

## HO 119 – Amendments to the CM/GC Act

### Purpose:

HO 119 offers guidance to public owners about the use of the CM/GC contracting method. It provides safeguards to ensure taxpayers are protected from unscrupulous contractors who may use the CM/GC method to their own advantage. It also provides subcontractors protections to ensure they have fair opportunities to participate on Idaho public works projects. This bill will put minimal but important rules around the new CM/GC law. The changes will put important limits that have been proven in other states to protect both taxpayers and subcontractors in cases where the CM/GC delivery method is used.

### Summary of the proposed amendments:

- a. The CM/GC would be limited on the amount of work they can self-perform to no more than 30% of the GMP. This amendment will help keep the large majority of construction open for all qualified contractors to bid, and keep the CM/GC (or its subsidiaries or affiliates) from simply doing most of the construction themselves.
- b. The amendments would require the CM/GC to give the owner a gross maximum price (GMP), but not before the construction documents are 90% complete.
- c. Requires that all sub bid packages be competitively bid subject to Idaho's public bidding laws contained in 67-2805. The law as currently written requires a "competitive bid" but is not subject to Idaho's public bidding laws. This means the CM/GC could only allow its "favorites" to bid and exclude all other qualified subcontractors. The amendment would stop this from happening.
- d. Requires the CM/GC to disclose which bid packages on which it – or its affiliates or subsidiaries – are going to bid.
- e. Requires any contingency reserves and incentives to be spelled out in writing at the time the CM/GC contract is awarded, and limits incentives to no more than 5% of the GMP. It also requires that if the construction is actually completed for less than the GMP the savings accrue to the public body unless it has been otherwise negotiated as part of the incentive.

NOTE: This provision has been included for protection of taxpayers. A CM/GC contract is NOT a regular hard bid situation where the contractor is entitled to any savings under its bid. In CM/GC the contractor is NOT bidding – they are *negotiating* the GMP and have true insider knowledge with regard to construction of the project. Moreover the GMP is a not to exceed price, not a hard bid. So it makes sense that unless it is part of an incentive agreement, any construction savings should be returned to taxpayers. This helps keep unscrupulous contractors from padding their bid for unknowing public owners.