

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 429

BY CRONIN

AN ACT

RELATING TO PUBLIC WORKS CONTRACTS; TO PROVIDE A SHORT TITLE; REPEALING CHAPTER 10, TITLE 44, IDAHO CODE, RELATING TO PUBLIC WORKS CONTRACTS; AMENDING TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 10, TITLE 44, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE PREFERENCE FOR RESIDENT CONTRACTORS WITH LIMITATIONS, TO PROVIDE FOR DECERTIFICATION, TO PROVIDE DENIAL OF APPLICATION FOR RESIDENCY, TO PROVIDE LIMITATION ON SUBCONTRACTING BY RESIDENT CONTRACTORS, TO PROVIDE PREFERENCE FOR IDAHO LABOR AND MATERIALS IN CONTRACTS, TO PROVIDE PREFERENCE FOR IDAHO MATERIALS AND IDAHO AGRICULTURAL PRODUCTS REQUIRED IN PUBLIC PURCHASES WITH EXCEPTIONS, TO PROVIDE FOR STATEMENT OF IDAHO MATERIALS PREFERENCE IN REQUESTS FOR BIDS AND PROPOSALS, TO PROVIDE FOR IDAHO MATERIALS PREFERENCE REQUIRED IN CONSTRUCTION OR MAINTENANCE OF PUBLIC STRUCTURES, TO PROVIDE FOR GOVERNING OF FEDERAL FUNDS BY FEDERAL LAW AND TO PROVIDE FOR CAPITAL CONSTRUCTION PROJECTS RESTRICTIONS, PREFERENCE REQUIREMENTS AND WAIVERS; PROVIDING AN EFFECTIVE DATE AND PROVIDING APPLICATION.

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

SECTION 1. SHORT TITLE. This act shall be known and may be designated as the "Idaho Purchasing Act."

SECTION 2. That Chapter 10, Title 44, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Title 44, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 10, Title 44, Idaho Code, and to read as follows:

CHAPTER 10
PUBLIC WORKS CONTRACTS

44-1001. DEFINITIONS. As used in this chapter:

(1) "Office and place of business" means a headquarters or administrative center where business activities are conducted or controlled.

(2) "Resident" means a person, partnership, association, firm, limited liability company or corporation certified as a resident by the department of labor prior to bidding upon the contract or responding to a request for proposal, subject to the following criteria:

(a) Any person who has been a resident of the state for one (1) year or more immediately prior to bidding upon the contract or responding to a request for proposal;

(b) A partnership, association, firm, limited liability company or corporation, each member or shareholder of which has been a resident of the state for one (1) year or more immediately prior to bidding upon the contract or responding to a request for proposal;

(c) A corporation organized under the laws of the state with at least fifty percent (50%) of the issued and outstanding shares of stock in the corporation owned by persons who have been residents of the state for one (1) year or more prior to bidding upon the contract or responding to a request for proposal, and which maintains its principal office and place of business within the state, and the president of the corporation has been a resident of the state for one (1) year or more immediately prior to bidding upon the contract or responding to a request for proposal;

(d) A corporation organized under the laws of the state which has been in existence in the state for one (1) year or more and whose president has been a resident of the state for one (1) year or more immediately prior to bidding upon the contract or responding to a request for proposal and maintains its principal office and place of business within the state. If at least fifty percent (50%) of the issued and outstanding shares of stock in the corporation are owned by nonresidents, shares of the corporation shall:

(i) Have been acquired by nonresidents one (1) year or more immediately prior to bidding upon the contract or responding to a request for proposal; or

(ii) Be publicly traded and registered under section 13 or 15(d) of the securities exchange act of 1934 for one (1) or more classes of its shares.

(e) A limited liability company organized under the laws of the state and which maintains its principal office and place of business in the state and the managing members or the appointed managers of which have been residents of the state for one (1) year or more immediately prior to bidding upon the contract or responding to a request for proposal; or

(f) A person, partnership, limited liability company or corporation which has satisfied the following requirements for the period of one (1) year or more immediately prior to bidding upon the contract or responding to a request for proposal:

(i) Has continuously maintained an office or place of business within the state; and

(ii) Has continuously employed not less than one (1) full-time employee within the state.

44-1002. RESIDENT CONTRACTORS -- PREFERENCE LIMITATION WITH REFERENCE TO LOWEST BID OR QUALIFIED RESPONSE -- DECERTIFICATION -- DENIAL OF APPLICATION FOR RESIDENCY. (1) If a contract is let by the state, any department thereof, or any county, city, town, school district, community college district or other public corporation of the state for the erection, construction, alteration or repair of any public building, or other public structure, or for making any addition thereto, or for any public work or improvements, the contract shall be let, or the provision of services to the governmental entity, if advertisement for bids or request for proposal is not required, to a resident of the state. Unless an alternate design and construction delivery method is used, if advertisement for bids or request for proposal is required the contract shall be let to the responsible certified resident making the lowest bid if the certified resident's bid is not more

1 than five percent (5%) higher than that of the lowest responsible nonresi-
2 dent bidder.

3 (2) If any person who is certified as a resident contractor for any rea-
4 son loses that certification, that person may not be recertified as a resi-
5 dent for a period of one (1) year from the date of decertification.

6 (3) If any person who applies for certification as a resident contrac-
7 tor is denied certification because of not meeting the residency require-
8 ments, that person may not reapply for certification for a period of one
9 hundred eighty (180) days from the date certification is denied. No person
10 shall be denied certification because of inadvertent omission of informa-
11 tion, as determined by the department of employment, on an application for
12 resident certification.

13 (4) The department may make investigations as necessary to determine
14 whether any person is eligible to receive or continue to hold a certificate
15 of residency. The department may require or permit any person to file a
16 statement in writing, under oath or otherwise as to all the facts and cir-
17 cumstances concerning the matter to be investigated. For the purpose of
18 any investigation under this section, the director of the department or
19 any person designated by him may administer oaths and affirmations, sub-
20 poena witnesses, and compel their attendance, take evidence and require the
21 production of any books, papers, correspondence, memoranda, agreements or
22 other documents or records, which the director or designated person deems
23 relevant or material to the inquiry. In case of refusal to obey a subpoena
24 issued to any person, any Idaho district court, upon application by the di-
25 rector, may issue to the person an order requiring him to appear before the
26 director or the officer designated by him, to produce documentary evidence
27 if so ordered, or to give evidence touching the matter under investigation
28 or in question. Failure to obey the order of the court may be punished by the
29 court as contempt of court.

30 (5) If, after investigation, the department believes that a certifi-
31 cate of residency should be denied or revoked, it shall provide notice to the
32 applicant or certificate holder of its intent to deny or revoke the certifi-
33 cate and of the applicant or certificate holder's opportunity for a hear-
34 ing if requested. Any hearing conducted under this subsection shall be con-
35 ducted in accordance with chapter 52, title 67, Idaho Code. No less than a
36 notice of thirty (30) calendar days shall be provided.

37 44-1003. LIMITATION ON SUBCONTRACTING BY RESIDENT CONTRACTORS. A suc-
38 cessful resident bidder shall not subcontract more than twenty-five percent
39 (25%) of the work covered by his contract to nonresident contractors.

40 44-1004. PREFERENCE FOR IDAHO LABOR AND MATERIALS REQUIRED IN CON-
41 TRACTS. Resident Idaho laborers, workmen and mechanics shall be used upon
42 all work enumerated in section 44-1002, Idaho Code, whenever possible and
43 any contract let shall so provide. Idaho materials and products of equal
44 quality and desirability shall have preference over materials or products
45 produced outside the state and any contract let shall so provide.

46 44-1005. PREFERENCE FOR IDAHO MATERIALS AND IDAHO AGRICULTURAL PROD-
47 UCTS REQUIRED IN PUBLIC PURCHASES -- EXCEPTION -- COST DIFFERENTIAL --

1 DEFINITION. (1) Every board, commission or other governing body of any state
 2 institution, and every person acting as purchasing agent for the board,
 3 commission or other governing body of any state institution or department,
 4 and every county, municipality, school district and community college dis-
 5 trict, shall prefer in all purchases for supplies, material, agricultural
 6 products, equipment, machinery and provisions to be used in the maintenance
 7 and upkeep of their respective institutions, supplies, materials, agricul-
 8 tural products, equipment, machinery and provisions produced, manufactured
 9 or grown in this state, and supplies, materials, agricultural products,
 10 equipment, machinery and provisions supplied by a resident of the state,
 11 competent and capable to provide service for the supplies, materials, agri-
 12 cultural products, equipment, machinery and provisions within the state of
 13 Idaho. Preference shall not be granted for articles of inferior quality to
 14 those offered by competitors outside of the state, but a differential of not
 15 to exceed five percent (5%) may be allowed in cost of contracts less than
 16 five million dollars (\$5,000,000) for the Idaho materials, supplies, agri-
 17 cultural products, equipment, machinery and provisions of quality equal to
 18 those of any other state or country.

19 (2) As used in this section, "agricultural products" means any horti-
 20 cultural, viticultural, vegetable product, livestock, livestock product,
 21 bees or honey, poultry or poultry product, sheep or wool product and timber
 22 or timber product.

23 44-1006. STATEMENT OF IDAHO MATERIALS PREFERENCE IN REQUESTS FOR
 24 BIDS AND PROPOSALS. All requests for bids and proposals for materials, sup-
 25 plies, agricultural products, equipment, machinery and provisions for the
 26 construction, maintenance and upkeep of every state, county, municipal,
 27 community college district or school district institution shall contain
 28 the words "preference is hereby given to materials, supplies, agricultural
 29 products, equipment, machinery and provisions produced, manufactured or
 30 grown in Idaho, or supplied by a resident of the state, quality being equal to
 31 articles offered by the competitors outside of the state."

32 44-1007. IDAHO MATERIALS PREFERENCE REQUIRED IN CONSTRUCTION OR MAIN-
 33 TENANCE OF PUBLIC STRUCTURES -- EXCEPTION -- COST DIFFERENTIAL. All public
 34 buildings, courthouses, public school buildings, public monuments and other
 35 public structures constructed in this state shall be constructed and main-
 36 tained by materials produced or manufactured in Idaho if Idaho materials are
 37 suitable and can be furnished in marketable quantities. Preference shall
 38 not be granted for materials of an inferior quality to those offered by com-
 39 petitors outside of the state, but a differential of not to exceed five per-
 40 cent (5%) may be allowed in cost of contracts less than five million dol-
 41 lars (\$5,000,000) for the Idaho materials of equal quality as against ma-
 42 terials from states having or enforcing a preference rule against "out of
 43 state" products.

44 44-1008. GOVERNING OF FEDERAL FUNDS BY FEDERAL LAW. The operation of
 45 this chapter upon the letting of any public works contract above mentioned,
 46 in connection with which funds are granted or advanced by the United States
 47 of America, shall be subject to the effect, if any, of related laws of the

1 United States and valid rules and regulations of federal agencies in charge,
2 governing use and payment of the federal funds.

3 44-1009. CAPITAL CONSTRUCTION PROJECTS RESTRICTIONS -- PREFERENCE
4 REQUIREMENTS -- WAIVERS. (1) Unless otherwise prohibited by federal law,
5 any funds appropriated or authorized for expenditure during the fiscal year
6 ending June 30, 2013, that have not been encumbered, obligated by contract
7 as of June 15, 2013, for capital construction projects shall be subject to
8 the restrictions of this section, which shall be construed where possible
9 as complimentary and consistent with other statutory requirements relating
10 to competitive bidding and contractor preferences. To the extent the re-
11 strictions in this section are inconsistent with other state statutes, this
12 section shall supersede all such inconsistent provisions and shall govern.
13 This section shall be applied as follows:

14 (a) All contracts shall require the construction manager at risk or
15 design builder to conduct an open bid process in compliance with Idaho
16 contractor preference laws before awarding any subcontracts for work to
17 be performed for the project;

18 (b) Unless exempted pursuant to subsection (1) (c) of this section, the
19 construction manager at risk or design builder shall award to respon-
20 sible Idaho resident contractors not less than seventy percent (70%) of
21 the value of the total subcontract work to be performed for the project;

22 (c) The requirement of subsection (1) (b) of this section may be waived
23 in part upon a written determination that: The work to be performed is
24 specialized or of such a scale that it can be more suitably performed
25 by out-of-state contractors; the bid amounts submitted by responsi-
26 ble Idaho subcontractors exceed one hundred five percent (105%) of
27 the costs of out-of-state providers for equivalent quality of work or
28 services; the enforcement of the requirement would unreasonably delay
29 completion of construction; there were insufficient responsible Idaho
30 contractors submitting bids to make the seventy percent (70%) require-
31 ment; or, if the requirement of subsection (1) (b) of this section is
32 waived in part, the remaining value of the total subcontract work to be
33 performed for the project is subject to the requirement of subsection
34 (1) (b) of this section.

35 (2) Any waiver shall be approved in writing by the following persons:
36 for projects to be completed by the state of Idaho, by the director of the
37 department of administration; for projects to be completed by a state uni-
38 versity, by the president of the university and the president of the board
39 of regents of the university of Idaho or the state board of education; for
40 projects completed by a community college, by the community college presi-
41 dent and its chairman of the board of trustees; and for all other projects, by
42 the respective governing body.

43 (3) Any approved waiver shall be documented in writing and provided
44 to the governor and the joint finance-appropriations committee. Unless
45 exempted pursuant to subsection (1) of this section, this subsection shall
46 apply to all construction delivery methods: The procurement of furniture,
47 fixtures and equipment shall be done by competitive bid based upon either
48 generic specifications or specifications addressing performance standards

1 and functional requirements determined by the agency, but without specifi-
2 cation of individual brands or manufacturers.

3 (4) No person who was employed by the agency to prepare the bid docu-
4 ments, whether with or without compensation, shall be eligible to bid on the
5 final bid package.

6 (5) A five percent (5%) preference shall be granted to responsible
7 Idaho resident suppliers for procurements subject to this subsection. The
8 requirements of this section may be waived for furniture, fixtures or equip-
9 ment upon a written determination that the furniture, fixtures or equipment
10 requirements of the project are so specialized or that an item or type of
11 furniture, fixture or equipment is so unique or uncommon that failure to
12 waive the requirements would materially impair the functionality of the
13 project. Waivers under this subsection shall be approved by the persons
14 listed in subsection (2) of this section and are subject to other provi-
15 sions of this section. All bids shall be opened in public in an office of
16 the agency soliciting the bid. Contractor progress payments shall be made
17 only after the agency has been supplied with applicable lien waivers signed
18 by the materialman, subcontractor or laborer, as applicable, or upon the
19 contractor's affidavit that all materialmen, subcontractors and laborers
20 have been paid for that portion of payment requested, less any contracted
21 amounts held for retainage or for which there is a reasonable basis for
22 dispute. No funds subject to this section shall be expended unless the con-
23 tracting agency has submitted a plan to the supervising entity and the joint
24 finance-appropriations committee, which promotes the employment of respon-
25 sible Idaho resident design firms, including professional architectural and
26 engineering services as defined by title 54, Idaho Code, in the planning and
27 design phases of facilities funded with moneys subject to this section. The
28 plans shall allow for partnerships between responsible Idaho design firms,
29 including professional architectural and engineering services, and nonres-
30 ident firms when necessary to secure specialized services required for a
31 project. The contracting agency shall evaluate and consider overall quali-
32 fications, residency, fee proposal, past performance and level of services
33 in the final decisions.

34 (6) Any agency that has received an appropriation of state funds on or
35 after July 1, 2011, for any capital construction project shall conduct a
36 review of each project funded with state funds to assess whether contractors
37 that were awarded contracts using a resident preference complied in all
38 respects to applicable resident preference laws. If the agency determines
39 that there is reasonable suspicion that a contractor failed to comply with
40 the resident preference laws, the agency shall report the matter to the de-
41 partment of labor and the attorney general. The department of labor and the
42 attorney general shall take such enforcement action on behalf of the state of
43 Idaho and the agency against the contractor as they deem appropriate.

44 SECTION 4. This act shall be in full force and effect on and after July
45 1, 2012, and shall apply to all contracts entered into on and after the effec-
46 tive date of this act.