

The board will comply with all public works construction requirements of Idaho law relating to the construction, alteration or repair of any and all school buildings and improvements. In addition, the board will follow the guidelines set forth in the District's Policies and Procedures Manual for the Administration of Federal Education Programs ("Federal Programs Manual"). For purposes of this Policy, "public works construction" and "public works contractor" shall have the meanings set forth in Idaho Code §54-1901(2).

## **PUBLIC WORKS LICENSURE**

For any construction, alteration, improvement or repair involving any single project involving any number of trades or crafts with an estimated cost of less than one hundred thousand dollars (\$100,000), a public works contractors' license is not required. For projects equal to or greater than one hundred thousand dollars (\$100,000), the successful bidder must hold a valid public works contractors' license as required by Idaho law. If a portion or all the funding for the public works project is federal funding, the district's notice of solicitation of bids will not require that the bidder hold a valid public works license at the time of submission of the bid. However, any successful bidder must hold such license at the time of award and execution of a resulting contract.

Except as otherwise provided herein or by federal law, the successful bidder selected to complete construction, repair, or renovation of district facilities must hold a valid public works license and must agree to comply with the following guidelines as provided in Idaho Code §§44-1001 *et seq.*:

1. The contractor or person in charge of public works construction must employ 95% bona fide Idaho residents as employees except for sole source procurements authorized by Idaho Code §67-2808(2).
2. Alternatively, if the total number of persons employed on the contract is fifty (50) or less, the contractor or person in charge must employ 90% bona fide Idaho residents, provided the contractor gives preference to the employment of bona fide Idaho residents in the performance of such work.
3. For purposes of the guidelines in this section, "bona fide resident of Idaho" means that the person has resided in Idaho for not less than one (1) year immediately prior to employment on the project.
4. In contracts involving the expenditure of federal aid funds the preference for bona fide Idaho residents will not be enforced in such a manner as to conflict with or be contrary to federal law prescribing a labor preference to honorably discharged soldiers, sailors, and marines, prohibiting as unlawful any other preference or discrimination among citizens of the United States.

5. An employee who is not a citizen of the United States, or has not declared an intention to become such, or is not eligible to become a citizen shall not be employed upon any public works construction project of the district.
6. Whenever applicable provisions of Idaho law require a public works contractor's license to bid upon a public construction project, the requirement will be deemed waived whenever a federal law prohibits requiring licensure as a precondition for submitting a bid.
7. Nothing in this policy prohibits the district from performing construction or repair work on its own facilities using its own employees.

**WRITTEN PLANS AND SPECIFICATIONS**

The board will make written plans and specifications of work to be performed or materials to be furnished on any public works construction project of the district, which plans and specifications will state, among other things pertinent to the work to be performed or materials furnished, the number, size, kind and quality of materials and service required for such contract. The plans and specifications will not specify or provide for the use of a specific brand or mark, or any patented apparatus or appliances when other materials are available for such purpose and when such requirements would prevent competitive bidding on the part of dealers or contractors in other articles or materials of equivalent value, utility or merit. All plans and specifications will be made available to all interested and prospective bidders, provided that the board may require prospective bidders to make a reasonable deposit for such plans and specifications.

**SUBCONTRACTORS TO BE LISTED ON BID OF GENERAL CONTRACTOR**

In all bids submitted for the construction, alteration or repair of district buildings and improvements which construction requires plumbing, HVAC work or electrical work, the general contractor is required to include in his bid the name(s) and address(es) of the subcontractors who will subcontract the plumbing, HVAC work and electrical work under the general contract.

In the event the general contract intends to self-perform the plumbing, HVAC work or electrical work, the general contractor must be properly licensed by the state of Idaho to perform such work. The general contractor must demonstrate compliance with this requirement by listing the valid contractor's license number for the plumbing, HVAC or electrical work to be self-performed by the general contractor on the bid form.

At the time subcontractors are named in accordance with this section, they must possess the appropriate licenses or certificates of competency issued by the state of Idaho covering the contractor work classification in which each respective subcontractor is named, except in cases where the project is financed in whole or in part by federal aid funds. In such cases, the

subcontractor must possess the appropriate license or certificate at or prior to the award and execution of the contract.

The general contractor may not name any subcontractor in his bid unless he has received communication from the subcontractor by telephone, mail, facsimile, electronically or in person. In the event the general contractor who secures the contract cannot finalize the terms of the agreement between him and a named subcontractor for any reason other than cost, the general contractor shall name another subcontractor by written notification within ten (10) days of being awarded the contract. The general contractor shall disclose to the board the cost for the work to be performed by substitute contractor. If the amount of the substitute subcontractor's bid is less than the original subcontractor's bid, the reduction in cost shall be passed through to the benefit of the board.

Failure to name subcontractors or list the valid contractor's license number for plumbing, HVAC or electrical work being self-performed by the general contractor shall render any bid submitted by a general contractor unresponsive and void.

**PUBLIC WORKS AGREEMENTS – PAYMENT OF WAGES**

Except as provided in this section or as required by federal or state law, the district will not require that a contractor, subcontractor, material supplier or carrier engaged in the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works to pay its employees a (i) predetermined amount of wages or wage rate; or (ii) a type, amount or rate of employee benefits. The foregoing requirement will not apply when federal law requires the payment of prevailing or minimum wages to persons working on projects funded in whole or in part by federal funds (e.g. Davis-Bacon Act wages). In addition, the district will ensure that neither it nor any construction manager acting on its behalf will:

1. In its bid documents, specifications, project agreements or other controlling documents for a public works construction contract, require or prohibit bidders, offerors, contractors, subcontractors, or material suppliers to enter into or adhere to prehire agreements, project labor agreements, collective bargaining agreement or any other agreement with one (1) or more labor organizations on the same or other related construction projects; or
2. Discriminate against, or treat differently, bidders, offerors, contractors, subcontractors or material suppliers for becoming or refusing to become ore remain signatories or otherwise

to adhere to agreements with one (1) or more labor organizations on the same or other related construction projects.

Nothing in this section will prohibit bidders, offerors, contractors, subcontractors or material suppliers from voluntarily entering into agreements described in subparagraph 1 above.

The requirements of this section do not prohibit or interfere with the rights of employers or other parties to enter into agreements or engage in any other activity protected by the National Labor Relations Act, 29 U.S.C. §151 *et seq.*

**PAYMENT AND PERFORMANCE BONDS**

Before any contract equal to or greater than fifty thousand (\$50,000) for the construction, alteration or repair of any building or improvement is executed, the person to whom such contract was awarded shall furnish to the district bonds, as described in this section, that shall become binding upon the execution of the contract. The person to whom the contract was awarded shall be designated as “contractor.” Each bond shall be executed by a surety company(ies) authorized to do business in Idaho or, in lieu of providing such surety company performance and payment bonds, the contractor may deposit a government obligation. A “government obligation” is a public debt obligation of the United States government or the state of Idaho and an obligation whose principal and interest is unconditionally guaranteed by the United States government or the state of Idaho. All payment and performance bonds shall be filed with the board clerk or other designated agent of the board. The following guidelines will apply to performance and payment bonds:

1. Performance Bonds. The board has discretion to set the amount of the performance bond, but in no case will it be set at less than eighty-five percent (85%) of the contract amount. The performance bond will be conditioned on the faithful performance of the contract in accordance with the plans, specifications, and conditions thereof, and is issued solely for the protection of the board.
2. Payment Bonds. The board has discretion to set the amount of the payment bond, but in no case will it be set at less than eighty-five percent (85%) of the contract amount. The payment bond is issued solely for the protection of persons supplying labor or materials, or renting, leasing or otherwise supplying equipment to the contractor or his subcontractors in the prosecution of the work provided for in such contract.

Where the board requires a performance bond or payment bond in excess of fifty percent (50%) of the total contract amount, it will not withhold from the contractor or subcontractor any amount exceeding five percent (5%) of the total amount payable as retainage. The board will release to the contractor any retainage for those portions of the project accepted it and the contractor have accepted as complete within thirty (30) days after such acceptance. Pursuant to Idaho Code §54-1926(3), contractors, contracting with subcontractors pursuant to contract work with the board, shall not be authorized to withhold from the subcontractor(s) any amount exceeding five percent (5%) of the total amount payable to the subcontractor(s) as retainage. The contractor is further

required to remit the retainage to the subcontractor(s) within thirty (30) days after completion of the subcontract.

The board reserves the right to require a performance bond or other security in addition to those described hereinabove, or in cases other than the cases specified herein.



**LEGAL REFERENCE:**

Idaho Code Sections

- 33-601 – Real and Personal Property; Acquisition, Use or Disposal of Same
- 44-1001 et seq. – Public Works
- 54-1201 et seq. – Engineers and Surveyors
- 54-1901 et seq. – Public Works Contractors
- 54-4501 et seq. – Public Works Construction Management Licensing
- 67-2309 – Written Plans and Specifications for Work to be Made by Officials;  
Availability
- 67-2310 – Subcontractors to be Listed on Bid of General Contractor; Exceptions
- 67-2804 – Waiver
- 67-2805 – Procurement of Public Works Construction

**CROSS-REFERENCE:**

- 850 – Purchasing
- 850P1 – Supplemental Purchasing Procedures
- 850.20 – Purchases Using Federal Funds
- 850.20P1 – Purchasing Procedures for Federal Awards
- 850.90P1 – Procedures for Procuring Public Works Construction
- 853 – School Building Plan Reviews and Inspection
- 854 – Contractual Certifications and Restrictions

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