



Hells Canyon

Ethics and Professional Practice

AGENCY GUIDANCE

Idaho Board of Professional Engineers and Land Surveyors | AGC 3 | 7-30-2020

Guidance Documents

Agency Guidance Documents are interpretations of existing laws and rules of the Board. They are not new laws or rules. “Agency guidance” means all written documents, other than statutes, rules, orders, and pre-decisional material, that are intended to guide agency actions affecting the rights or interests of persons outside the agency. "Agency guidance" includes memoranda, manuals, policy statements, interpretations of law or rules, and other material that are of general applicability, whether prepared by the agency alone or jointly with other persons.

Point of contact

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Purpose

The purpose of this document is to describe prior Board opinions and decisions regarding engineering and land surveying practice in Idaho that requires a P.E. or P.L.S. license. This agency guidance document is meant to provide the Board’s interpretation of the laws and rules that govern both professions regarding ethics and professional practice.

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CONTINUING PROFESSIONAL DEVELOPMENT

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BOARD TO AUDIT CONTINUING PROFESSIONAL DEVELOPMENT

Beginning in 1999, Professional Land Surveyors in Idaho were required to comply with continuing professional development rules as a condition of license renewal. In 2009, Professional Engineers were also required to comply. The Board is continuously auditing compliance audit by randomly selecting five percent of those licensed each year. The Board has discovered what it considers to be serious deficiencies in the record keeping and compliance with requirements of the Administrative Rules by a significant number of professional license holders. The Board will take action against those found to be out of compliance with the requirements and all professional license holders should be aware that this will continue to be monitored by the Board.

Key words: CPD, CPC, audit, disciplinary action

Approved: 11-2007, NB40 Updated 6-10-2020

BOARD TO WAIVE CPD AUDIT FOR THOSE WHO CHOOSE TO RETIRE

The Board voted to waive an audit of continuing professional development if a licensee chooses to retire during the period for which they may or are being audited unless there is a disciplinary matter pending or in progress.

Key words: CPD, audit, waiver

Approved: 11-2011, NB48

CPD CARRY-FORWARD FOR NEW LICENSEES

In response to an inquiry, the Board has voted to allow a licensee to carry-forward up to 30 Professional Development Hours earned during the renewal biennium in which they are initially licensed, even though they are exempt from the requirement to comply with the Continuing Professional Development rules until their first renewal.

Key words: CPD, PDH, carryover, renewal

Approved: 11-2010, NB46

CONTINUING PROFESSIONAL DEVELOPMENT FOR ADDITIONAL PROFESSIONAL ENGINEER LICENSING EXAMINATIONS

Idaho licenses professional engineers “generically,” which means that all persons so licensed are professional engineers and are allowed to practice in any discipline in which they are competent, and they are the initial judge of that competency. The Idaho Board issues a wall certificate indicating that they are “especially qualified” in the discipline of the professional engineer licensing examination that they took, but that does not preclude the professional engineer from practicing in another discipline, so long as they are competent to do so. Some individuals find that for marketing or other purposes they desire to demonstrate that they are “especially qualified” in a discipline other than that for which they were originally licensed. The Board has determined that, for the purposes of Continuing Professional Development, a professional engineer who takes and passes subsequent professional engineer licensing examinations may claim up to the maximum of documented self-study hours plus the actual number of exam hours.

Key words: CPD, especially qualified, competent

Approved: 11-2012, NB50

BOARD VOTES TO GRANT PDH’S FOR CFedS PROGRAM

The Board reviewed the Certified Federal Surveyors (CFedS) Program, which is jointly administered by the Department of the Interior’s Bureau of Land Management and the National Society of Professional Surveyors (NSPS). The program has seven courses and a final examination. The Board voted to allow fifteen (15) Professional Development Hours (PDH’s) for each of the seven courses, and an additional 75 PDH’s for passing the examination. Information about the program is available on the internet at <http://www.cfedS.org>.

Key words: CFeds, CPD, PDH, BLM

Approved: 12-2009, NB44. Updated 6-10-2020

BOARD GUIDANCE on CFedS COMPLETION

The Certified Federal Surveyor course is an in-depth program relating to the Public Lands Survey System. Candidates must pass exams in seven individual modules to be eligible for the final examination. The modules are:

1. **CFedS I** Records Investigation, History of the PLSS, Administrative Procedures, Indian Land Law and Cultural Awareness
2. **CFedS II** Federal Boundary Law and Title Examination
3. **CFedS III** Survey Evidence Analysis

4. **CFedS IV** Restoration of Lost Corners
5. **CFedS V** Introduction to Water Boundaries
6. **CFedS VI** Subdivision of Sections
7. **CFedS VII** Federal Boundary Standards and Business Practices

After successful completion of all seven modules, the candidate takes a three-part, six-and one-half hour, proctored final examination. Passing the exam makes the CFedS eligible to receive four (4) semester upper division credits from the Oregon Institute of Technology (OIT).

Those taking the CFedS course are not commonly pursuing a degree. Therefore, many do not take advantage of the credit opportunity. OIT only allows the credit if applied for within 90 days of certification. As a result, many who have earned the credential do not have a transcript with the four (4) semester hours of credit shown.

Board decided to allow successful completion of the CFedS program as meeting the rule requirement for a Public Lands Survey System required course and that as meeting four (4) semester hours of the 30-hour surveying specific courses required for those with related four-year degrees.

Keywords: CFedS, credits, education, PLSS course

Approved 4-9-2020, NB 65

BOARD VOTES TO GRANT PDH'S FOR CFedS CONTINUING EDUCATION

The Board encourages professional land surveyors to pursue a credential as a Certified Federal Surveyor (CFedS) which is offered by the Department of Interior Bureau of Land Management (BLM). The Board issued an opinion in 2009 that describes the professional development hours allowed for obtaining a CFedS certificate. To maintain a CFedS certificate, additional continuing education is required by the BLM. CFedS continuing education courses are not described in hours. The CFedS program does not follow the definition of continuing education units (CEU) as described in the Board's rule. For purposes of clarifying the Board's rules of continuing professional development, the Board has adopted a ratio of one (1) CFedS continuing education credit (CEU) equals five (5) professional development hours (PDH). These hours should be logged as a workshop (activity type 4).

Keywords: CFedS, credits, education, PLSS course

Approved: 9-2019, NB 64

CERTIFICATE OF AUTHORIZATION

All Business Entities Must Now Have Certificate of Authorization

Board Decides to Continue Issuing Certificates of Authorization

Business Entities Must Have Certificate of Authorization

Design Companies Doing Engineering

No Certificate of Authorization When Public Services Not Offered

ALL BUSINESS ENTITIES MUST NOW HAVE COA

Effective July 1, 2001, every business entity, except sole proprietorships, that is offering professional land surveying or professional engineering services to the public in Idaho must obtain a Certificate of Authorization (COA) from the Board. The Board asked the Legislature to amend the Idaho Code to require a COA of all businesses to assure that businesses were held to the same Rules of Professional Responsibility as the individual practitioners. Applications are available from the Board's website.

Key words: COA, businesses, application

Approved 12-2001, NB 32 Updated 6-10-2020

BOARD DECIDES TO CONTINUE ISSUING CORPORATE CERTIFICATES OF AUTHORIZATION

As reported in the January 1999 issue of the NEWS BULLETIN, the Board considered submitting legislation which would have eliminated the issuance of corporate Certificates of Authorization. After taking into account the input from licensees and certificate holders, the Board has decided not to propose the changes. The primary reason for the Board deciding not to propose the amendments was that without the issuance of a Certificate of Authorization, the Board cannot discipline a corporation for acts committed by non-licensed employees of the corporation.

Key words: COA, business entity, discipline, non-licensed employees

Approved 10-1999, NB 29

BUSINESS ENTITIES MUST HAVE CERTIFICATION OF AUTHORIZATION

CORPORATIONS: There appears to be some confusion among the professional engineers and land surveyors that practice through a corporation in the State of Idaho as to the requirements that must be met to take a contract in the name of a corporation to furnish professional services through a corporation. For those persons either practicing or contemplating the practice of professional engineering/land surveying through a corporation, the following requirements of the Idaho Code must be complied with:

Under the provisions of the Idaho Engineers and Surveyors Law, Chapter 12, Section 54-1235, a corporation must

- a. be duly registered as a corporation by the Secretary of State, State of Idaho, and

b. receive a Certificate of Authorization by the Idaho Board of Professional Engineers and Land Surveyors to practice engineering and/or land surveying through a corporation, and

c. file with the board a designation of individual or individuals duly licensed and certified to practice professional engineering/land surveying in this state, who shall be in responsible charge of the practice of professional engineering or land surveying for the corporation.

If a corporation does not have a Certificate of Authorization from the Board to practice professional engineering/land surveying through a corporation, it is required that an application be made online through the Board's website.

Keywords: COA, corporation, secretary of state, authorization.

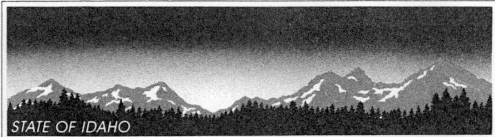
Approved 3-1985, NB 8 Updated 6-10-2020

"DESIGN" COMPANIES DOING ENGINEERING

Over the past several years the Board has had contact with a number of companies that have the word "design" in their company name or listed among the services that they offer. The concern that the Board has about these companies is that the public may not be able to discern the difference between the "design services" they offer and the engineering services offered by licensed professional engineers. Since the primary function of the Board is to protect the public from the offering of professional services by those not qualified to do so, it will continue to discourage the use of the term "design" in conjunction with any services that the public may be led to believe are engineering in nature.

Keywords: design, services, companies, business entities, offering services

Approved 7-1992, NB 18 Updated 6-10-2020



**BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS**

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<http://www.ipels.idaho.gov>

November 11, 2010

J. Matthew Landreth, P.L.S.
1302 W. Jackson
Spokane, WA 99205

Dear Mr. Landreth:

At its meeting on November 8-10, 2010 the Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors reviewed your inquiry regarding the need for your employer, Knife River Contractors, to maintain a current Certificate of Authorization. The Board voted to inform you that as long as Knife River Contractors is not offering professional land surveying services directly to the public they do not need a Certificate of Authorization.

Please call if you have any questions.

For the Board,

Gary L. Young, P.E./L.S.
Board Chair

DLC/GLY/dc:Landreth, J. Matthew.2010-11 Meeting

EQUAL OPPORTUNITY EMPLOYER

ETHICS

Anonymous Complaints Not Accepted

Conflict of Interest Construction Inspection

Conflict of Interest Planning Commission

Contingency Fee Inappropriate

Finders Fee Inappropriate

Gratuities for Travel and Entertainment

Obligation to Public vs Client

Seek Employment Where Others Employed



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June 5, 2012

Dr. Cecil W. Hathaway, P.E.
5548 N. Pacific Ave.
Coeur d'Alene, ID 83815-8356

Dear Dr. Hathaway:

At its meeting on June 4 and 5, 2012 the Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors reviewed your letter to Dr. James H. Milligan dated March 12, 2012. The Board asked me to write to you and thank you for your communication.

As an agency of the State of Idaho, the Board is constrained by the requirements of the Administrative Procedures Act and the Rules of the Attorney General when it comes to processing requests for inquiry or formal complaints. Those statutes and rules require that we provide due process in all instances. Sometimes that results in delays beyond which the parties do not anticipate or appreciate. The Board also has a policy of not accepting anonymous complaints or requests for inquiry unless there is an imminent threat to the public health, safety or welfare.

Please call if you have any questions.

For the Board,

David K. Bennion, P.E.
Board Chair

DLC/DKB/dlc:Hathaway, Cecil W.2012-06 Meeting

CONFLICT OF INTEREST FOR OFFERING CONSTRUCTION INSPECTION SERVICES

Question

I'm ITD's district engineer and I'm wondering about conflicts of interest. We occasionally hire engineering firms for design, and would like to start hiring them for construction testing and inspection also. Is it considered a conflict of interest if we hire the same firm for both functions?

Answer

No, this is not a violation of our Rules of Professional Responsibility as it relates to a conflict of interest. It is perfectly acceptable for the owner to hire a P.E. licensee to provide design and construction testing and inspection services on the same project as long as they are working for the same client.

Keywords: Conflict of Interest, Construction Inspection

Approved 1-1-2017, NB58

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March 14, 2014

Chris Renaldo, P.L.S.
706 Center Avenue
St. Maries, ID 83861

Re: Pending Rule Pertaining to Conflict of Interest
MKA File No. 825.00

Dear Mr. Renaldo:

I am the attorney for the Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors (Board). At its most recent meeting, the Board took under consideration your oral query to one of the Board members regarding the pending rule pertaining to conflict of interest. My understanding is that you have inquired as to whether or not the pending rule regarding conflict of interest would preclude engineers and land surveyors who occasionally do work for the county from holding a volunteer position on that county's planning commission.

First and foremost, the pending rule does not preclude anyone from serving on a governmental body, whether as a volunteer or elected official. However, in those cases where a person chooses to work as part of a governing board that has the ability to contract or recommend a contract, the elected or appointed official's business may not solicit or accept contracts from that governmental authority. That is the meaning of section 008.05 of the pending rule. In addition, there are several criminal statutes that might apply in such a situation.

The Board does not have any information as to the particulars of the planning commission you refer to and cannot advise you as to what course of action you should take. The Ethics in Government Act requires all public officials to confer with their municipal counsel before taking action that may financially benefit the person's private business or family. You should definitely confer with the county prosecutor before you take any action if you still intend to do business with the county.

Yours very truly,



MICHAEL J. KANE

MJK:tlp

cc: Mr. Keith Simila, P.E., Executive Director, IPELS
Mr. James L. Szatkowski, P.E., Deputy Director, IPELS

IS IT A CONTINGENT FEE?

A P.E. recently asked the Board for a clarification of the Rules of Professional Responsibility regarding contingent fee contracts. He said "Let us assume that a professional engineer offers his services to a small city. These services consist of preparation of preliminary studies related to an infrastructure project being proposed. Funding for the project is not defined; however, the City is working with several agencies to seek grant funds. The engineer offers his services to the City based on the concept that payment be delayed until the City receives funds. In addition, the fees can be paid out of grant funds. If no funds materialize the engineer states that it is still good advertising. Would this situation violate IDAPA 24.32.01.104.04 Contingent Fee Conditions? Rule 104.04 of the Rules of Professional Responsibility states "Contingency fee contracts. A Licensee or Certificate Holder shall not accept an agreement, contract, or commission for professional services on a 'contingency basis' which may compromise his professional judgement and shall not accept an agreement, contract, or commission for professional services which includes provisions wherein the payment of fee involved is contingent on a 'favorable' conclusion, recommendation or judgement."

The Board responded by stating "The Board discussed the Rules of Professional Responsibility as well as previous situations that have been before the Board. The Board concluded that not charging a municipal client for preliminary engineering services and filling out an application for grant funds is not prohibited. However, a situation in which the engineer contracted to charge for the services if the grant was obtained but to waive the fee if the grant was not obtained would be considered a contingent fee arrangement that might compromise the professional judgement of the licensee, and would therefore be prohibited."

Keywords: contracts, commission, contingency, fee

Approved: October 1993, NB23 Updated 6-10-2020

BOARD EXPRESSES OPINION THAT “FINDER’S FEE” FOR WORK IS INAPPROPRIATE

A licensee inquired of the Board whether or not a “Finder’s Fee” violates the Rules of Professional Responsibility. A real estate agent directed a client to the licensee and then asked that the licensee include a surplus in their fee to the client in order to pay the real estate agent a “finder’s fee.” The Board concluded that such an arrangement would be in violation of IDAPA 24.32.01.104.01.

Keywords: Finder’s Fee, Commission, Real Estate Agent

Approved 11-1-2011, NB48 Updated 6-10-2020

BOARD CHANGES OPINION ON THE ACCEPTANCE OF GRATUITIES

The Board issued an opinion in 1999 that allowed the acceptance of travel, entertaining, and lodging for a licensee to receive training at the location of a manufacturer or vendor out of state where the expenses were paid by the manufacturer or vendor. The Board recently changed their opinion on this matter. Upon further research and reflection, the Board now believes the prior opinion does not comply with IDAPA 24.32.01.103.04 Gratuities. The prior opinion did not address the possibility of a third party or the public's perception related to receiving the gift of travel, entertainment and accommodations may have had on the licensee or certificate holder. The attendance and receipt of related training materials has been well established as a normal, ethical and possibly necessary activity for a professional to participate in. The acceptance of travel, entertainment, and lodging, however, could be perceived by others as a way to influence the licensee or certificate holder favorably toward the provider, and thus should be avoided. See the website FAQ for more information.

Keywords: Gratuities, Travel, Entertainment, Manufacturer, Vendor

Approved 11-9-2018, NB62 Updated 6-10-2020

OBLIGATION OF LICENSE HOLDERS TO THE PUBLIC OVER OBLIGATION TO CLIENT

The Board reminds all Licensees and Certificate Holders that IDAPA 24.32.01.100.01 of the Rules of Professional Responsibility states

“All Licensees and Certificate Holders shall at all times recognize their primary obligation is to protect the safety, health and welfare of the public in the performance of their professional duties.”

These 31 words are the cornerstone of the professions of engineering and land surveying and separate our professions from nearly all other professions for which a license is required. The other professions, including those in accounting, health care, law, and the clergy, find their obligation is to their client, not to the public. Regarding many of those professions, there are even legal safeguards assuring confidential communication between the professional and their client. Confidentiality of medical records, attorney/client communications and clergy/parishioner communications are matters of law, but the primary obligation of licensees and certificate holders of the Board of Professional Engineers and Professional Land Surveyors is to the public.

Keywords: Obligation, public, client, protect

Approved 12-2001, NB 32. Updated 6-10-2020

SEEKING OR ACCEPTING WORK WHICH IS UNDER CONTRACT TO ANOTHER

One of the most commonly asked questions about the Board's Rules of Professional Responsibility relates to Rule IDAPA 24.32.01.104.03, "Assignment On Which Others Are Employed." A review of that Rule and its application seems in order to clarify its intent and application. Rule 104.03 states "A Licensee or Certificate Holder shall not knowingly seek or accept employment for professional services for an assignment which another Licensee or Certificate Holder is employed, or contracted to perform without the currently employed or contracted entity being informed in writing." Simply stated, the Rule says that you cannot pursue or accept work that another professional has a contract to perform unless you inform that other professional in writing. The issue of whether or not the currently contracted professional has been paid for their work is not within the jurisdiction of the Board to address.

Keywords: Employed, assignments, contracted, informed

Approved 11-2007, NB40. Updated 6-10-2020

MATERIAL DISCREPANCY

Land Survey Material Discrepancy

Material Discrepancy COA Responsible

Material Discrepancy Expired or Retired Licensees

Notify Discovery of Discrepancy

IN LAND SURVEYING, WHAT IS A “MATERIAL DISCREPANCY”?

The statutes of Recording of Surveys requires that a survey be recorded if it “Discloses a material discrepancy with previous surveys of record” or if it “Produces evidence or information which varies from, or is not contained in, surveys of record relating to the public land survey, lost public land corners or obliterated land survey corners.” A P.L.S. recently inquired of the Board “What amount of discrepancy or variation would be the trigger to require a licensee to file a Record of Survey?” In answering, the Board relied upon Idaho Code section 55-1911, which states,

“Error of closure. Any survey of land involving property boundaries including, but not limited to, public land survey lines, shall be conducted in such a manner to produce an unadjusted mathematical error of closure of each area bounded by the property lines with the survey of not more than one (1) part in five thousand (5,000).”

The Board concluded that if a survey reveals a discrepancy with a previous survey of record which is not in excess of one part in five thousand, then the surveyor should not consider that he has found a material discrepancy, and thus would not be required to file a Record of Survey.

Key words: discrepancy, material, land survey, monument, record of survey

Approved 5-2004, NB 35. Updated 6-10-2020

BOARD AMENDS 2004 OPINION ON WHAT IS A “MATERIAL DISCREPANCY” IN LAND SURVEYING

The statutes of recording of surveys requires that a survey be recorded if it “discloses a material discrepancy with previous surveys of record” or if it “produces evidence or information which varies from, or is not contained in, surveys of record relating to the public land survey, lost public land corners or obliterated land survey corners.” The 2004 opinion is insufficient as it references only error of closure. The Board is of the opinion that a material discrepancy should demonstrate a discrepancy that makes a difference in either the pedigree of the corner such as with a different cap, or a different position of a corner that may adversely affect landowner’s boundaries for property, lease areas, or easements.

Key words: discrepancy, material, land survey, monument, record of survey

Approved 6-10-2019, NB 63

BOARD ISSUES OPINION ON BUSINESS ENTITY AND INDIVIDUAL RESPONSIBILITY FOR PAST WORK

In response to an inquiry, the Board expressed its opinion that when a material error, discrepancy or omission is found in past work performed by an individual who worked for a business entity, both the business entity and the individual are responsible to address the problem. The Board noted that Idaho Code §54-1235 states, in part “No business entity shall be relieved of responsibility for the conduct or acts of its employees or officers by reason of its compliance with the provisions of this chapter, nor shall any individual practicing professional engineering or professional land surveying as defined in this chapter, be relieved of responsibility for engineering or land surveying services performed by reason of his employment or relationship with such business entity.” The Board also noted that in most situations, the business entity has the records and history of the project and the individual has the personal recollection of involvement.

Key words: material discrepancy, business entity, COA, conduct

Approved 5-2000, NB30, Amended 9-2019, NB64

MATERIAL DESCREPANCY RELATED TO AN EXPIRED OR RETIRED LICENSEE

In response to an inquiry, the Board expressed its opinion that when a “simple, obvious error” in the work of an expired or retired licensee is found, and it represents a material discrepancy, error, or omission in past work performed by an individual, the individual is responsible to address the problem, but cannot unless the license is renewed or reinstated to active practice. The Board noted that given the fact that the individual is precluded by law from practicing on an expired or retired license, the licensee who discovers the error should notify the expired or retired licensee, if possible, and note the error on any future work done.

Key words: material discrepancy, business entity, COA, conduct

Approved 9-2019, NB 64

NOTIFY DISCOVERY OF A PROBLEM WITH THE WORK OF ANOTHER PROFESSIONAL

Another question that is frequently addressed by the Board and staff deals with the discovery of a problem in the work of another professional. IDAPA 24.32.01.100.04 states “Obligation To Communicate Discovery Of Discrepancy. If a Licensee or Certificate Holder, during the course of his work, discovers a material discrepancy, error, or omission in the work of another Licensee or Certificate Holder, which may impact the health,

property and welfare of the public, the discoverer must make a reasonable effort to inform, in writing, the Licensee or Certificate Holder whose work is believed to contain the discrepancy, error or omission. Such communication shall reference specific codes, standards or physical laws which are believed to be violated and identification of documents which are believed to contain the discrepancies. The Licensee or Certificate Holder whose work is believed to contain the discrepancy shall respond in writing within twenty (20) calendar days to any question about his work raised by another Licensee or Certificate Holder. In the event a response is not received within twenty (20) days, the discoverer must notify the Licensee or Certificate Holder in writing, who has another twenty (20) days to respond. Failure to respond (with supporting evidence) on the part of the Licensee or Certificate Holder whose work is believed to contain the discrepancy is considered a violation of these rules and may subject the Licensee or Certificate Holder to disciplinary action by the Board. The discoverer must notify the Board in the event a response that does not answer the concerns of the discoverer is not obtained within twenty (20) days. A Licensee or Certificate Holder is exempt from this requirement if their client is an attorney and they are being treated as an expert witness. In this case, the Idaho Rules of Civil Procedure apply.

Key words: Discrepancy, error, omission, notify, another professional

Approved 11-2007, NB40. Updated 6-10-2020

QUALIFICATIONS BASED SELECTIONS

[Bids for Services Not Allowed](#)

[QBS Bids Not Allowed](#)

[QBS Emergencies](#)

[QBS Guest Article](#)

[QBS Not Required for Private Sector Projects](#)

[QBS Guest Article Questions and Answers](#)

[QBS Subconsultants](#)

BIDS FOR SERVICES NOT ALLOWED

The Qualifications Based Selection (QBS) Facilitator Council is a coalition of several design and professional service organizations formed to bring information about QBS to public entities in Idaho. QBS is required for all state agencies and political subdivisions of the state seeking to contract with professional engineers, professional land surveyors, architects, landscape architects, and construction managers. On selections for professional engineering and land surveying services that are required pursuant to Idaho Code Section 67-2320, a licensee, in response to solicitations described shall not submit information that constitutes a bid for services requested. For more information on the QBS Facilitator Council, visit their website at <http://idahoqbs.com>

Key words: QBS, bids, services

Approved: 11-2010, NB46



**BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS**

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September 7, 2010

James S. Baker, P.E.
692 West Hartack Ct.
Meridian, ID 83642

Dear Mr. Baker:

At its meeting on August 30 and 31, 2010, the Board reviewed your inquiry regarding a request for proposals and a request to submit an estimate of costs for the services. The Board concluded that the request is for services included in the definition of the practice of engineering. In addition, IDAPA 24.32.01.104.05 prohibits individuals who are solicited by a public entity to submit information that constitutes a bid for services requested. There is no evidence in this situation to indicate that the public entity ranked qualified persons or firms pursuant to Idaho Code Section 67-2320(2) or (3) or that it followed the statutory requirements of that code section. However, the Board has only authority or jurisdiction over those to whom it has issued a license.

Based upon the circumstances as described, a response to the "Request for Scope of Work" to include a cost estimate would constitute a bid for services requested and a violation of IDAPA 24.32.01.104.05.

You are referred to Idaho Code Section 67-2320 which states, in pertinent part, "(i) In fulfilling the requirements of subsections (2)(a) through (2)(g) of this section, a public agency or political subdivision may request information concerning a person's or firm's rates, overhead and multipliers, if any, however such information shall not be used by the public agency or political subdivision for the purpose of ranking in order of preference as required in subsection (2)(c) of this section."

The Board has formed a subcommittee to address concerns about the relatively recent addition to IDAPA 24.32.01.104.05 and will advise the engineering and surveying communities of any further action that may be proposed to clarify the intent of the rule.

Please call if you have any questions.

For the Board,

Gary L. Young, P.E./L.S.
Board Chair

DLC/GLY/dc:Baker, James S.2010-08 Meeting

Updated 6-10-2020

QBS AND THE NEED FOR EMERGENCY SERVICES

Question

As you are aware the County and several cities have declared a state of emergency due to the localized flooding of the Boise River and concerns of significant property damage. One of the purposes of the declarations is that the entities may suspend normal contracting and acquisition requirements of the Idaho Code. My concern is our rules of professional responsibility.

We have been asked, along with perhaps three or four other firms, to provide a cost proposal to assist the county engineer's office during this time. Our effort would not be directly related to the flood emergency, but to perform some of the normal duties ordinarily provided by the county engineer that now does not have to time to perform.

The request from the county requires that we provide a fee based proposal.

My reading of all this is that this service would fall under the umbrella of the emergency declaration as a peripheral necessary activity. As our rules of professional responsibility acknowledge QBS selection as required by Idaho Code, the emergency declaration removes that same obligation under our rules. Therefore our office could provide a proposal based upon cost.

If you believe my assessment is incorrect, please let me know. The county is hoping to receive proposals by Friday.

Thank You,

PE/PLS from Southern Idaho

Answer from the Board Attorney

Here is my take on the question. You are correct that there is no question that a county may suspend formal bidding in its entirety in cases of emergency to deal with the emergency. Idaho Code § 67-2320 seems to indicate (although rather awkwardly) that QBS policy should be followed unless the "expenditure is otherwise exempt from the bidding process provided by law." Your rule of professional responsibility 104.05 indicates that professionals should follow QBS in those circumstances "required pursuant to § 67-2320." So it seems that bidding is not required in declared emergencies at all, hence it follows that niceties of QBS should not be required. Ergo, you should not be looking to discipline a professional for responding to an emergency offer of contract.

Mr. Engineer/surveyor's scenario seems to be that he and others are being asked what it will cost to help the county engineer deal with a declared emergency. Given what appears to be the intent of the statutes and rule, it is my opinion that an attempted prosecution of a responding engineer would be outside the law, and subject to dismissal. I recognize that someone may parse the wording of the statutes and rules differently, but I believe the intent of the statutory scheme is clear.

Michael J. Kane

Key words: county engineer, QBS

Approved NB59 6-7-2017. Updated 6-10-2020

QBS GUEST ARTICLE – QBS FACILITATORS COUNCIL

NEW QBS RULE REGARDING SUBCONSULTANTS

The Rules of Professional Responsibility regarding “Selection on the Basis of Qualifications” in IDAPA 24.32.01.104.05 prevent licensees or certificate holders to submit bids in response to solicitations governed by Idaho Code 67-2320, the “QBS” Law. The Idaho Board of Professional Engineers and Land Surveyors (Board) proposed a change to the rule by adding “subconsultants” to the language. The purpose was to clarify that it is also against the Rules for subconsultants to submit bids in response to a QBS solicitation. The rule was approved by the 2018 Idaho Legislature and is currently in effect.

How does this new rule effect engineers and land surveyors and how should license holders approach it in the QBS selection process?

Good question. The QBS Facilitator Council is a group of professionals representing the various design professions. We give advice and guidance to both owners and design professionals in the proper application of the QBS Law. The Board was gracious enough to allow us to provide this guest article to provide some guidance on this issue. Below is a list of Q&A that can hopefully answer your questions.

Q1: What’s the best way to ensure compliance with the new rule?

A1: The very best way is for owners (and/or consultants who prepare the QBS Request for Proposal (RFP) or Request for Qualification (RFQ) for the owner) to specify that: “All design professions anticipated to work on the project shall be named in the response (include firm names and general project responsibilities). Failure to do so may be grounds for rejection or reevaluation of the response.”

By naming all design professionals that may work on a project, all potential subconsultants are named. If selected, therefore, the entire team then submits one negotiated price to the owner for consideration.

Q2: What if a prime consultant asks me for a bid when they were selected in a QBS process?

A2: Don’t give them a bid. Giving them a bid is now against the Rules of Professional Responsibility. Explain the new rule to them.

As with any new Rule, there will be an education period as people adjust to the new rule.

Q3: What does the prime consultant do if they need a subconsultant on their team that was not listed with their original proposal?

A3: It depends on the RFP or RFQ, but likely they will have to ask the owner to add the subconsultant to the team after the fact. That may require a rescoring of the proposal or might disqualify the prime consultant.

The owner will be the final arbitrator of these situations. The QBS Council continues to educate owners on QBS best practices – again, requiring that the entire potential team be listed in the response is the best approach.

Q4: What does the prime consultant do if a subconsultant they listed in their winning QBS response either becomes unavailable or does not provide a reasonable price?

A4: It depends on the RFP or RFQ, but likely they will have to ask the owner to substitute a different subconsultant for the one that is unreasonable or unavailable.

If justified, those circumstances would likely allow for substitution (without rescoring the proposal) so long as the replacement subconsultant is of similar qualifications as the original. Again, the owner will arbitrate those cases.

Q5: What happens if I witness a subconsultant giving a bid price to a prime consultant or an owner during or after a QBS selection process?

A5: Notify Board staff. They will educate the license holder or take disciplinary action if warranted.

Q6: What if I'm asked to provide a bid for engineering or surveying services to a contractor who has a construction contract on a public works project?

Q6: Since the contractor is not subject to the QBS law, you may submit a bid for services that are part of the contractor's work.

With that said, however, public agencies and owners should refrain from placing design services in construction contracts that are better done during the design phase and under the QBS process.

- Services better done under the initial design through QBS would include all engineering and surveying to perform the design, control layout, and critical elements of the construction staging or phasing for the project. In addition to the overall design package, examples of other design elements that should be done by the QBS selected Design Professional might include construction traffic control, temporary cross over design, and survey control staking.
- Services better left to the contractor for bidding in their construction contract should be limited to those specific to their means and methods of construction. Examples might include shoring, false work, proprietary retaining wall systems, and dewatering.

Q7: What if I have more questions or concerns?

A7: Please notify Board staff or the QBS Facilitator's Council (Teri Ottens) at (208) 321-1736 or tottens@amsidaho.com

Key words: Qualifications based selection, QBS council, prime consultant, subconsultant, bids, violation.

Approved July 2018 NB 61 Updated 6-10-2020

QBS NOT REQUIRED FOR PRIVATE SECTOR

Idaho Code Section 67-2320 requires that all state agencies and political subdivisions of the state retain the services of engineers, land surveyors and several other professionals on the basis of qualifications followed by a negotiation of a scope of services and fee. This process is often call “Qualification Based Selection”, or “QBS.” Private sector consumers of professional services are not required to follow these guidelines. The Board’s Rules of Professional Responsibility state that “A Licensee or Certificate Holder should seek professional employment or professional service work on the basis of qualifications and competence for proper accomplishment of the work assignment.” The verb “should” is permissive, not mandatory, and is used in this Rule because QBS, while mandatory for state agencies and political subdivisions of the state is not required in the private sector. Because QBS is mandatory for state agencies and political subdivisions of the state, professional engineers and professional land surveyors should not submit proposals which include fee information to those entities in violation of the QBS requirements. If a state agency or political subdivision of the state solicits proposals for engineering or land surveying work in a manner that is not in compliance with Idaho Code Section 67-2320, engineers or land surveyors should contact the QBS Facilitator’s Council at (208) 321-1736 and they will contact the entity to educate them about the statute and QBS process.

Key words: QBS, qualifications based selections, mandatory, permissive, state agency, political subdivision, private sector

Approved 11-2007, NB40

QBS GUEST ARTICLE Q&A

The following guest article is reprinted from the February 2012 Association of Idaho Cities Newsletter and is presented here for information purposes only. It should not be interpreted as the opinion of the Board of Licensure of Professional Engineers and Professional Land Surveyors.

Procurement of Professional Engineering and Land Surveying Services

by

Tim Haener, P.E.

ACEC Idaho - Government Affairs Chairman

QBS Facilitators Council - Member

The following Q&A covers some common issues related to the procurement of professional engineers (PE) and professional land surveyors (PLS) for public works projects. Many thanks go to Dave Curtis, Executive Director of the Idaho Board of Professional Engineers and Land Surveyors, and Teri Ottens, Director of the QBS Facilitators Council for their review and input.

Please consult your City Attorney for any specific questions or other related information.

Question:

Is hiring a PE required for the design and construction of a City's public works project?

Answer:

Yes, per Idaho Code, it is a requirement to have a PE prepare the plans, specifications, and estimates, and to review the construction process.

54-1218. Public work. It shall be unlawful for this state, or for any county, city, school district, irrigation district, drainage district, highway district, or other subdivision of the state, having power to levy taxes or assessments against property situated therein, to engage in the construction of any public work when the public health or safety is involved unless the plans and specifications and estimates have been prepared by, and the construction reviewed by a professional engineer.

Question:

Is hiring a PLS required for City land surveying work?

Answer:

Yes, Idaho Code requires all land surveys for political subdivisions (Cities) to be performed by a professional land surveyor.

54-1229. Legal Survey of Land. No survey of land, or plat or subdivision shall be legal unless made by or under the responsible charge of a professional land surveyor. All land surveys made under the authority of the state, or of any political subdivision of the state, must be performed by a professional land surveyor.

54-1202(12). Professional Land Surveying...mean(s) responsible charge of authoritative land surveying services ...

Question:

How does a City procure the services of a professional engineer or professional land surveyor?

Answer:

A City must follow a Qualifications Based Selection (QBS) process that is delineated in Idaho Code 67-2320. The preamble of that section reads as follows:

67-2320. PROFESSIONAL SERVICE CONTRACTS WITH DESIGN PROFESSIONALS, CONSTRUCTION MANAGERS AND PROFESSIONAL LAND SURVEYORS. (1) Notwithstanding any other provision of law to the contrary, it shall be the policy of this state that all public agencies and political subdivisions of the state of Idaho and their agents shall make selections for professional engineering, architectural, landscape architecture, construction management and professional land surveying services, including services by persons licensed pursuant to chapters 3, 12, 30 and 45, title 54, Idaho Code, on the basis of qualifications and demonstrated competence and shall negotiate contracts or agreements for such services on the basis of demonstrated competence and qualifications for the type of services required at fair and reasonable prices.

The code referenced above provides further details about the QBS process. In summary, for contracts in which the fee is anticipated to be greater than \$25,000, the procedure requires the City to establish selection criteria (not based on price) and solicit statements of qualifications from interested PE/PLS's through a published notice. The City then reviews the proposals and ranks them in order of qualifications. The City and the highest-ranked firm then finalize the scope of services and negotiate a suitable fee. If they cannot agree, the City can then terminate negotiations and undertake discussions with the next highest ranked firm.

For contracts with an anticipated fee less than \$25,000, the City does not have to advertise the solicitation but must still select the PE/PLS based on demonstrated competence and qualifications.

Question:

Can a City ask for billing rates or overhead multipliers in the QBS process?

Answer:

Yes, but they cannot be used in ranking the PE/PLS firms. Note that the City also cannot ask for information that could be used to formulate a "bid" for services, such as "billing rates" plus "estimated hours".

Question:

Why can't a City select a PE/PLS based strictly on price?

Answer:

For professional services where the life, health and safety of the public are paramount, it is in the best interest of the public to select based on qualifications. A common analogy is that you "wouldn't hire your legal advisor based on lowest price". Lowest price is usually contrary to experience and qualifications.

Secondly, often a City knows it needs to undertake a project, but does not know all the steps that might be involved in order to successfully accomplish that project. Selecting the most qualified firm and then negotiating a detailed scope of services gives both sides an opportunity to understand in detail what will be expected of the PE and of the City. Lastly, the qualifications of the PE can greatly impact the overall project price. The design fee for a project is typically only five to 15 percent of the construction budget, and much less than that based on the project's life cycle cost (including operation and

maintenance, etc.). The big dollars for the City are in construction and operation. A design performed by the most-qualified PE firm (using their experience and innovation) has a high probability of lowering construction bid prices versus the low price engineering alternative. Moreover, the experience of the PE as it relates to the construction process is also very valuable in mitigating claims, change orders, and delays. Finally, the more qualified PE will find ways to make the project more effective to operate and maintain – lowering the overall life-cycle cost. These probable savings through the use of QBS will far outweigh the relative minor savings in engineering fees if selection were based on lowest price.

A recent study proved that QBS selection of PE is more cost and time-effective than a “low bid” approach. Commissioned by the American Public Works Association (APWA) and the American Council of Engineering Companies (ACEC) and performed by independent researchers from Georgia Tech and the University of Colorado, the 2009 study concluded the following:

- The average amount of change orders versus construction costs was three percent for QBS projects versus ten percent for cost-based selections.
- The average construction schedule growth was 8.7 percent on QBS projects versus ten percent for non-QBS projects.
- Owners rated their satisfaction of projects that had QBS selection at 93 percent “high” or “very high”.
- QBS projects addressed the concerns of more stakeholders in the process than cost-based procurements.

QBS is so vital to the protection of the public life, safety, and welfare that it is mandated for all federally funded projects through the Brooks Act of 1972 (Public Law 92-152). APWA likewise encourage the use of QBS for selection of design professionals.

Question:

Can a City hire a previously-selected PE/PLS for a subsequent project related to the original project?

Answer:

Yes, the City may choose to hire the same PE/PLS for an “associated or phased project” without going through a new QBS selection process. If the City wishes to hire a different engineer or land surveyor (after the first project or if the current contract is terminated with their existing PE/PLS) they must conduct another QBS selection process.

Question:

How does a City select for on-call, “City Engineer” and/or “City Surveyor” services that aren’t related to a single project and don’t involve a specific scope of services?

Answer:

The City would go through the QBS process and rank firms based on qualifications. The City would then negotiate rates that are acceptable. If negotiations fail, then the next highest ranked firm would commence negotiations and so on. A firm selected as City Engineer and/or City Surveyor may do any assignments for the City for which they are qualified. If the City wishes to hire another firm for a specific project, they must go through a separate QBS process.

Question:

Can a City create a pre-approved “roster” of engineers and/or land surveyors that they can choose from for future projects that are not yet known?

Answer:

Yes, the City would solicit statements of qualifications through the QBS process. The solicitation may include several categories of services with rating criteria for each. The City would then review the proposals and rank the responding firms. Once the firms are ranked, an “approved list” of firms would be created for each category (usually no more than five firms per category).

When a project comes up in a category, the City would assign that project to the firm on the approved list that they think can best execute the project. Then they would negotiate a scope of work and fee. If negotiations fail, the City can then choose another firm from the approved list to negotiate with. Another option would be to negotiate the first project with the highest ranked firm on the approved list and the second project with the second firm, and so on.

Often on larger projects, the City may request a “mini proposal” from several of the firms on the preapproved list to garner additional QBS information related to that project – and then award that project based on the results of the mini proposal.

Question:

Are PE/PLS’s required to follow the QBS process? What happens if they submit a price with their statement of qualifications or otherwise give a price for services during a solicitation?

Answer:

The QBS statute regulates Cities and not professional engineers or professional land surveyors. However, PE/PLS Rules of Professional Responsibility require license holders to not subvert the process or be complacent in a violation of State Law. In addition, specific Rules of Professional Responsibility require that a PE/PLS “not submit information that constitutes a bid for services requested” under a selection process required by 67-2320. If they do, please contact the Board of Professional Engineers and Professional Land Surveyors at (208) 373-7210.

Question:

How can I get more help or information on the QBS process?

Answer:

Discuss with your City Attorney.

Also, the QBS Facilitators Council is available to assist you in the QBS process and answer questions that you may have.

- Phone: 208-321-1736
- Email: tottens@amsidaho.com
- The QBS-Idaho website has a lot of useful information and can be found at the following location: www.idahoqbs.com

Question:

Can I hire the same engineer for construction phase engineering services (observation, administration, testing) that performed the design?

Answer:

Yes. There are distinct advantages in having the design PE involved in the construction process since they are familiar with the design background, intent, and specific project

conditions. In fact, most standard engineering and construction contracts (including the Engineers Joint Contract Documents Committee (EJCDC) forms contemplate the fact that the design PE is best suited to fulfill the construction phase services role during the construction process. It is not a conflict of interest for the PE to fulfill both the designer role and construction observation / administration role on a project.

Question:

What if a PE/PLS tries to solicit work from my City for which another PE/PLS is currently under contract?

Answer:

That is a violation of the PE/PLS Rules of Professional Responsibility unless the soliciting PE/PLS has notified the incumbent PE/PLS of their intent in writing and prior to the solicitation. So, if a PE/PLS solicits work for which another PE/PLS is under contract, you might want to ask the soliciting PE/PLS if they “pre-notified” the incumbent engineer or land surveyor. If not, please contact the Board of Professional Engineers and Professional Land Surveyors at (208) 373-7210.

Question:

What if a PE tries to solicit work from my City on a contingent fee basis? For example, they say “We will do a grant application” or “We have connections to get an earmark” for a project in exchange for some assurance that they will be selected to do the subsequent engineering work?

Answer:

Contingency basis work is a violation of the PE Rules of Professional Responsibility. A PE is allowed to do grant applications or investigate funding sources without cost to the City, however, there can be no written or implied “quid pro quo” for giving the subsequent work to the PE. In fact, it should be make clear to the PE that their *pro bono* work comes at their own risk and a QBS process will be used to select the PE for the project.

Summary:

Procuring the services of a professional engineer and professional land surveyor is required under Idaho Code for public works projects and land surveying, respectively. The Idaho QBS law provides procedures for securing these services from the most qualified firm – which is in the best interest of the public. Professional engineers and land surveyors must comply with their Rules of Professional Responsibility regarding how they respond to a QBS solicitation and how they behave as professionals in a very competitive environment.

Key words: QBS, bids, procurement, contingency, professional services

Approved: 4-2012, NB49

QUALIFICATIONS BASED SELECTION OF SUB-CONSULTANTS

Question

Licenses have asked Board members “do our rules prohibit bidding for engineering or land surveying sub-consulting services on public projects when the prime consultant was selected using a QBS process?”

Answer

The applicable rules are Rules of Professional Responsibility IDAPA 24.32.01.104.05 Selection of the Basis of Qualifications

05. Selection on the Basis of Qualifications. A Licensee or Certificate Holder should seek professional employment or professional service work on the basis of qualifications and competence for proper accomplishment of the work assignment. On selections for professional engineering and land surveying services that are required pursuant to Section 67-2320, Idaho Code, a licensee or certificate holder, in response to solicitations described in Section 67-2320, Idaho Code, may not submit information that constitutes a bid for services requested either as a consultant or subconsultant.

All licensees and certificate holders are prohibited from offering a bid for professional services for public projects either as a consultant or subconsultant. The rule is enforceable and violators may be subject to disciplinary action by the board for submitting a bid for professional services. See guest articles on QBS.

Key words: QBS, consultants, sub-consultants

Approved 1-1-2017, NB58 Updated 6-18-2020

RESPONSIBLE CHARGE

[Review of Work by Others](#)

[Supervision, Direction and Control](#)

[Revised White Paper on Responsible Charge](#)

[What is Responsible Charge](#)

BOARD POSITION PAPER ON REVIEW OF WORK BY OTHERS

The following has been adopted by the Board as a Position Paper on the issue of review of work done by others.

On numerous occasions the Board has been asked to express their opinion regarding specific situations in which a professional engineer or a professional land surveyor has been asked to review the work of another license holder. The Board believes that a general discussion of the issue might serve the public and the license holders to better understand the ethical and legal circumstances which come to bear in such situations.

It is the Board opinion that the review of the design documents by another professional is a reasonable and prudent option open to the client. While not always warranted, the review of the documents as to concept, content, completeness and reasonableness by another professional provides the engineer and the client with a degree of assurance that design documents comply with industry standards. This type of review can be performed under various titles such as “Value Engineering” or “Peer Review”. While the Board considers such reviews as legitimate undertakings of a design professional, the manner in which such a review is performed raises several legal and ethical considerations of which both the reviewing and reviewed professional must be aware.

Comments, particularly critical comments, regarding to the initial design generally fall into two categories. Those categories are those areas in which there is a difference of opinion between the original design and the review engineer regarding best engineering practice, and those areas where, in the opinion of the reviewing engineer there is a material discrepancy or inaccuracy which must be corrected by the design professional. Addressing first the condition where the design documents are not in violation of currently accepted codes or standard practices, but in which the reviewing engineer believes an alternative approach is superior, the reviewing engineer must make clear that he is presenting opinions regarding what is the best engineering solution for the client and that he is not claiming that the original design documents are in error or unsatisfactory according to current practice. In a review conducted under this circumstance, the reviewing engineer should clearly state recommended modifications to the documents, his or her reason for recommending that such changes are warranted, as well as mitigating circumstances which he feels may have been considered by the original design engineer in establishing the system presented in the original documents.

Following this initial comment, the reviewing engineer should make available to the design engineer all comments and correspondence regarding his recommendations to the client along with supporting charts, documents and computations that he utilized to establish his recommendations. Following this presentation of information to the client and to the design engineer, the reviewing engineer should give the design engineer the opportunity to respond to all comments presented in his report. Upon receipt of the design engineer’s response, the reviewing engineer should provide a summary outlining, to the best of his or her knowledge, arguments presented by both parties, with comments regarding the perceived relative merits of each arguments. The original design engineer

should be invited to do likewise.

The purpose of this process is to provide the client with clear and concise information regarding differences of opinion between the design professionals.

In those instances where the reviewing engineer discovers a material discrepancy or inaccuracies, the Rules of Professional Responsibility apply. The Rules of Professional Responsibility (IDAPA 10, Title 1, Chapter 1, Subchapter B) contain several sections which relate to the issue. The first of these is Rule 100.04, **Obligation To Communicate Discovery Of Discrepancy**. This rule states:

Except as provided in the Idaho Rules of Civil Procedure 26(b)(4)(B), if a Licensee or Certificate Holder, during the course of his work, discovers a material discrepancy, error, or omission in the work of another Licensee or Certificate Holder, which may impact the health, property and welfare of the public, the discoverer must make a reasonable effort to inform the Licensee or Certificate Holder whose work is believed to contain the discrepancy, error or omission. Such communication must reference specific codes, standards or physical laws which are believed to be violated and identification of documents which are believed to contain the discrepancies. The Licensee or Certificate Holder whose work is believed to contain the discrepancy must respond within twenty (20) calendar days to any question about his work raised by another Licensee or Certificate Holder. In the event a response is not received within twenty (20) days, the discoverer must notify the Licensee or Certificate Holder in writing, who has another twenty (20) days to respond. Failure to respond (with supportable evidence) on the part of the Licensee or Certificate Holder whose work is believed to contain the discrepancy is considered a violation of these rules and may subject the Licensee or Certificate Holder to disciplinary action by the Board. The discoverer must notify the Board in the event a response that does not answer the concerns of the discoverer is not obtained within the second twenty (20) days. A Licensee or Certificate Holder is exempt from this requirement if their client is an attorney and they are being treated as an expert witness. In this case, the Idaho Rules of Civil Procedure apply.

While the determination of what constitutes a “material discrepancy, error, or omission in the work of another Licensee or Certificate Holder, which may impact the health, property and welfare of the public” is left to the judgement of the discoverer, this section is relatively unambiguous, and quite clearly identifies the responsibilities of the discoverer and the alleged maker of a discrepancy. Communication between the involved professionals may lead one or the other or both to the conclusion that no material discrepancy, error or omission exists, but rather a professional difference of opinion. Such situations arise, and should not require Board involvement to resolve. The Board has issued disciplinary Orders regarding this rule following Administrative Hearings and clearly believes that this is a serious obligation of its license holders.

The second section of the Rules of Professional Responsibility which relates to the review of work by others is found at Rule 102.04, **Actions In Regard To Other Registrants Or Certificate Holders**. This rule states:

A Licensee or Certificate Holder may not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of another Licensee or Certificate Holder, nor may he indiscriminately criticize another Licensee's or Certificate Holder's work in public. If he believes that another Licensee or Certificate Holder is guilty of fraud, deceit, negligence, incompetence, misconduct or violation of these rules he should present such information to the Board for action.

Following Administrative Hearings, the Board has issued disciplinary Orders in the past which found the failure on the part of a license holder to discuss alleged errors on the part of another license holder constituted indiscriminate criticism. This rule is not intended to infringe on the right to free speech of license holders. It does not prohibit criticism, it just makes indiscriminate public criticism a violation of the Rules of Professional Responsibility. It provides license holders the opportunity to make the Board aware of possible wrongdoing by a license holder of the Board.

The third section of the Rules of Professional Responsibility which deal with review of work by others involves Rule 104.03, **Assignment On Which Others Are Employed**. It states

A Licensee or Certificate Holder may not knowingly seek or accept employment for professional services for an assignment that another Licensee or Certificate Holder is employed, or contracted to perform without the currently employed or contracted entity being informed in writing.

Licensees often believe that when they are hired to review the work of another license holder they may be in violation of this rule. The Board is of the opinion that it is not a violation of this rule to review the work of another to provide a "second opinion." However, the obligation to notify the alleged maker of a discrepancy becomes paramount, as does the obligation to refrain from indiscriminate public criticism.

Nothing in the Rules of Professional Responsibility or the statutes are intended to prohibit or inhibit the legitimate review of the work of a professional by employees of regulatory agencies or persons employed to conduct a "peer review" or perform "Value Engineering."

An issue was brought to the attention of the Board in which "Engineer B" was hired to review the work of "Engineer A". Engineer A expressed a concern that Engineer B could only provide an unbiased review of the work if Engineer B made it clear from the beginning that Engineer B would not be eligible to perform any work on the project, should Engineer B's review result in the owner of the project seeking professional services from another engineer on work previously done by Engineer A. The Board concurs with Engineer A in this scenario, since Engineer B would be suspected of being critical of Engineer A in order to secure work on the project unless Engineer B removes himself or herself from the potential of being hired for subsequent work on that project. Without such removal, the perception, if not the reality of a conflict of interest would

arise.

The final situation dealing with this situation is one in which the professional reviews the work of an unlicensed person. Idaho Code §54-1215(3)(d) states

“The seal and signature shall be used by licensees only when the work being stamped was under the licensee’s responsible charge.”

Idaho Code §54-1202(15) defines “responsible charge” as

“. . . the control and direction of the engineering work, or the control and direction of land surveying work, requiring initiative, professional skill, independent judgment and professional knowledge of the content of relevant documents during their preparation. Except as allowed under section 54-1223, Idaho Code, reviewing, or reviewing and correcting, documents after they have been prepared by others does not constitute the exercise of responsible charge.”

The Rules of Professional Responsibility compliment the Idaho Code through Rule 101.03, **Use Of Seal On Documents**, which states

“A Licensee must affix his signature and seal only to plans or documents prepared under his responsible charge.”

The Board has made it clear in past articles in News Bulletins, and in Orders resulting from Administrative Hearings, that simple review of the work done previously by an unlicensed person is a violation of Idaho Code and Administrative Rule, because simple review does not constitute responsible charge as defined in Idaho Code.

There are, however, circumstances in which a professional might review the work of an unlicensed person legitimately. One instance is when a professional engineer prepares performance specifications for an end product in order to avoid proprietary specifications. In this circumstance, typically, the successful bidder, who may or may not be licensed, prepares “shop drawings” for review by the professional engineer who prepared the performance specifications. The review by the professional engineer is performed in order to determine whether or not the intent of the performance specifications has been met.

The Board has been asked whether a professional engineer can review the work of an unlicensed person on a project in which the professional engineer has not been in responsible charge of the work, and then sign, seal and date a letter attesting to the accuracy or acceptability of the work. This letter is then intended to accompany the work of the unlicensed person. Idaho Code §54-1215(3) states, in pertinent part,

“It shall be unlawful for any person to affix or to permit his seal and signature to be affixed to any documents . . . for the purpose of aiding or abetting any other person to evade or attempt to evade any portion of this chapter.”

Further, Rule 101.02, **Aiding And Abetting An Unlicensed Person** of the Rules of Professional Responsibility states

“A Licensee or Certificate Holder shall avoid actions and procedures which, in effect, amount to aiding and abetting an unlicensed person to practice engineering or land surveying.”

Unless there were unusual circumstances surrounding this situation, the Board would likely consider this a violation of both Idaho Code and Administrative Rule.

Keywords: responsible charge, material discrepancy, peer review, aid and abet, seal, stamp.

Approved December 2001, NB 32 Updated 6-10-2020

BOARD OPINION ON SUPERVISION, DIRECTION AND CONTROL

The Board received an inquiry regarding the need for physical presence of a license holder to provide direction and control of an exempt employee or subordinate. The Board concluded that supervision and direction and control do not relate to physical proximity, but to involvement of the professional in responsible charge in the supervision of their unlicensed employees or subordinates. Regardless of the physical location, the law requires that the professional be in responsible charge of the work as defined in Idaho Code.

Keywords: responsible charge, supervision, direction and control

Approved 5-2004, NB 35

BOARD REVISES WHITE PAPER ON RESPONSIBLE CHARGE

At its meeting in June of 2005 the Board adopted some revisions to its previously adopted White Paper on Responsible Charge. Below is the entire document as adopted.

"RESPONSIBLE CHARGE" AS APPLIED TO PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

INTRODUCTION:

In response to the many inquiries and questions that arise with regard to the term “responsible charge”, the Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors has elected to issue this “white paper” as it applies to our license holders. In accomplishing this, the subject has been restricted to the Idaho Laws

and Rules pertaining to the Practice of the Professions of Engineering and Land Surveying as of July 1, 2005.

DEFINITIONS AND SUPPORTING STATUTES:

The definition of "responsible charge" for professional engineers and professional land surveyors is found in Title 54, Chapter 12, Section 54-1202 (15) and is as follows:

Responsible Charge. "Responsible charge" means the control and direction of engineering work, or the control and direction of land surveying work, requiring initiative, professional skill, independent judgment and professional knowledge of the content of relevant documents during their preparation. Except as allowed under section 54-1223, Idaho Code, reviewing, or reviewing and correcting, documents after they have been prepared by others does not constitute the exercise of responsible charge.

Other references in Title 54, Chapter 12 of the Idaho Code referring to the term "responsible charge" may be found in Idaho Code Sections 54-1202(11) & (12), 54-1204, 54-1215(3c) & (3d), 54-1223, 54-1229 and 54-1235(4) & (5). Idaho Code Section 54-1204 refers to qualifications of members of the board and will not be restated here. Idaho Code Section 54-1235(4) & (5) deals with practice by business entities and defines who shall be and may not be the designated individual in "responsible charge" of professional engineering or professional land surveying for the business entity and will not be restated here. Idaho Code Sections 54-1202(11) & (12) and 54-1215(3c) & (3d) are as follows:

54-1202. Definitions.

(11) Professional Engineering and Practice of Professional Engineering. The terms "professional engineering" and "practice of professional engineering" mean any service or creative work offered to or performed for the public for any project physically located in this state, such as consultation, investigation, evaluation, planning, designing, design coordination, teaching upper division engineering design subjects, and responsible charge of observation of construction in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects, wherein the public welfare or the safeguarding of life, health, or property is concerned or involved, when such service requires the application of engineering principles and data. A person shall be construed to practice or offer to practice professional engineering within the meaning and intent of this chapter who practices or offers to practice any of the branches of the profession of engineering for the public for any project physically located in this state or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way, represents himself to be a professional engineer or through the use of some other title implies that he is a professional engineer or that he is licensed under this chapter, or holds himself out as able to perform or who does perform for the public for any project physically located in this state, any engineering service or work or any other service designated by the practitioner which is the practice of professional engineering.

54-1202

(12) (a) "Professional land surveying" and "practice of professional land surveying" mean responsible charge of authoritative land surveying services using sciences such as mathematics, geodesy and photogrammetry and involving:

(i) The making of geometric measurements and gathering related information pertaining to the physical or legal features of the earth, improvement on the earth, and the space above, on or below the earth; and

(ii) Providing, utilizing or developing the same into survey products such as graphics, data, maps, plans, reports, descriptions or projects. Professional services include acts of consultation, investigation, testimony, planning, mapping, assembling and interpreting and gathering measurements and information related to any one (1) or more of the following:

1. Determining by measurement the configuration or contour of the earth's surface or the position of any fixed objects;

2. Performing geodetic surveys to determine the size and shape of the earth or the position of any point on the earth;

3. Locating, relocating, establishing, reestablishing or retracing property lines or boundaries of any tract of land, road, right-of-way, easement or real property lease;

4. Making any survey for a division or subdivision or a consolidation of any tracts of land;

5. Locating or laying out of alignments, positions or elevations in the field for the construction of fixed works;

6. Determining, by the use of principles of surveying, the position for any boundary or nonboundary survey monument or reference point or for establishing or replacing any such monument or reference point;

7. Certifying elevation information;

8. Preparing narrative land descriptions; or

9. Creating, preparing or modifying electronic or other data necessary for the performance of activities in subparagraphs 1. through 8. of this paragraph.

(b) "Professional land surveying" and "practice of professional land surveying" shall not mean:

(i) Mapping or geographic information system work that is for nonauthoritative boundaries and nonauthoritative elevations;

(ii) Construction survey work that is unrelated to establishing vertical and horizontal project control; or

(iii) Construction staking of fixed works or the development and use of electronic models for machine-controlled construction that by design are unrelated to determining boundaries described in paragraph (a)(ii)3. of this subsection.

Any person shall be construed to practice or offer to practice professional land surveying who engages in professional land surveying, or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional land surveyor, or who represents himself as able to perform or who does perform any professional land surveying service or work or any other service designated by the practitioner which is professional land surveying.

54-1215. Certificates-Seals.

(3)(c) The seal and signature of the licensee and date shall be placed on all original documents in such a manner that such seal, signature and date are reproduced when the original document is copied. The application of the licensee's seal and signature and date shall constitute certification that the work thereon was done by him or under his responsible

charge. Each plan or drawing sheet shall be sealed and signed and dated by the licensee or licensees responsible for each sheet. Copies of electronically produced documents, listed in paragraph (b) of this subsection, distributed for informational uses such as for bidding purposes or working copies, may be issued with the licensee's seal and a notice that the original document is on file with the licensee's signature and date. The words "Original Signed By:" and "Date Original Signed:" shall be placed adjacent to or across the seal on the electronic original. The storage location of the original document shall also be provided. Only the title page of reports, specifications and like documents need bear the seal, signature and date of the license and the date.

(3)(d) The seal and signature shall be used by licensees only when the work being stamped was under the license's responsible charge.

PERTINENT AND INTERRELATED PORTIONS OF THE IDAHO CODE AND ADMINISTRATIVE RULES:

There are several pertinent and interrelated sections in Title 54, Chapter 12 and in the Rules of Professional Responsibility (IDAPA 10, Title 1, Chapter 1, Subsection B) which tie the signing and sealing of documents to the person(s) in responsible charge. Chief among those are Section 54-1215(3)(b) of Idaho Code and Rules 24.32.01.101(01) & (03). Restatement of the statutes and rules are as follows:

54-1215. Certificates-Seals.

(3)(b) The seal, signature and date shall be placed on all final specifications, land surveys, reports, plats, drawings, plans, design information and calculations, whenever presented to a client or any public or governmental agency. Any such document presented to a client or public or governmental agency that is not final and does not contain a seal, signature and date shall be clearly marked as "draft," "not for construction" or with similar words to distinguish the document from a final document. In the event the final work product is preliminary in nature or contains the word "preliminary," such as a "preliminary engineering report," the final work product shall be sealed, signed and dated as a final document if the document is intended to be relied upon to make policy decisions important to the life, health, property, or fiscal interest of the public.

24.32.01.101. COMPETENCY FOR ASSIGNMENTS.

01. Assignments in field of competence. A licensee must undertake to perform assignments only when qualified by education or experience in the specific technical field involved, however, a Licensee, as the prime professional, may accept an assignment requiring education or experience outside of his own field of competence, but his services are restricted to those phases of the project in which the Licensee is qualified. All other phases of such project shall be performed by qualified associates, consultants or employees. For projects encompassing (1) one or more disciplines beyond the Licensee's competence, a Licensee may sign and seal all documents for the total project only when the Licensee has first determined that all elements of the project have been performed, signed and sealed by other associates, consultants or employees who are competent, licensed and qualified to perform such services.

03. Use of Seal on Documents. A Licensee shall affix his signature and seal only to plans or documents prepared under his responsible charge.

CONCLUSIONS AND BOARD INTERPRETATIONS:

The combined requirements contained in the Laws and Rules cited above define the expectations of the Idaho Board with regard to “responsible charge”. Practices such as aiding and abetting unlicensed persons and reviewing and stamping of work of others not under a license holder’s direct supervision are in violation of Idaho statutes and rules. Reviewing or reviewing and correcting, documents after they have been prepared by others does not constitute the exercise of responsible charge because the reviewer has neither control over nor detailed knowledge of the content of such documents throughout the preparation process. “Responsible charge” means maintaining control over and having detailed professional knowledge of the content of documents during all phases of the preparation process.

Key words: Competency, responsible charge, seal, aiding and abetting, control,

Approved 4-2006, NB 37 Updated 6-10-2020

WHAT IS THIS “RESPONSIBLE CHARGE” THING?

The term “responsible charge” as it pertains to the practice of engineering and surveying is a frequent subject of discussion to the practicing professional in Idaho as well as members of the Board and Board staff. A review of these pertinent sections of our law and rules would be of great value to help you understand your professional responsibilities and legal requirements. After such a review, we believe that there could be little confusion about “stamping” versus “rubber stamping”. If you did it, you stamp it! If you stamp it, you are, and were, in “responsible charge”. If you were in “responsible charge”, you had complete “control and direction” of the work. Mere review, no matter how detailed, cannot meet the requirement of the “control and direction” of the work as required by our current engineering and land surveying law.

Perhaps a look at our current state laws and rules and their provisions would be helpful in resolving some of the questions and issues concerning the meaning and intent of “responsible charge”. The preface to any discussion concerning the Idaho engineering law starts with our primary obligation which is found in the Definitions section of the “Rules of Professional Responsibility” (IDAPA 10, Title 01, Chapter 1, Section 100.01). Briefly stated, this definition says that our “... primary obligation is to protect the safety, health and welfare of the public...”. Title 54, Chapter 12, Section 54- 1202(15) of the Engineers and Surveyors Act contains the definition of “responsible charge” which basically requires “...control and direction...” of the work. The meaning of “responsible charge” for professional engineers is found in Section 54-1202(11) and corporate responsibilities are stated in Section 54-1235(4). Land surveyor requirements are found in

Section 54-1202(12) and 54-1229. The Sections called out above deal with the definitions and requirements involving “responsible charge”.

Other Sections of the law deal with the operative requirements of the law, the “how to comply” Sections.

These rules are 24.32.01.101.01, Assignments in field of competence, 24.32.01.101.03, Use of seal on documents, and Section 54-1215, Certificates-Seals. These “how to and who” Sections are emphatic in their requirement for professional engineers and professional land surveyors to stamp any work that they do whether it be at the single discipline level, the multi-discipline level or the project management/principal in charge level. Further, it requires the multi-discipline and project management/principal in charge professionals to use only licensed persons to be in responsible charge of services outside their own area of competence. Note also the provisions of Section 54-1215(3) which requires a seal on all final specifications, land surveys, reports, plats, drawings, design information and calculations.

Key words: Responsible charge, competence, review

Approved 7-1997, NB26 Updated 6-10-2020

SEALS AND STAMPING

[CAD Generated Professional Seals Allowed](#)

[Each Sheet Needs Seal](#)

[GIS Submittals and Seals](#)

[Half size Seals Acceptable](#)

[Licensees Responsible for Seal](#)

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[Preliminary Documents Must Be Sealed](#)

[Seals Industrial Exemption](#)

[Seal Only Responsible Charge Work](#)

[Stamping Practices Questions and Answers](#)

[Use of Dates on Seals](#)

CAD GENERATED PROFESSIONAL SEALS

The Board continues to receive questions regarding the use of Computer Aided Drafting (CAD) generated seals. The Board determined that either a seal generated by a CAD system, or a rubber stamp or crimp meets the requirements of the law for a seal, but a signed and dated copy of the seal must be on file with the Board. You will need to submit a sample of the seal to the Board office to be kept in your file, prior to being issued your license. This seal sample will need your signature and the date it was submitted, as you would sign and seal any legal document. The sample can be a hard copy original or a scanned copy.

Key words: seal, CAD, signed and dated

Approved: 7-1992, NB 18 Updated 6-10-2020



**BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS**

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August 11, 2010

Scott Stanfield, P.E.
Mason & Stanfield, Inc.
826 3rd St. South
Nampa, Idaho 83651

Dear Mr. Stanfield:

At its meeting on August 5, 2010 the Board reviewed your email correspondence with David Curtis relative to your concerns about being asked to not seal, sign and date a plan sheet which was prepared under your responsible charge. The Board concurs with your interpretation of Idaho Code Section 54-1215 which states in pertinent part,

“Each plan or drawing sheet shall be sealed and signed and dated by the licensee or licensees responsible for each sheet.”

Please call if you have any questions.

For the Board,

Gary L. Young, P.E./L.S.
Board Chair

DLC/GLY/dc:Stanfield, Scott.2010-08 Meeting (Retreat)

GIS SUBMITTALS AND SEALS

The Board reviewed an inquiry from a P.L.S. in which he asked the Board questions and expressed concerns about Twin Falls County requesting an electronic copy of plats and Records of Survey for inclusion in the County Assessor's GIS system. His concern was over the requirement that final documents be sealed, signed and dated. The Board responded by quoting Idaho Code Section 54-1202(18) which defines "signature" as

(18) Signature. "Signature" means either: an original handwritten message identification containing the name of the person who applied it; or a digital signature which is an electronic authentication process attached to or logically associated with an electronic document. The digital signature must be unique to the person using it; must be capable of verification; must be under the sole control of the person using it; and must be linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed."

The Board said that one way to protect the work product would be to apply a digital signature, as defined above, to the document. That way, if it is altered, the digital signature would be invalidated. Digital signatures are available from commercial vendors.

Further, Idaho Code Section 54-1215(3)(c) states

"The seal, signature of the licensee and date shall be placed on all original documents in such a manner that such seal, signature and date are reproduced when the original document is copied. The application of the licensee's seal, signature and the date shall constitute certification that the work thereon was done by him or under his responsible charge. Each plan or drawing sheet shall be sealed and signed and dated by the licensee or licensees responsible for each sheet. In the case of a business entity, each plan or drawing sheet shall be sealed and signed and dated by the licensee or licensees responsible for each sheet. **Copies of electronically produced documents, listed in paragraph (b) of this subsection, distributed for informational uses such as for bidding purposes or working copies, may be issued with the licensee's seal and a notice that the original document is on file with the licensee's signature and date. The words "Original Signed By:" and "Date Original Signed:" shall be placed adjacent to or across the seal on the electronic original. The storage location of the original document shall also be provided.** Only the title page of reports, specifications and like documents need bear the seal, signature and date of the licensee." **(Emphasis added)**

By following the steps shown **bold and underlined above** you will meet the requirement of having sealed and signed and dated a hard copy. If the document is altered, you have the opportunity to compare it to the original hard copy.

Finally, you could ask for a written request from the public official who desires an electronic copy, then place a statement of intent on the document as to its intended use; for example, "For GIS Purposes Only" and "Not Intended to be a Final Work Product."

Key words: GIS, seal, electronic, digital, preliminary, documents

Approved 6-2008, NB41 Updated 6-10-2010

HALF-SIZE SEALS OK'd FOR USE BY BOARD

A license holder inquired as to whether it was allowable to submit drawings on which there were professional engineer or professional land surveyor seals which had been prepared in an electronic format and were one-half the size they were originally. The Board discussed the matter and concluded that as long as the seal is legible there would not be a problem in submission of the ½ size documents, providing all the original documents contain an original signature and date. The Board will continue to require that new license holders submit signed and dated seals according to the size specifications indicated on the letter issuing their number. A copy of the signed and dated seal will be placed in their permanent file.

Key words: Seal, signature, half size

Approved 7-1998, NB27

LICENSEES RESPONSIBLE - BE CAREFUL WHAT YOU STAMP

The Board recently investigated a complaint in which a licensee performed a structural design and the necessary calculations on a building modification project. The project only had one plan sheet which included structural, electrical, mechanical and architectural details. The licensee placed his seal, signature and date on the drawing without stating that he was responsible only for the structural aspects of the drawing. The Board encourages its licensees to make clear what parts of a drawing for which they are responsible if the drawing includes work for which the licensee is not responsible.

YOU ARE SOLELY RESPONSIBLE FOR WHAT YOU STAMP

A licensee recently made the Board aware of a situation in which he had been directed by his employer to certify that a document met the requirements of the Idaho Code, even though the licensee did not believe that the document complied with all the requirements. The dilemma that the licensee faced was whether to comply with the directive given by the employer and place his seal on the certification or to comply with his own true opinion and refuse to sign and seal the certification. The Board expressed the opinion that a licensee shall not certify or seal designs or other documents that the licensee believes do not meet the requirements of the laws of the State of Idaho or are contrary to the licensee's professional judgement.

Key words: stamping, seal, drawings, disclaimer, compliance, judgement

Approved 7-1994, NB21 Updated 6-10-2020

PEs MUST SEAL LEGAL DESCRIPTIONS

In the last edition of this NEWS BULLETIN the Board expressed its opinion that professional land surveyors who prepare legal descriptions without having performed a survey in the field must seal, sign and date those descriptions, primarily because under Idaho Code Section 54-1215(3)(b), the description would be considered a "report" and must be sealed, signed and dated. The question has been asked of the Board whether or not professional engineers who prepare legal descriptions must seal, sign and date those descriptions. In its discussion of the matter the Board pointed out that professional engineers are not licensed to perform professional boundary land surveys and cannot prepare a legal description based on a field survey they have performed. Professional engineers may only prepare legal descriptions from record information. Since preparation of legal descriptions is not the exclusive privilege of any licensed profession, the Board concluded that it would not be improper for a professional engineer to prepare a legal description, however, as with professional land surveyors, professional engineers who prepare such descriptions must seal, sign and date those documents as "reports" under Idaho Code Section 54-1215(3)(b).

Key words: Survey, monuments, report, seal, stamping, record of survey

Approved: 11-2008, NB42 Updated 6-10-2020

"PLAN STAMPING" A VIOLATION

The Board has answered a number of inquiries recently regarding what is commonly called "plan stamping". The general question which has been posed is whether it is proper for a licensee to review and then stamp the work of a non-licensee who is not an employee of, or under the supervision of, the licensee. Idaho Code Section 54-1215(3)(c) states, in part, that "The application of the licensee's seal and signature and the date shall constitute certification that the work thereon was done by him or under his responsible charge." "Responsible Charge" is defined in Idaho Code Section 54-1202(15) as "the control and direction of the engineering work, or the control and direction of land surveying work, requiring initiative, professional skill, independent judgement and professional knowledge of the content of relevant documents during their preparation. Except as allowed under 54-1223, Idaho Code, reviewing, or reviewing and correcting, documents after they have been prepared by others does not constitute the exercise of responsible charge." Idaho Code Section 54-1215(3)(d) states that "The seal and signature shall be used by licensees only when the work being stamped was under the licensee's responsible charge." The Board is of the opinion that "direction and control" of professional activities cannot be accomplished by reviewing the work previously done by a non-licensed person, and the placement of the licensee's seal in such a situation would be a violation of the Engineers and Surveyors Act. In related situations, a licensee might be asked to review work previously performed by another Idaho licensee. In this

situation, the Rules of Professional Responsibility (Section 103.02) would require that the licensee being asked to review the work inform the original licensee of his involvement.

Key words: plan stamping, responsible charge, seal, direction and control, violation

Approved 12-1990, NB16 Updated June 10, 2020

“PLAN STAMPING” A SERIOUS VIOLATION

The following information was received from the Tennessee Board of Architectural and Engineering Examiners and points out the potential serious consequences of "plan stamping". It is reprinted here with the permission of the Tennessee Board.

"On September 25, 1991, the Court of Appeals of Tennessee affirmed an August 31, 1989, decision by the Tennessee State Board of Architectural and Engineering Examiners to revoke the engineering certificate of Nashville engineer Clark L. Shaw. The Shaw case is significant in that a death and several injuries resulted, at least in part, from design failures reflected on mechanical and plumbing drawings for a 3-story hotel which were plan-stamped by Shaw.

The Tennessee Board found that the mechanical, plumbing, and electrical drawings for the Ramada Inn-Music Valley Hotel in Nashville had been prepared by three unlicensed draftsmen working independently at the request of the project owner. The owner then approached Shaw, who was employed as an electrical engineer with the U.S. Army Corps of Engineers, to stamp the drawings so that a local building permit could be obtained.

On November 23, 1986, one hotel guest died and several others were seriously injured from inhaling carbon monoxide gas which had seeped into several guest rooms at the Ramada Inn-Music Valley Hotel. The Tennessee Board determined that the hotel's mechanical and plumbing drawings contained "design deficiencies and omissions relating to provisions for air supply and ventilation of the atrium, laundry, water heaters, and hotel sleeping rooms that compromised the life safety of the building's occupants."

In appealing the Board's revocation of his certificate, Shaw argued that the Tennessee statute prohibiting a licensee's stamping of documents not prepared by that licensee "or under his responsibility" was unclear in meaning and, therefore, unconstitutionally vague. Shaw maintained that, although he had little or no contact with the draftsmen who actually prepared the drawings, he made alterations to the drawings and "assumed responsibility" for the plans when he stamped them.

The Court of Appeals of Tennessee rejected Shaw's argument and wrote: "In short, none of the plans was prepared under any relationship of responsibility between plaintiff (Shaw) and any preparer...The statute does not authorize assumed responsibility. It requires existing responsibility at the time of preparation...(The) uncontradicted evidence shows conclusively that the plaintiff violated the plain meaning of the statute, and conclusion of the Board that plaintiff violated the statute was correct."

As no permission to appeal the Court of Appeals decision was sought within the prescribed time period, the Tennessee Board's revocation of Shaw's engineering certificate is now final."

Given the wording of the Idaho Code relating to the sealing of plans, it is possible that a court in Idaho would come to a conclusion similar to that reached in the Tennessee case. Idaho Code Section 54-1215 (c) states, in part, "The application of the licensee's seal and signature and the date shall constitute certification that the work thereon was done by him or under his responsible charge." Idaho Code Section 54-1215 (d) states "The seal and signature shall be used by licensees only when the work being stamped was under the licensee's responsible charge."

Idaho Code does allow for the review and sealing of work done by an out-of-state licensee that is a site adaptation of a standard design plan. Idaho Code Section 54-1223(5) states "A professional engineer licensed in Idaho may review the work of a professional engineer who is licensed in another jurisdiction of the United States or a foreign country on a project that is a site adaptation of a standard design plan to determine that the standard design plan meets the standard of care and is applicable to the intended circumstance, with or without modification. The Idaho professional engineer shall demonstrate responsible charge, as defined in this chapter, by performing professional services related to his assignment..."

Key words: plan stamping, responsible charge, seal, direction and control, violation

Approved 7-1992, NB18 Updated 6-10-2020

PLS MUST SEAL LEGAL DESCRIPTIONS

At the February 2008 Board Meeting, a P.L.S. asked the Board to reconsider its previously expressed opinion regarding the sealing of legal descriptions prepared by professional land surveyors who have not performed a survey in the field of the land

being described. At the February 2008 meeting, the Board created a subcommittee consisting of Gary Young, P.E./L.S. and John Howe, P.L.S. with advice and input from attorney Mike Kane and Executive Director David Curtis, P.E. to reevaluate the interpretation and interrelationships of Idaho Code Section 54-1202(12), 54-1215, 54-1227, 55-1902(9), and 55-1904(2). Following is that analysis.

The following article from the 31st edition of the Board NEWS BULLETIN (June 2001) is the opinion previously expressed by the Board on the matter.

“BOARD EXPRESSES OPINION ON LEGAL DESCRIPTIONS

A P.L.S. asked the Board three questions regarding a preparation of legal descriptions. The questions and the answers provided by the Board follow.

QUESTION Should legal descriptions written by professional land surveyors in the State of Idaho be sealed by them?

ANSWER Yes, we believe that a professional land surveyor **MUST** seal, sign and date legal descriptions written by them.

QUESTION Does it make any difference if the legal description is based on a field survey done by the surveyor or is based on office work only (using deed descriptions and recorded surveys by other surveyors)?

ANSWER No [it does not make a difference], but we provide the following additional analysis. Idaho Code section 54-1202(12) defines “land surveying” and “professional land surveying” as:

54-1202. DEFINITIONS. As used in this chapter, unless the context or subject matter requires otherwise:

(12) (a) "Professional land surveying" and "practice of professional land surveying" mean responsible charge of authoritative land surveying services using sciences such as mathematics, geodesy and photogrammetry and involving:

(i) The making of geometric measurements and gathering related information pertaining to the physical or legal features of the earth, improvement on the earth, and the space above, on or below the earth; and

(ii) Providing, utilizing or developing the same into survey products such as graphics, data, maps, plans, reports, descriptions or projects. Professional services include acts of consultation, investigation, testimony, planning, mapping, assembling and interpreting and gathering measurements and information related to any one (1) or more of the following:

1. Determining by measurement the configuration or contour of the earth’s surface or the position of any fixed objects;
2. Performing geodetic surveys to determine the size and shape of the earth or the position of any point on the earth;
3. Locating, relocating, establishing, reestablishing or retracing property lines or boundaries of any tract of land, road, right-of-way, easement or real property lease;
4. Making any survey for a division or subdivision or a consolidation of any tracts of land;

5. Locating or laying out of alignments, positions or elevations in the field for the construction of fixed works;
6. Determining, by the use of principles of surveying, the position for any boundary or nonboundary survey monument or reference point or for establishing or replacing any such monument or reference point;
7. Certifying elevation information;
8. **Preparing narrative land descriptions**; or
9. Creating, preparing or modifying electronic or other data necessary for the performance of activities in subparagraphs 1. through 8. of this paragraph.

(b) "Professional land surveying" and "practice of professional land surveying" shall not mean:

- (i) Mapping or geographic information system work that is for nonauthoritative boundaries and nonauthoritative elevations;
- (ii) Construction survey work that is unrelated to establishing vertical and horizontal project control; or
- (iii) Construction staking of fixed works or the development and use of electronic models for machine-controlled construction that by design are unrelated to determining boundaries described in paragraph (a)(ii)3. of this subsection.

Any person shall be construed to practice or offer to practice professional land surveying who engages in professional land surveying, or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional land surveyor, or who represents himself as able to perform or who does perform any professional land surveying service or work or any other service designated by the practitioner which is professional land surveying. Described in the law is “. . . **preparing narrative land descriptions.**”

The Board is of the opinion that the practice of professional land surveying includes preparing legal descriptions and if prepared by a professional land surveyor, it is considered to fall within the categories listed in Idaho Code section 54-1215(3)(b) requiring a professional seal, signature and date.

QUESTION [Idaho Code section] 54-1215(3)(b) states that “The seal, signature and date shall be placed on all final specifications, land surveys, reports, plats, drawings, plans, design information and calculations, whenever presented to a client or any public or governmental agency.” Do legal descriptions fall into any of these categories?

ANSWER A legal description would, in our opinion, be a “report” under Idaho Code section 54-1215(3)(b) which would require a seal, signature and date.

The legal description work of a professional land surveyor for a client is a report. Although the word “report” is not defined in the statute, Black’s Law Dictionary (Sixth Edition) defines the word “report” to mean: “An official or formal statement of facts or proceedings. To give an account of, to relate, to tell, to convey or disseminate information.” It appears that the preparation and dissemination of a legal description fits within the generally accepted definition of a report. Under those conditions, under the mandatory terms of the Section 54-1215(3)(b), the licensee must seal, sign and date his or her work.

Keywords: seal, legal description, report, sign

6-2008, NB 41 Updated 6-10-2020

PRELIMINARY DOCUMENTS MUST BE SEALED

A P.L.S. wrote the Board and asked some questions which were prefaced with the statement “I was reviewing a Subdivision Application at the Planning & Zoning office today. Included in the drawings were Preliminary Road Plans prepared by a surveying company. The Planning & Zoning Commission used those drawings to approve the Subdivision.” The following are the questions the surveyor asked and the answers provided by the Board.

Question: Preliminary Plats are sometimes submitted by engineers and sometimes by surveyors. I don’t recall that either the Preliminary Road Plans or the Preliminary Plats are ever sealed. The Planning and Zoning Commission uses those drawings to make policy decision[s] (i.e. subdivision and road approval). Should these preliminary drawings be sealed?

Answer: Under Idaho Code Section 54-1215(3)(b), if prepared by a professional engineer or a professional land surveyor, Preliminary Plats and Preliminary Road Plans that are “intended to be relied upon to make policy decisions important to the life, health, property or fiscal interest of the public” must be sealed, signed and dated.

Key words: seal, signature, preliminary, plat, road plans, legal description

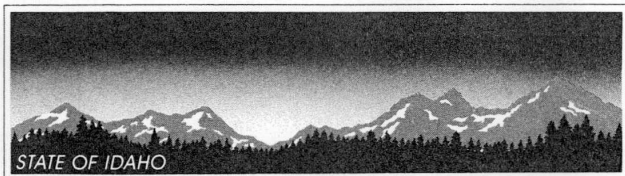
Approved: 6-2008, NB 41 Updated 6-10-2020

SEALS, INDUSTRIAL EXEMPTION - IT’S EXEMPT

A license holder inquired as to whether a person licensed as a professional engineer would be required to stamp his engineering work if he was working in a situation where he was exempt from the licensure requirement under Idaho Code Section 54-1223(1)(f), commonly known as the “industrial exemption”. The Board concluded that the engineer would not be required to stamp the document as long as that engineer is employed within that company and the document would only be used internally. If the company is exempt, then the stamp is not required. If the document is being submitted to someone outside of the company, then a stamp would be required.

Key words: Seal, signature, industrial exemption

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June 5, 2012

Dennis Keierleber, P.E.
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Dear Dr. Keierleber:

At its meeting on June 4 and 5, 2012 the Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors reviewed the email string between you and James Szatkowski, P.E. on April 6, 2012.

The Board asked me to write to you and inform you that according to Idaho Code Section 54-1215, you may stamp any work that has been done under your responsible charge, but unless that condition is met, as defined in Idaho Code Section 54-1202(15), you cannot stamp it. IDAPA 24.32.01.101 quite clearly reinforce the statute in that regard. In addition, we do not believe that the International Building Code allows for submittal of a "code compliance sheet" prepared by a licensed design professional, intended to analyze unsealed plans prepared by a non-licensed person, in lieu of plans prepared by a licensed design professional.

The Board NEWS BULLETIN No. 32 from December 2011 stated,

"The Board has been asked whether a professional engineer can review the work of an unlicensed person on a project in which the professional engineer has not been in responsible charge of the work, and then sign, seal and date a letter attesting to the accuracy or acceptability of the work. This letter is then intended to accompany the work of the unlicensed person. Idaho Code §54-1215(3) states, in pertinent part,

"It shall be unlawful for any person to affix or to permit his seal and signature to be affixed to any documents . . . for the purpose of aiding or abetting any other person to evade or attempt to evade any portion of this chapter."

Further, Rule 101.02, **Aiding And Abetting An Unlicensed Person** of the Rules of Professional Responsibility states

“A Licensee or Certificate Holder shall avoid actions and procedures which, in effect, amount to aiding and abetting an unlicensed person to practice engineering or land surveying”

Unless there were unusual circumstances surrounding this situation, the Board would likely consider this a violation of both Idaho Code and Administrative Rule.”

While some of the quoted statutes and rules in the NEWS BULLETIN article may have changed slightly since publication, we believe the guidance is still pertinent.

Please call if you have any questions.

For the Board,

David K. Bennion, P.E.
Board Chair

DLC/DKB/dlc:Keierleber, Dennis.2012-06 Meeting

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STAMPING PRACTICES SOME QUESTIONS, SOME CONCERNS AND A FEW ANSWERS

D.T. Neill, P.E.

Over the past several years the Idaho Board has encountered a number of incidents which have caused us to believe that a lot of PE's and PLS's don't appreciate or understand stamping practices as required by Idaho Law. We also recognize that there may be some weaknesses and conflicts in our law which need correction or clarification. Consequently, this article has been prepared in the hopes of explaining the Board's interpretation of proper stamping practices and to stimulate some comments and discussion which will enable all of us to better understand and improve this critical aspect of professional engineering and land surveying in Idaho.

The sections of Idaho Code (law) and the Boards Rules, which have the force of law, that make any reference to stamps or stamping are summarized below. The section numbers marked with an asterisk are those which specifically refer to stamping practices.

Rules of Professional Responsibility: 24.32.01.101.01 & .03

Procedure: 24.32.01.014 & .023.

Corner Perpetuation and Filing: 24.32.01.302.05

Idaho Code, Title 54 Chapter 12: 54-1215, 54-1222, 54-1223(5) & (6), and 54-1235 (1).

Interestingly, there is reference to stamping in Title 50 Chapter 13 on plats and vacations in 50-1309, but no reference in Title 55 Chapter 16 on corner perpetuation and filing, or Title 55 Chapter 17 on coordinate system of land description, or Title 55 Chapter 19 on recording of surveys. There are several references to certificates and certifying but nothing specifically incorporates stamps or stamping into such certificates. Perhaps these apparent omissions should be corrected or the intent clarified. Even though so much of our law specific to land surveying doesn't mention stamps or stamping, the Board believes the requirements in Title 54 Chapter 12 are sufficiently general to require land surveyors to use their stamp on all reports, drawings, record of surveys, and corner records.

Throughout our rules and laws there are references to stamp or seal and to stamping or sealing. The Board believes these terms are identical and we will use only the terms stamp or stamping here for simplicity. Also, we will use the abbreviation PE/PLS to refer to professional engineers and/or professional land surveyors licensed to practice in Idaho.

We are going to go to a hypothetical question and answer mode which has served the "Legal Corner" and "You be The Judge" features in NSPE's Engineering Times so

well. However, the answers are not hypothetical, they are the Board's official position.

Q Why does the Board make such a fuss over stamping? After all, my dentist doesn't stamp my fillings, does he?

A The Idaho Code, 54-1215(3)(b) requires stamping of "all final specifications, land surveys, reports, plats, drawings, plans, design information and calculations, whenever presented to a client or any public or government agency."

The Board believes stamping such documents is the singular action by which a PE/PLS signifies to the client and to all others that the engineering or land surveying work was done by or under the direction and control of an individual who has met the minimum qualifications for licensing as a PE/PLS. The stamp identifies a single individual who has legal responsibility for both the professional and technical aspects of the work. Everyone considering or using engineering or surveying documents should recognize that without the PE/PLS stamp, no one has publicly accepted such responsibility.

Remember, as engineers and land surveyors we don't build the bridges, plants and devices on which the public so depends. Instead we prepare documents which describe precisely how to build, test and operate those bridges, plants and devices. Surveyor's boundary markers are an exception to the above generality, but our law requires that such monuments be marked with the license number of the surveyor.

As for your dental fillings, we don't know. If they aren't identified as to their origin, maybe they should be?

Q Are there other exceptions or special cases where stamping isn't appropriate or possible?

A Probably. One is when a PE/PLS appears before an official, regulatory or governing body to give testimony of a professional nature. There isn't anything to stamp in such situations. However, that PE/PLS should, at the start of his/her statement, identify himself or herself as a PE/PLS and give their license number so that that information is recorded in the minutes of the proceedings.

In general, the Board believes that PEs/PLSs should use their stamps more rather than less. But don't stamp stuff that clearly is not engineering or surveying either.

No doubt there are other special stamping situations of which the board is not aware. Please bring them to our attention so we can establish an official position on them. Asking permission is better than begging forgiveness no matter what the cynics say.

Q What about putting an unsigned stamp on drafts or check prints in order to satisfy some regulator's interpretations of their requirements?

A There is no provision in our law for "draft" stamping of any kind. A stamp, by definition, includes the PEs/PLSs signature and date signed. Presenting a document to a client with just a stamp image and no signature and date is a violation of our law.

If you are concerned that your draft documents or drawings may be taken as final, complete versions, then use a big, red DRAFT or DO NOT FABRICATE stamp in addition to your PE/PLS stamp.

Q Why don't I just avoid this whole hassle by not stamping my work if my client doesn't require it? That way I won't have any legal or professional responsibility that my client doesn't want me to have and, by implication, doesn't want to pay for.

A Neither you nor your client have such a choice. The Board interprets our law to require that all engineering and surveying work done for a client and that is applicable in Idaho be done by a PE/PLS. If you are a PE/PLS then you must stamp the work. If you are not a PE/PLS, then you are illegally practicing as an "unlicensed" person regardless of the number and source of your diplomas.

The above paragraph contains several conditional statements which need elaboration. The phrase "done for a client" covers all individuals, companies, state and federal agencies. You may do engineering work for yourself or for your employer without stamping it. But your employer may not present that work to their client without an appropriate PE/PLS stamp. Companies do not have such stamps only people do. And by implication, the company's client is your client and therefore a PE/PLS stamp is required whenever that work is presented to a client.

The phrase "applicable in Idaho" means that you can do engineering work at your desk in Idaho for application in another state or country without applying an Idaho stamp. Conversely, engineering done at a desk in another state or country which is applicable in Idaho must have an Idaho stamp when it is presented to a client.

Our law defines engineering work rather broadly. It doesn't define a client but the Board interprets that term rather broadly also.

Q Can I use computer generated stamp images or do I have to hand-stamp things?

A Yes, you can use a computer generated stamp image that conforms to our law but you cannot use computer generated signatures and dates. You must personally sign and date the stamp image applied to the original document. You can copy the original document, of course, but you cannot use your CAD plotter or laser printer to make valid multiple originals unless you sign and date the stamp image on each original. This interpretation on copying may seem bit strained but the Board wants everyone who uses a stamped document to be absolutely confident that the PE/PLS personally approved the document. If a computer generates the stamp image, signature and date then anyone with access the computer can stamp the original. A computer and scanner can be used to copy an original document and reproduce it but that is reproducing an original, not generating it.

Q Then how about "sticky-backs" and other means of applying the stamp image?

A The Board has no restrictions on how the stamp image is generated or applied as long as the signature and date are applied to the stamp image after it is placed on the document. We may not be able to "police" this situation very well, but pre-signed and dated "sticky-backs" are improper, just as are computer generated signatures and dates.

As an aside, we have had a case where a regulatory agency questioned the authenticity of a stamp because their copy of the drawing showed a darker area around the stamp than the clear area on the balance of the drawing. They thought the client had applied the stamp rather than the PE/PLS. So beware, the use of "sticky-backs" may cause you some problems.

Q We all know that "plan stamping" is illegal in Idaho but isn't it unrealistic to expect every engineering work applied in Idaho to be designed by a PE/PLS?

A You are correct on both points. A PE/PLS should stamp only engineering work done by himself/herself or under his/her responsible charge. The Board interprets the responsible charge phase to mean: while the engineering work is being done. A review of the engineering or land surveying work is different. A PE/PLS does not have the right to sell their stamp, i.e. "plan stamping", even if they are willing to assume full responsibility for the engineering or land surveying work. A recent court case in Tennessee held, in part, that their law

doesn't authorize assumed responsibility; it requires existing responsibility at the time of preparation. The Idaho Board agrees with that point.

The portions of the Idaho Code dealing with surveying practice are much more detailed and specific than those dealing with engineering practice. Surveying work can be done only with an Idaho PLS in responsible charge. Our law does not provide for any form of temporary surveying or engineering practices.

Q What about revisions to documents? Does each revision have to be stamped or the whole document restamped? What if the original PE/PLS is no longer available?

A If the revision is of an editorial nature, then restamping is not necessary; however, only a PE/PLS should make that decision. If the revision is significant from an engineering or land surveying standpoint, then the revision must be stamped by the PE/PLS in responsible charge of the revision. The revision must be somehow identified or separated from the original work on the document so that the new stamp clearly applies only to the revision. If the original PE/PLS does the revision, his/her stamp can be replaced with a new one bearing the current date.

All the stamping questions posed to the Board to date are covered above. But we don't want the process to stop. If you have further questions on stamping, please send them to the Board. We think stamping requirements are an important component of our continuing efforts to protect the public safety and wellbeing. We need our licensees input to further develop and disseminate good stamping practices. Perhaps this topic would make a good program for a professional society meeting. Be sure to ask a Board member to attend or designate someone to record the questions and opinions and then send them to the Board office.

Key words: stamping, signing, sealing, responsible charge, client, public, revision

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THE USE OF DATE ON SEALS

There have been a number of instances brought to the attention of the Board in which licensees have applied their seal to documents and signed it, but have not dated it. Section 54-1215(3)(a) of the Idaho Code states that "...Whenever the seal is applied, the licensee's signature and date shall also be included. If the signature is handwritten, it shall be adjacent to or across the seal..."

Key words: stamp, seal, signature, date

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LICENSURE

Military Personnel Offered Special Status

MILITARY PERSONEL OFFERED SPECIAL STATUS

Qualified veterans, spouses and veterans obtain special status under Idaho law. The Board reviewed its application process and noted that:

- 1) we waive residency requirements for military personnel stationed in Idaho,
- 2) we waive continuing professional development (CPD) requirements for military persons deployed outside their normal station for a period exceeding one hundred twenty (120) days, and
- 3) we can assist in the preparation of experience narratives to develop the comparative between military and civilian experience for members, spouses and veterans.
- 4) The Board has agreed to accept transcripts of military training, as long as the transcript is produced and maintained by a recognized accrediting body.

Idaho Code 67-2602A exempts license renewal fees for all active duty military personnel during active duty and within 6 months of discharge and requires such licensees remain in good standing with the Board without renewal and disallows the license to be cancelled, suspended, or revoked during this time period.

Keywords: veteran, military, active duty, waivers, CPD

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