

TITLE 40
HIGHWAYS AND BRIDGES

CHAPTER 9
CONTRACTS -- BIDS

40-901. APPLICATION. The requirements for contracts and bids that apply to all county highway systems and highway districts of the state shall be subject to the provisions of [chapter 28, title 67](#), Idaho Code, in concert with the provisions of any specific statute pertaining to the letting of any contract or the purchase or acquisition of any commodity or thing by any system or highway district by soliciting and receiving competitive bids, and shall not be construed as modifying or amending the provisions of any statute, nor preventing the district from doing any work by its own employees.

[40-901, added 1985, ch. 253, sec. 2, p. 637; am. 2005, ch. 213, sec. 7, p. 643.]

40-902. BIDS -- STATE HIGHWAY SYSTEM. (1) Whenever work on the state highway system is let by contract, advertisement for sealed bids must be provided for at least two (2) consecutive weeks in one (1) newspaper, having a general circulation in the county or one (1) of the counties, where the work is to be done. In addition, the department may use any medium reasonably determined to reach prospective bidders.

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

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

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

(5) Except as allowed by the provisions of sections [40-904](#) and [40-905](#), Idaho Code, a bidder who did not submit the lowest responsible bid as determined by the department may within five (5) calendar days of bid opening file a written application to challenge the department's determination of the lowest responsible bidder and apply to the department's chief engineer for the appointment of a hearing officer to hold a contested case hearing. The application shall set forth in specific terms the reasons why the department's decision is thought to be erroneous. Upon receipt of an application, the chief engineer shall appoint a hearing officer with the authority to conduct a contested case hearing in accordance with the provisions of [chapter](#)

[52, title 67](#), Idaho Code. Upon receipt from the hearing officer of findings of fact, conclusions of law and a recommended order, the chief engineer shall review the same and enter a final order sustaining or reversing the decision of the department on the selection of the lowest responsible bidder. Following entry of the final order, the chief engineer shall have the authority to award the contract to the bidder determined in the final order to be the lowest responsible bidder at a time and in a manner which shall be in the best interest of the state.

[40-902, added 1985, ch. 253, sec. 2, p. 637; am. 2004, ch. 233, sec. 1, p. 685; am. 2005, ch. 125, sec. 1, p. 409; am. 2010, ch. 293, sec. 13, p. 784.]

40-903. COUNTY, CITY OR HIGHWAY DISTRICT BID PROHIBITED. No county, city or highway district shall bid on any state highway system construction project which is let by competitive bid by the Idaho transportation board; provided, however, the provisions of this section shall not prohibit the Idaho transportation board, a county, a city or a highway district from entering into agreements with one another for joint or cooperative action pursuant to the provisions of [chapter 3, title 40](#), or [chapter 23, title 67](#), Idaho Code.

[40-903, added 1987, ch. 303, sec. 2, p. 644.]

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

- (a) Project suitability for design-build method contracting regarding time constraints, costs and quality factors;
- (b) The availability, capability and experience of potential design-build firms;
- (c) The department's ability to manage design-build projects, including employing experienced personnel or outside consultants; and
- (d) Other criteria the department deems relevant and states in writing in its determination to use design-build contract procedures.

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

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

(4) A professional engineer licensed in the state of Idaho shall have responsible charge of preparing the request for qualifications (RFQ) and request for proposals (RFP) including the base technical concept. The term "responsible charge" shall be as defined in section [54-1202](#), Idaho Code. The professional engineer shall not be affiliated with any design-build firm submitting proposals on the project.

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

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

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

(8) Any Idaho professional engineering licenses required shall be obtained prior to submittal of a design-build firm's proposal. The design-build firm shall obtain any required Idaho public works licenses prior to submitting a proposal unless the project involves federal funds. If the project involves federal funds, then the design-build firm shall obtain any required Idaho public works licenses prior to contract award.

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

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

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

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

(c) Maintain the confidentiality of evaluation committee members and other design-build firms.

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

(a) Best value;

(b) Fixed price-best design; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Relevant construction-related experience and performance;

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

(iii) Designer qualifications;

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

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

3. Available resources of the designer.

(b) Scope of work statement and schedule;

(c) Documents defining the project requirements;

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

(e) Estimated cost of project design and construction;

(f) Requirements for key personnel;

(g) Scoring criteria for evaluating the qualifications submitted; and

(h) The number of firms to be short-listed. The number of firms short-listed shall be no less than two (2) or more than five (5).

(15) The criteria for evaluation of qualifications may include, without limitation:

- (a) Technical qualifications for construction, such as specialized experience and technical competence, including key personnel;
- (b) Capability to perform construction, including the availability of key personnel;
- (c) Designer qualifications;
- (d) The proposed plan of the design-build firm to manage the design and construction of the project;
- (e) Understanding of and approach to the project;
- (f) Organizational conflicts of interest;
- (g) Other appropriate qualifications-based selection factors.

(16) The RFQ shall not include any price-related factors. Designer qualifications shall be included in the selection process as a percentage of the total score based on project complexity, potential for design innovation and alternatives, and the project's impacts to the public during construction and operation. The department shall develop a short-list of the most qualified design-build firms from the proposals submitted in response to the request for qualifications. If only a single design-build firm responds to the RFQ or remains on the short-list, the department may issue a new RFQ or cancel the solicitation.

(17) The department shall provide to each design-build firm that submitted qualifications the summary of scores of all proposers and the design-build firms' evaluation worksheets within three (3) business days following notification of the short-list. The confidentiality of the evaluation committee members and other design-build firms shall be maintained.

(18) Design-build firms that submit qualifications and that do not qualify for the short-list generated by the department may challenge the department's determination in accordance with the procedures outlined in section [40-902](#) (5), Idaho Code. A challenge must be filed with the department within seven (7) calendar days of the date the department transmitted the evaluation scores and worksheets.

(19) The department shall prepare a request for proposals (RFP) for each design-build contract. The RFP shall address the base technical concept for the design-build contract.

(20) The RFP shall define the base technical concept, the mandatory project scope elements, deliverables and the project schedule including, but not limited to:

- (a) Performance and technical requirements;
- (b) Conceptual design;
- (c) Specifications;
- (d) Functional and operational elements for the delivery of the completed project;
- (e) Description of the selection and award criteria, including the weight or relative order, or both, of each criterion;
- (f) Copies of the contract documents the selected bidder will be expected to sign;
- (g) Maximum time allowed for project design and construction;
- (h) Estimated cost of design and construction or fixed price;
- (i) A requirement that all proposals be submitted to the department in two (2) parts:
 1. A technical proposal; and
 2. A price proposal;

(j) A requirement that all proposals be submitted in a separately sealed, clearly identified package that includes the date and time of the submittal deadline;

(k) A requirement that the technical proposal include a critical path method and bar schedule of the work to be performed, or similar schematic, design plans and specifications, technical reports, calculations, permit requirements, applicable development fees, designer qualifications as they relate to the technical proposal and other data requested in the request for proposals;

(l) A requirement that the price proposal contain all design, construction, engineering, quality control and assurance, and construction costs of the proposed project;

(m) The terms and conditions for stipends, including waiving of the stipend, and when the stipend shall be paid;

(n) The date, time and location of the public opening of the sealed price proposals;

(o) The basis for design-build firm selection and contract award;

(p) When applicable, the alternate technical concept deadline; and

(q) Other information relevant to the project.

(21) The RFP selection and award criteria shall include price, shall include the design-build firm's design and construction qualifications, and may include time of completion, innovation, design and construction quality and other technical or quality related criteria. The qualification based selection process required pursuant to section [67-2320](#), Idaho Code, in obtaining certain consultant services is not applicable. When applicable, the percent weighting of the technical proposal score that is assigned to the designer qualifications shall be based on the project's level of design completeness prior to the RFP and the opportunity for design innovation and alternatives.

(22) As part of the RFP, and when available, the department shall make available any project specific documentation, drawings, files, reports and other pertinent materials that would be of use to the eligible design-build firms.

(23) The RFP shall address and identify contract provisions including, but not limited to:

(a) Allocation of known risks according to the type and location of the project, and the following risk factors shall be considered:

(i) Governmental risks;

(ii) Regulatory compliance risks;

(iii) Construction phase risks;

(iv) Postconstruction risks; and

(v) Right-of-way risks;

(b) Payment and performance bonds;

(c) Proposal guaranty;

(d) General and professional liability insurance;

(e) Meetings regarding the preconstruction services;

(f) The department's standards, rules, guidelines, and special provisions requirements;

(g) Environmental regulatory requirements, including whether the department or the design-build firm will acquire any or all of the permits required for construction;

(h) Design and construction requirements, including specifications;

(i) The final documents to be provided by the design-build firm upon completion of the project, which may include "as built" plans, engineering reports, shop drawings, test results, documentation, daily reports and item quantities;

(j) The date for submittal of the technical and price proposals; and

(k) The date for opening the sealed price proposals.

(24) The RFP may allow design-build firms to submit one (1) or more alternate technical concepts (ATCs).

(a) ATCs will only be considered if they are determined by the department at its sole discretion to be equal to or better than the base technical concept. Typically, ATCs will improve project quality and/or reduce project costs. The department may allow preapproved ATCs as part of the design-build firm's proposal.

(b) A proposed ATC is not acceptable if it merely seeks to reduce quantities, performance or reliability, or seeks a relaxation of the contract requirements. ATCs shall be submitted by the design-build firm by the date specified within the RFP and preapproved in writing by the department prior to the proposal submittal date. All technical proposals must include the department's preapproval letters for consideration of the ATCs.

(c) A design-build firm may incorporate one (1) or more preapproved ATCs into its technical and price proposal. Each design-build firm shall submit only one (1) proposal.

(d) The price proposal shall reflect any incorporated ATCs. Except for incorporating approved ATCs, the proposal may not otherwise contain exceptions to or deviations from the requirements of the RFP.

(e) The RFP will not distinguish between proposals that do not include any ATCs and proposals that include ATCs. Both types of proposals shall be evaluated against the same technical criteria, and a best value determination shall be made in the same manner.

(f) An approved ATC that is incorporated into a design-build firm's proposal will become part of the design-build contract upon award of the design-build contract to that design-build firm.

(g) ATCs properly submitted by a design-build firm and all subsequent communications regarding its ATCs shall be considered confidential prior to the award of the design-build contract.

(25) Prior to proposal submittal, the department shall offer design-build firms equal opportunity to participate in one-on-one meetings with the department regarding their proposals if the department determines that such discussions are needed. The department shall disclose to all design-build firms any issues impacting the scope of work or base technical concept that are relevant to the RFP. The department shall not disclose information pertaining to an individual design-build firm's ATCs or confidential business strategies.

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

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

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

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

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

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

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

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

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

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

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

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

(35) In consideration for paying the stipend, the department may use any ideas or information contained in the submitted proposals with no obli-

gation to pay any additional compensation to the unsuccessful design-build firm.

(36) The department may either:

- (a) Reject all proposals;
- (b) Award a design-build contract to the design-build firm; or
- (c) Award to the next ranked design-build firm, if the selected design-build firm declines the award and forfeits the proposal guaranty.

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

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

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

[40-904, added 2010, ch. 293, sec. 14, p. 785.]

40-905. CONTRACTS -- CONSTRUCTION MANAGER/GENERAL CONTRACTOR. (1) The preferred contracting method of the department shall be as described in section [40-902](#), Idaho Code. The department may select construction manager/general contractor (CM/GC) firms and award contracts for highway projects as provided herein. CM/GC highway projects shall be of appropriate size and scope to encourage maximum competition and participation by qualified firms. CM/GC procedures may be used for a specific highway project only after the board determines that awarding a CM/GC contract will serve the public interest and is superior to that described in section [40-902](#), Idaho Code. The following criteria shall be used as the minimum basis for determining when to use CM/GC contract procedures:

- (a) Project suitability for CM/GC contracting regarding time constraints, costs and quality factors;
- (b) The availability, capability and experience of potential CM/GC firms;
- (c) The department's ability to manage CM/GC projects, including employing experienced personnel or outside consultants; and
- (d) Other criteria the department deems relevant and states in writing in its determination to use CM/GC contract procedures.

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

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

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

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

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

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

- (a) Be limited to discussion of the unsuccessful CM/GC firm's proposal and shall not include specific discussion of a competing proposal;
- (b) Provide information on areas in which the unsuccessful CM/GC firm's proposal had weaknesses or deficiencies; and
- (c) Maintain the confidentiality of the evaluation committee members and the other CM/GC firms.

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

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

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

(a) No person or business entity that assisted the department in preparing the solicitation documents will be allowed to participate as a CM/GC firm or as a member of the CM/GC firm's team; however, the department may determine that there is not an organizational conflict of interest where:

- (i) The role of the person or business entity was limited to provision of preliminary design, reports or similar "low-level" documents that may be incorporated into the solicitation but did not include assistance in the development of instructions to CM/GC firms or evaluation criteria; or
- (ii) Where all documents and reports delivered to the department by the person or business entity are made available to all potential CM/GC firms.

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

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

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

- (a) A description of the project, including programmatic, performance, and technical requirements and specifications when available;
- (b) A description of the qualifications to be required of the firm;
- (c) A description of the requirements of key personnel;

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

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

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

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

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

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

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

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

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

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

(f) Construction experience in similar projects;

(g) Submitted unit prices;

(h) Approach to pricing; and

(i) Organizational conflicts of interest.

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

(14) The contract shall be awarded in two (2) phases. The first is for services during the design phase that may include life-cycle cost considerations, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work. The second phase is for construction services. The second phase will be awarded after the plans have been sufficiently developed and a guaranteed maximum price for construction services has been successfully negotiated. Incremental construction phases may be awarded after guaranteed maximum prices are negotiated for each phase.

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

(i) Reject all proposals;

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

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

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

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

(ii) Advertise, bid and award in accordance with section [40-902](#), Idaho Code.

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

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

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

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

[40-905, added 2010, ch. 293, sec. 15, p. 791.]

40-913. RESOLUTION FOR USE OF DAY LABOR -- MATERIALS OR SUPPLIES PURCHASED ON THE OPEN MARKET. After twice rejecting all bids received for the same project, the county or district commissioners may, after preparing a cost estimate and finding it to be a fact, pass a resolution declaring that the project can be performed more economically by day labor, or the materials or supplies furnished at a lower price in the open market. Upon adoption of the resolution it may have the project accomplished in the manner stated. The work performed or the materials or supplies provided shall be in accordance with the same plans and specifications upon which the bids were based. A complete and accurate record shall be kept of the cost of performing the work and this cost record shall be in a form that allows easy comparison with the cost estimate. The record shall show the totals of all classes and kinds of work performed, the total cost and unit cost of each class, together with the costs of executing the work including the costs of labor, material, equipment purchased, rental of equipment, insurance, fringe benefits, superintendence and all other overhead allocable to that project, including the reasonable value of the use of equipment owned by the county or district.

[40-913, added 1985, ch. 253, sec. 2, p. 641; am. 1987, ch. 79, sec. 7, p. 151.]