technical and price proposals that may result from the discussions.

24 (29) Sealed price proposals shall be kept in a secure location until
25 read publicly. When applicable, the technical scores and best values shall
26 be read publicly at the same time.

27 (30) If an RFP includes a time factor with the selection criteria, the
28 department shall adjust the price using a department established value of
29 the time factor. The department established value of the time factor shall
30 be expressed as a value per day. The total time value shall be the total
31 number of days to complete the project multiplied by the time factor. The
32 time-adjusted price is the total time value plus the total price proposal
33 amount.

34 (31) The basis for design-build firm selection and contract award shall
35 be as follows:

36 (a) Best Value Method: Each proposal's price proposal, time adjusted,
37 if applicable, is divided by the technical proposal score to obtain
38 a total score. The department shall award the contract to the
39 design-build firm whose total score is lowest.

40 (b) Fixed Price - Best Design Method: The department shall award the
41 contract to the design-build firm whose technical proposal score is
42 highest.

43 (c) Lowest Price - Technically Acceptable Method: The department
44 shall award the contract to the design-build firm who meets the minimum
45 technical and designer qualifications requirements identified in the
46 RFP and whose price proposal is lowest.

47 (32) Proposals that are not responsive to the RFP may be excluded from
48 consideration. The criteria used for determining whether a proposal is not
49 responsive shall be defined in the RFP. Design-build firms whose proposals
50 are excluded from consideration are not eligible for payment of a stipend.

1 (33) At the discretion of the department, a stipend may be paid
2 to eligible design-build firms who submit responsive but unsuccessful
3 proposals in response to the RFP. The decision to do so shall be based upon
4 the department's analysis of the estimated proposal development costs,
5 the complexity of the project and the anticipated degree of competition
6 during the procurement process. The department shall pay the stipend within
7 forty-five (45) calendar days after award of a contract or the decision not
8 to award a contract.

9 (34) If a stipend is provided to an unsuccessful design-build firm, the
10 work produced within that design-build firm's proposal for the project shall
11 be provided to the department for its use in connection with the contract
12 awarded for the project, or in connection with a subsequent procurement,
13 without any additional compensation to the unsuccessful design-build firm.

14 (35) In consideration for paying the stipend, the department may
15 use any ideas or information contained in the submitted proposals with no
16 obligation to pay any additional compensation to the unsuccessful bidders.

17 (36) The department may either:

18 (a) Reject all proposals;

19 (b) Award a design-build contract to the design-build firm; or

20 (c) Award to the next ranked design-build firm, if the selected
21 design-build firm declines the award and forfeits the proposal
22 guaranty.

23 (37) The department is not required to award a contract. If the
24 department does award a contract, a contract shall be executed and a notice
25 to proceed shall be given to the successful design-build firm.

26 (38) When applicable, the department shall provide to each
27 design-build firm that submitted proposals the summary of scores of
28 all proposers and the design-build firms' evaluation worksheets within
29 three (3) business days following notification of intent to award. The
30 confidentiality of the evaluation committee members and other design-build
31 firms shall be maintained.

32 (39) Design-build firms that submit proposals and are not selected for
33 the award of the contract may challenge the department's determination in
34 accordance with the procedures outlined in section 40-902(5), Idaho Code. A
35 challenge must be filed with the department within seven (7) calendar days of
36 the date the department transmitted the evaluation scores and worksheets.

37 SECTION 15. That Chapter 9, Title 40, Idaho Code, be, and the same is
38 hereby amended by the addition thereto of a NEW SECTION, to be known and
39 designated as Section 40-905, Idaho Code, and to read as follows:

40 40-905. CONTRACTS -- CONSTRUCTION MANAGER/GENERAL CONTRACTOR. (1)
41 The preferred contracting method of the department shall be as described
42 in section 40-902, Idaho Code. The department may select construction
43 manager/general contractor (CM/GC) firms and award contracts for highway
44 projects as provided herein. CM/GC highway projects shall be of appropriate
45 size and scope to encourage maximum competition and participation by
46 qualified firms. CM/GC procedures may be used for a specific highway project
47 only after the board determines that awarding a CM/GC contract will serve
48 the public interest and is superior to that described in section 40-902,

1 Idaho Code. The following criteria shall be used as the minimum basis for
2 determining when to use CM/GC contract procedures:

3 (a) Project suitability for CM/GC contracting regarding time
4 constraints, costs and quality factors;

5 (b) The availability, capability and experience of potential CM/GC
6 firms;

7 (c) The department's ability to manage CM/GC projects, including
8 employing experienced personnel or outside consultants; and

9 (d) Other criteria the department deems relevant and states in writing
10 in its determination to use CM/GC contract procedures.

11 (2) No more than twenty percent (20%) of the department's annual
12 highway construction budget for the state transportation improvement
13 program shall be used for design-build and CM/GC contracts combined.

14 (3) No less than thirty percent (30%) of any CM/GC contract awarded
15 shall be self-performed by the CM/GC firm awarded such contract.

16 (4) A professional engineer licensed in the state of Idaho shall
17 have responsible charge of preparing the request for proposals (RFP).
18 Responsible charge shall be as defined in section 54-1202, Idaho Code. The
19 professional engineer shall not be affiliated with any CM/GC firm submitting
20 proposals on the project.

21 (5) Any CM/CG firm shall comply with all applicable requirements of
22 chapter 19, title 54, Idaho Code. The requirements of chapter 45, title 54,
23 Idaho Code, do not apply.

24 (6) For each proposed CM/GC project, the department shall designate an
25 evaluation committee. The members of the evaluation committee shall include
26 at least five (5) members who are qualified by education and experience. To
27 assist in the evaluation process, the evaluation committee may retain the
28 services of nonvoting members.

29 (7) After award of the contract, and upon written request, all
30 unsuccessful CM/GC firms shall be afforded the opportunity for a debriefing.
31 Debriefings shall be provided at the earliest feasible time after a CM/GC
32 firm has been selected for award. The debriefing shall:

33 (a) Be limited to discussion of the unsuccessful CM/GC firm's proposal
34 and shall not include specific discussion of a competing proposal;

35 (b) Provide information on areas in which the unsuccessful CM/GC firm's
36 proposal had weaknesses or deficiencies; and

37 (c) Maintain the confidentiality of the evaluation committee members
38 and the other CM/GC firms shall be maintained.

39 (8) Contracts for the services of a CM/GC shall be awarded through
40 a competitive process requiring the public solicitation of requests for
41 proposals for CM/GC services. The request for proposals shall include price
42 components and meeting requirements as stated in the request for proposals.

43 (9) The department shall advertise requests for proposals in
44 accordance with the procedures outlined in section 40-902(1), Idaho
45 Code.

46 (10) The RFP shall address potential organizational conflicts of
47 interest.

48 (a) No person or business entity that assisted the department in
49 preparing the solicitation documents will be allowed to participate
50 as a CM/GC firm or as a member of the CM/GC firm's team; however, the

1 department may determine that there is not an organizational conflict
2 of interest where:

3 (i) The role of the person or business entity was limited to
4 provision of preliminary design, reports or similar "low-level"
5 documents that may be incorporated into the solicitation but did
6 not include assistance in the development of instructions to CM/GC
7 firms or evaluation criteria; or

8 (ii) Where all documents and reports delivered to the department
9 by the person or business entity are made available to all
10 potential CM/GC firms.

11 (b) The CM/GC firm shall disclose all relevant facts concerning any
12 past, present or currently planned interests that may present an
13 organizational conflict of interest.

14 (c) If at any time during the selection process or during the contract
15 period a previously undetermined organizational conflict of interest
16 arises, the CM/GC firm must disclose that information as soon as
17 discovered and mitigate or eliminate the conflict.

18 (11) At a minimum, the request for proposals shall include:

19 (a) A description of the project, including programmatic, performance,
20 and technical requirements and specifications when available;

21 (b) A description of the qualifications to be required of the firm;

22 (c) A description of the requirements of key personnel;

23 (d) A description of the process the department will use to evaluate
24 qualifications and proposals, including evaluation and scoring
25 criteria;

26 (e) Schedule of items for which the CM/GC firm shall submit unit prices;

27 (f) A requirement that the CM/GC firm describe its approach to pricing;
28 and

29 (g) The form of the contract, including any contract for
30 preconstruction services, to be awarded.

31 (12) Evaluation factors for selection of the CM/GC shall include, but
32 not be limited to:

33 (a) Ability of the firm's key personnel;

34 (b) Financial, labor and equipment resources available for the
35 project;

36 (c) Ability of the firm to meet time and budget requirements;

37 (d) Scope of work the firm proposes to self-perform and its ability to
38 perform that work;

39 (e) The firm's approach to working collaboratively with the
40 department, and the department's consultant(s) when applicable, and to
41 executing the project;

42 (f) Construction experience in similar projects;

43 (g) Submitted unit prices;

44 (h) Approach to pricing; and

45 (i) Organizational conflicts of interest.

46 (13) The basis for selection shall be stated in the request for
47 proposal. Selection shall be based on the responsible proposer whose
48 proposal is evaluated as providing the best value to the department.

49 (14) The contract shall be awarded in two (2) phases. The first
50 is for services during the design phase that may include life-cycle

1 cost considerations, scheduling, cost estimating, constructability,
2 alternative construction options for cost savings, and sequencing of work.
3 The second phase is for construction services. The second phase will be
4 awarded after the plans have been sufficiently developed and a guaranteed
5 maximum price for construction services has been successfully negotiated.
6 Incremental construction phases may be awarded after guaranteed maximum
7 prices are negotiated for each phase.

8 (a) For the first phase, the department may either:

9 (i) Reject all proposals;

10 (ii) Award a contract to the best evaluated CM/GC firm; or

11 (iii) Award to the next best evaluated CM/GC firm if the best
12 evaluated CM/GC firm is determined to be nonresponsive, declines
13 the award and forfeits the proposal guaranty or the parties are
14 unable to reach a mutually acceptable contract.

15 (b) For the second phase, the department may either:

16 (i) Award a construction contract or incremental construction
17 contracts upon successful negotiations of a guaranteed maximum
18 price; or

19 (ii) Advertise, bid and award in accordance with section 40-902,
20 Idaho Code.

21 (15) The CM/GC shall provide performance and payment bonds during
22 construction phases.

23 (16) The department is not required to award a contract. If awarded,
24 however, a contract shall be executed and notice given to proceed with the
25 work.

26 (17) The department shall provide to each CM/GC firm that submitted
27 proposals the summary of scores of all proposers and the CM/GC firms'
28 evaluation worksheets within three (3) business days following notification
29 of intent to award. The confidentiality of the evaluation committee members
30 and other CM/GC firms shall be maintained.

31 (18) CM/GC firms that submit proposals and are not selected for the
32 award of the contract may challenge the department's determination in
33 accordance with the procedures outlined in section 40-902(5), Idaho Code. A
34 challenge must be filed with the department within seven (7) calendar days
35 following the date the department transmitted the evaluation scores and
36 worksheets.

37 SECTION 16. An emergency existing therefor, which emergency is hereby
38 declared to exist, this act shall be in full force and effect on and after its
39 passage and approval.