

BEFORE THE IDAHO TRANSPORTATION DEPARTMENT

CURTIS CLEAN SWEEP, INC., an Idaho Corporation,

Appellant,

vs.

STATE OF IDAHO, IDAHO TRANSPORTATION DEPARTMENT,

Respondent.

Agency Case No. KN 24967/22218

OAH Case No. 26-290-06

IDAHO TRANSPORTATION DEPARTMENT'S FINAL ORDER

On February 24, 2026, the Deputy Chief Administrative Law Judge Leslie Hayes issued a recommended order, attached here as Exhibit A, in the above-reference bid protest.

NOW THEREFORE, IT IS HEREBY ORDERED that the said Recommended Order dated February 24, 2026, is ADOPTED as the FINAL ORDER of the Idaho Transportation Department.

IT IS FURTHER ORDERED that the bid protest filed by Curtis Clean Sweep, Inc., is hereby DENIED.

This Order is a Final Order and is the final administrative action of the Idaho Transportation Department pursuant to Idaho Code § 67-5246. The parties' right to file an appeal and seek the judicial review of this order is set forth in title 67, chapter 52, Idaho Code.

DATED this 25<sup>th</sup> day of February, 2026.

**David B Kuisti,**  
**P.E.**

Digitally signed by David B  
Kuisti, P.E.  
Date: 2026.02.25 13:45:25  
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DAVID B. KUISTI, P.E.  
Acting Chief Engineer/Chief Deputy Director  
Idaho Transportation Department

CERTIFICATE OF SERVICE

I hereby certify that on this 25<sup>th</sup> day of February, 2026, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Cory Zubizareta  
Curtis Clean Sweep 9500  
S. Saratov Way  
Kuna, ID 83634

Email  
cory@curtisleansweep.com

OAH  
General Government Division  
P.O. Box 83720  
Boise, ID 83720-0104

Email:  
filings@oah.idaho.gov  
leslie.hayes@oah.idaho.gov

/s/Ajita Hishikar  
\_\_\_\_\_  
AJITA HISHIKAR  
Paralegal

## EXPLANATION OF APPEAL RIGHTS

This is a final order of the agency. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See I.C. § 67-5246(4).

Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to District Court by filing a petition in the District Court of the county in which a hearing was held; the final agency action was taken; the party seeking review of the order resides, or operates its principal place of business in Idaho; or the real property or personal property that was the subject of the agency action is located.

An appeal must be filed within twenty-eight (28) days of (a) the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See I.C. § 67-5273. The filing of an appeal to District Court does not itself stay the effectiveness or enforcement of the order under appeal.

# EXHIBIT A

**BEFORE THE IDAHO TRANSPORTATION DEPARTMENT**

CURTIS CLEAN SWEEP,	)	Agency Case No. KN 24967/22218
	)	
Appellant,	)	OAH Case No. 26-290-06
	)	
v.	)	<b>ORDER</b>
	)	
IDAHO TRANSPORTATION	)	
DEPARTMENT,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Hearing Officer on Appellant Curtis Clean Sweep’s protest of two bids awarded by Idaho Transportation Department (ITD) to another bidder. Curtis Clean Sweep asserts that the selected lowest responsible bidder’s compliance with Idaho Code sections 44-1001 through 44-1005 would be impossible, and that ITD should have exercised its discretion and required additional proof of compliance with Idaho Code sections 44-1001 through 44-1005 at the bid-level prior to selection of the lowest responsible bidder pursuant to ITD’s Standard Specification for Highway Construction section 102.10.

The facts of this case are undisputed and adopted from the briefs of the parties.

On January 27, 2026, ITD opened bids for Project No. A024(967), State, FY-26, D-3, Contrast Pavement Marking (“Project 1”). On February 3, 2026, ITD opened bids for Project No. A022(218), I-84, FY-26, D-4 Interstate Striping (“Project 2”). ITD’s Procurement Administration Unit then posted the bid costs to ITD’s website identifying the overall bid results. ITD then completed a “Contract Award Checklist” for each bid received. During this process ITD checks the contractor’s license validity, the National Debarment list for the contractor, bid bond status, that all addendums were acknowledged, and if the Idaho Code Certification Form was signed (if state funded). During this process if any of these items are incomplete or incorrect the bid is deemed irregular and notification is made by email to the respective contractor.

On January 28, 2026, the Resident Engineer for D-3 received a letter from Cory Zubizareta of Curtis Clean Sweep, with a bid protest for Project 1. A similar letter was received by the Resident Engineer for D-4 for Project 1 on or about February

3, 2026. Both protests presented the same issue: the apparent low bidder's compliance with Idaho Code §§ 44-1001 through 44-1005 and ITD's authority to reject bids under the Department's Standard Specification for Highway Construction section 102.10. ITD's Chief Engineer answered both these letters confirming the receipt of the bid protest.

*Idaho Transportation Department's Opening Brief*, p. 2 (internal citations to *Declaration of Karen Hanna in Support of Idaho Transportation Department's Brief* ("Hanna Dec.") omitted).

Curtis Clean Sweep did not contest the above facts, but added the following additional facts, which were not disputed by ITD. Those are that "the anticipated workforce consists of approximately ten workers" and pursuant to statute, would require "approximately nine Idaho resident workers at the commencement of performance." *Appellant Curtis Clean Sweep's Response Brief*, pp. 2-3.

Idaho Code sections 44-1001 through 44-1005 address the employment of Idaho residents in public works contracts and the enforcement mechanisms for the failure to comply with that requirement stating that a contractor "must employ ninety-five percent (95%) bona fide Idaho residents as employees on any such contracts . . . or where under such contracts fifty (50) or less persons are employed the contractor may employ ten percent (10%) nonresidents[.]" I.C. § 44-1001. At the bid stage, ITD requires bidders to complete an "Idaho Code Certification Form" acknowledging understanding and compliance with Idaho Code sections 44-1001 through 44-1005. *Hanna Dec.*, ¶¶ 7-8, Ex. A-B (emphasis added). The responsive and responsible apparent low bidder on both construction projects complied with this process. *Hanna Dec.*, ¶ 9.

The Idaho Supreme Court has held that "the governing board of a municipality may exercise discretion in selecting the 'lowest responsible bidder' or 'lowest and best bidder' so long as the entity awarding the contract does not 'exercise the discretion entrusted arbitrarily, and without reason reject the lowest bid and accept a higher one.'" *Beco Cons. Co., Inc. v. City of Idaho Falls*, 124 Idaho 859, 862 (1993) (citing *Seysler v. Mowery*, 29 Idaho 412, 417 (1916)).

ITD provided evidence that the lowest responsible bidder – Specialize Pavement Marking LLC – “has met the requirements required at the time of bid per ITD’s past established practice and present expectations.” *Hanna Dec.*, ¶11. ITD argued that the practice of determining compliance with Idaho Code sections 44-1001 through 44-1005 has been established since 2018 when a prior bid protest raised a similar issue – “What evidence, if any, must a contractor supply to establish compliance with I.C. § 44-1001 during the performance of work under contract with ITD?” *Idaho Transportation Department’s Opening Brief*, Ex. A, p. 4.<sup>1</sup> While that decision is not binding on this Hearing Officer, it both informs and supports ITD’s position that it has consistently applied the certification of compliance with Idaho Code sections 44-1001 through 44-1005 since 2018. This consistent application demonstrates that ITD is acting within the scope of its discretion and not in an arbitrary manner without reason.

While Curtis Clean Sweep desires that ITD, on “objective project characteristics create a defined feasibility threshold” demonstrating that “the apparent low bidder can comply at the outset of performance[,]” that position is inconsistent with the law dictating that this decision is one of discretion for ITD. *See Appellant Curtis Clean Sweep’s Response Brief*, p. 3. This position has the same issue as the bid protest in 2018 – that is, “it is not for [Curtis Clean Sweep] to set the standard against which ITD measures responsibility.” *Idaho Transportation Department’s Opening Brief*, Ex. A, p. 8.

That additional information might be useful, or that ITD might approach the problem in a different way, or that more investigation might be helpful is immaterial; I have no authority to substitute my business judgment for that of the agency in the matter of determining what the standard ought to be that is to be applied by the agency in reaching its answer to the question of responsible bidder under the bid statute.

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<sup>1</sup> Exhibit A has been replaced with the same order contained in the case transmittal sheet to the Office of Administrative Hearings. The copy contained at Exhibit A is of poor quality and, at times, unreadable.

*Idaho Transportation Department's Opening Brief*, Ex. A, p. 9. The same is true here. It is not within the Hearing Officer's authority to second-guess ITD's business practices as long as those practices are within the scope of its discretion and not done in an unreasonable or arbitrary manner.

**ORDER**

Based on the foregoing, IT IS HEREBY ORDERED that Curtis Clean Sweep's protest is **DENIED**.

**RULE 625 NOTICE**

This is a recommended order of the presiding officer. It will not become final without action of the agency head. Motions for reconsideration filed with the presiding officer will not be considered.

IT IS SO ORDERED.

DATED: February 24, 2026.

OFFICE OF ADMINISTRATIVE HEARINGS

/s/ Leslie M. Hayes  
Leslie M. Hayes  
Deputy Chief Administrative Law Judge

**DEPUTY CLERK’S CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of February, 2026, I caused to be served a true and correct copy of the foregoing by the following method to:

Cory Zubizareta  
Curtis Clean Sweep  
*Appellant*

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/s/ Elaine Maneck  
Elaine Maneck, Deputy Clerk  
Office of Administrative Hearings