

SENATE FILE NO. SF0107

Public works contracts.

Sponsored by: Joint Appropriations Interim Committee

A BILL

for

1 AN ACT relating to administration of government; generally
2 modifying provisions relating to contracts for public
3 works; modifying contract amounts for which a bond is
4 required; extending temporary provisions relating to
5 procurement requirements for expenditures for capital
6 construction projects; modifying penalties and enforcement
7 provisions; modifying and specifying preference
8 requirements; and providing for an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 15-1-113(d) and (f), 16-6-104,
13 16-6-112(a)(intro) and (iii), 16-6-203, 16-6-205, 16-6-206,
14 16-6-701(a)(vii) and 16-6-1001(a)(intro), (i)(A), (B),
15 (C)(intro), (III), (IV), (D)(III), (E), (ii)(A)(intro),
16 (D), (iii), (iv) and (b) through (e) are amended to read:

17

1 **15-1-113. Contracts for public improvements.**

2

3 (d) Every contract shall be executed by the mayor or
4 in his absence or disability, by the president or other
5 presiding officer of the governing body and by the clerk or
6 designee of the governing body. The successful bidder or
7 respondent shall furnish to the city, town or joint powers
8 board a bond as specified in the advertisement, or if the
9 contract price is ~~one hundred thousand dollars~~
10 ~~(\$100,000.00)~~ two hundred fifty thousand dollars
11 (\$250,000.00) or less, any other form of financial
12 guarantee satisfactory to the city, town or joint powers
13 board. The bond or other form of financial guarantee shall
14 meet the requirements of W.S. 16-6-112.

15

16 (f) In advertising for any bid, the forms of
17 guarantee required under this section and approved by the
18 city, town or joint powers board shall be specified. In
19 addition, bidders shall be required to accompany each bid
20 with a bid bond or if the bid is ~~one hundred thousand~~
21 ~~dollars (\$100,000.00)~~ two hundred fifty thousand dollars
22 (\$250,000.00) or less, any other form of bid guarantee
23 approved by the city, town or joint powers board, equal to
24 at least five percent (5%) of the total bid amount, with

1 sufficient surety and payable to the city, town or joint
2 powers board. The bid guarantee shall be forfeited as
3 liquidated damages if the bidder, upon the letting of the
4 contract to him, fails to enter into the contract within
5 thirty (30) days after it is presented to him for that
6 purpose or fails to proceed with the performance of the
7 contract. The bid guarantee shall be retained by the city,
8 town or joint powers board until proper bond or other form
9 of security satisfactory to the city, town or joint powers
10 board to secure performance of the contract has been filed
11 and approved. The right to reject any bid is reserved in
12 all bid advertisements. All bids shall be numbered
13 consecutively before they are opened and no further bids
14 may be received after the advertised time of opening bids
15 and any bid is publicly opened. The city, town or joint
16 powers board shall give all persons who desire an
17 opportunity to inspect all bids when they are opened. No
18 bid may be considered unless accompanied by a bid guarantee
19 in the required amount.

20

21 **16-6-104. Preference for Wyoming materials required**
22 **in contracts.**

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1 Wyoming made materials and products, and Wyoming suppliers
2 of products and materials of equal quality and desirability
3 shall have preference over materials or products produced
4 or supplied outside the state and any contract let shall so
5 provide.

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7 **16-6-112. Contractor's bond or other guarantee; when**
8 **required; conditions; amount; approval; filing; enforcement**
9 **upon default.**

10

11 (a) Except as provided under W.S. 9-2-1016(b) (xviii),
12 any contract entered into with the state, any county, city,
13 town, school district or other political subdivision of the
14 state for the erection, construction, alteration, repair or
15 addition to any public building or other public structure
16 or for any public work or improvement and the contract
17 price exceeds seven thousand five hundred dollars
18 (\$7,500.00), shall require any contractor before beginning
19 work under the contract to furnish the state or any
20 political subdivision, as appropriate, a bond or if the
21 contract price is ~~one hundred thousand dollars~~
22 ~~(\$100,000.00)~~ two hundred fifty thousand dollars
23 (\$250,000.00) or less, any other form of guarantee approved

1 by the state or the political subdivision. The bond or
2 other form of guarantee shall be:

3

4 (iii) In an amount not less than fifty percent
5 (50%) of the contract price unless the price exceeds ~~one~~
6 ~~hundred thousand dollars (\$100,000.00)~~ two hundred fifty
7 thousand dollars (\$250,000.00), in which case the
8 appropriate officer, agent or the governing body may fix a
9 sufficient amount;

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11 **16-6-203. Required resident labor on public works**
12 **projects; exception.**

13

14 Every person who is charged with the duty of construction,
15 reconstructing, improving, enlarging, altering or repairing
16 any public works project or improvement for the state or
17 any political subdivision, municipal corporation, or other
18 governmental unit, shall employ only Wyoming laborers on
19 the project or improvement. Every contract let by any
20 person shall contain a provision requiring that Wyoming
21 labor be used except other laborers may be used when
22 Wyoming laborers are not available for the employment from
23 within the state or are not qualified to perform the work
24 involved. The contract shall contain a provision requiring

1 specific acknowledgement of the requirements of this
2 section. A person required to employ Wyoming laborers may
3 employ other than Wyoming laborers if within seven (7) days
4 after being awarded the contract that person informs the
5 nearest state ~~employment office~~ workforce center of his
6 employment needs and the state ~~employment office~~ workforce
7 center certifies that the person's need for laborers cannot
8 be filled from those listed as of the date the information
9 is filed.

10
11 **16-6-205. Enforcement.**

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13 (a) The department of workforce services shall
14 promulgate rules and regulations required to enforce this
15 act and is authorized and directed to enforce this act.
16 For purposes of all investigations, the department shall
17 have the power to issue subpoenas requiring the attendance
18 and testimony of witnesses and the production of any books,
19 papers, documents or records which the department deems
20 relevant or material to the inquiry.

21
22 (b) Prior to final payment for a contract subject to
23 this act, the general contractor shall provide to the
24 contracting entity a payroll report for all contractors and

1 subcontractors involved in the project in a form that is
2 consistent with federally certified reporting requirements.

3
4 (c) This act shall not be enforced in a manner which
5 conflicts with any federal statutes or rules and
6 regulations.

7
8 **16-6-206. Failure to employ state laborers; penalty.**

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10 (a) A person who willfully or intentionally fails to
11 use Wyoming laborers as required in this act ~~is guilty of a~~
12 ~~misdemeanor punishable by a fine~~ shall be subject to a
13 civil penalty of not more than ~~seven hundred fifty dollars~~
14 ~~(\$750.00)~~ one thousand dollars (\$1,000.00) per nonresident
15 laborer employed per day, not to exceed a total penalty of
16 ten percent (10%) of the amount of the person's contract.

17 Each separate case of failure to employ Wyoming laborers on
18 public works projects constitutes a separate offense.

19
20 (b) In the event a second offense occurs, the person
21 shall be barred from bidding on any ~~state~~-contract subject
22 to the provisions of this act or submitting any request for
23 proposal on any ~~state~~-project subject to the provisions of

1 this act for one (1) year from the date the violation is
2 corrected.

3

4 (c) Before a civil penalty is imposed under this
5 section, the department of workforce services shall notify
6 the person accused of a violation. The notice shall be
7 served in accordance with the Wyoming Rules of Civil
8 Procedure and contain:

9

10 (i) A statement of the grounds for imposing the
11 civil penalty, including a citation to the statute
12 involved;

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14 (ii) A statement of the facts in support of the
15 allegations;

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17 (iii) A statement informing the person of the
18 right to a hearing and that failure to timely request a
19 hearing will result in imposition of the civil penalty
20 stated.

21

22 (d) A request for hearing on a proposed civil penalty
23 shall be in writing and shall be submitted to the
24 department no later than seven (7) days after receipt of

1 the notice from the department. The hearing shall be
2 conducted as a contested case before a hearing examiner of
3 the office of administrative hearings. The hearing shall
4 be no later than fifteen (15) days after receipt of the
5 request for hearing, unless the person subject to the
6 proposed civil penalty requests an extension of time for
7 good cause shown. The hearing officer shall recommend a
8 decision to the director of the department. After hearing
9 or upon failure of the accused to request a hearing, the
10 director of the department shall determine the amount of
11 the civil penalty to be imposed in accordance with the
12 limitations in this section. Judicial review, if any, shall
13 be from the decision of the director and in accordance with
14 the provisions of the Wyoming Administrative Procedure Act.

15

16 (e) A civil penalty may be recovered in an action
17 brought by the attorney general in the name of the state of
18 Wyoming in any court of appropriate jurisdiction.

19

20 **16-6-701. Definitions.**

21

22 (a) As used in this act:

23

1 (vii) "Construction manager at-risk" means a
2 type of construction management delivery in which the
3 construction manager at-risk is an advocate for the public
4 entity as determined by the contracts throughout the
5 preconstruction phase of a project. In the construction
6 phase of a project, the construction manager at-risk is
7 responsible for all project subcontracts and purchase
8 orders and may conduct all or a portion of the construction
9 project work. Under this delivery method, the construction
10 manager at-risk is responsible for providing a guaranteed
11 maximum price for the project to the public entity prior to
12 commencing the construction project and the construction
13 manager at-risk shall be required to bond any project with
14 a guaranteed maximum price in excess of ~~one hundred~~
15 ~~thousand dollars (\$100,000.00)~~ two hundred fifty thousand
16 dollars (\$250,000.00) in accordance with W.S. 16-6-112;

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18 **16-6-1001. Capital construction projects**
19 **restrictions; preference requirements; waivers; sunset of**
20 **section.**

21

22 (a) Unless otherwise prohibited by federal law, any
23 legislatively appropriated funds appropriated or authorized
24 for expenditure during the fiscal biennium ending June 30,

1 2012 or ending June 30, 2014, which have not been
2 encumbered, obligated by contract or designed as of January
3 17, 2011, for capital construction projects shall be
4 subject to the restrictions of this section which shall be
5 construed where possible as complimentary and consistent
6 with other statutory requirements relating to competitive
7 bidding and contractor preferences. To the extent the
8 restrictions in this section are inconsistent with other
9 state statutes, this section shall supersede all such
10 inconsistent provisions and shall govern. This section
11 shall be applied as follows:

12

13 (i) This paragraph shall apply to any alternate
14 design and construction delivery method as defined in W.S.
15 16-6-701(a)(v):

16

17 (A) All contracts shall require the
18 construction manager at risk or design builder to conduct
19 an open bid process in compliance with Wyoming contractor
20 preference laws before awarding any subcontracts for work
21 ~~to be performed for the project~~ covered under the contract;

22

23 (B) Unless exempted pursuant to
24 subparagraph (C) of this paragraph the construction manager

1 at risk or design builder shall award to responsible
2 Wyoming resident contractors not less than seventy percent
3 (70%) of the ~~value of the total subcontract work to be~~
4 ~~performed for the project~~ work covered by the manager's or
5 builder's contract. As used in this subparagraph "work
6 covered" shall be calculated using the total contract price
7 and the total of payments made to all subcontractors under
8 the contract, including materials but excluding from both
9 amounts the price for any part of the contract for which a
10 waiver is provided under subparagraph (C) of this
11 paragraph;

12
13 (C) The requirement of subparagraph (B) of
14 this paragraph may be waived ~~in part upon~~ for any part of
15 the subcontract work to be performed under the contract.
16 If waived in part, the remaining value of the total
17 subcontract work to be performed under the contract is
18 subject to and shall be used to calculate compliance with
19 the requirement of subparagraph (B) of this paragraph. A
20 waiver shall require a written determination that:

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22 (III) The enforcement of the
23 requirement would unreasonably delay completion of
24 construction; or

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(IV) There were insufficient responsible Wyoming contractors submitting bids to make the seventy percent (70%) requirement ~~.; or~~

(D) Any waiver shall be approved in writing by the following persons:

(III) For projects subject to review by the school facilities ~~commission~~ department, by the director of the school facilities commission and the chairman of the board of the school facilities commission;

(E) Any approved waiver shall be documented in writing and provided to the governor ~~. and the joint appropriations interim committee.~~

(ii) Unless exempted pursuant to subparagraph (D) of this paragraph, this paragraph shall apply to all construction delivery methods:

(A) The procurement of furniture, ~~fixtures~~ and movable equipment shall be done by competitive bid based upon either:

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(D) The requirements of subparagraph (A) or (B) of this paragraph may be waived for furniture, ~~fixtures~~ or movable equipment upon a written determination that the furniture, ~~fixtures~~ or movable equipment requirements of the project are so specialized or that an item or type of furniture, ~~fixture~~ or movable equipment is so unique or uncommon that failure to waive the requirements would materially impair the functionality of the project. Waivers under this subparagraph shall be approved by the persons listed in subparagraph (a)(i)(D) of this section and are subject to subparagraph (a)(i)(E) of this section.

(iii) All bids shall be opened in public in an office of the agency soliciting the bid. This paragraph shall apply to all construction delivery methods;

(iv) Contractor progress payments shall be made only ~~after the agency has been supplied with applicable lien waivers signed by the materialman, subcontractor or laborer, as applicable, or upon the contractor's affidavit that all materialmen, subcontractors and laborers have been paid for that portion of payment requested, less any contracted amounts held for retainage or for which there is~~

1 ~~a reasonable basis for dispute~~ in accordance with this
2 paragraph. If a contracting entity determines that a
3 general contractor in good standing on a project requires a
4 progress payment due for work completed in a workmanlike
5 manner in order to pay a materialman, subcontractor or
6 laborer for their work performed to date, the entity may
7 issue the progress payment upon verification that all
8 materialmen, subcontractors and laborers have been paid for
9 completed work through the date of the most recent previous
10 progress payment. If a progress payment has been withheld
11 by a general contractor due to a reasonable dispute between
12 a general contractor and a materialman, subcontractor or
13 laborer, further progress payments shall not be paid to the
14 general contractor but shall be retained in accordance with
15 the guidelines addressing disputed final payments under the
16 provisions of W.S. 16-6-117. A person submitting false
17 information regarding a progress payment subject to this
18 paragraph shall be subject to the provisions of W.S.
19 16-6-120.

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21 (b) No funds subject to this section shall be
22 expended unless the contracting agency has submitted a plan
23 to the governor ~~and the joint appropriations interim~~
24 ~~committee~~ which promotes the employment of responsible

1 Wyoming resident design firms, including professional
2 architectural and engineering services as defined by W.S.
3 9-2-1028(a)(v), in the planning and design phases of
4 facilities funded with monies subject to this section. The
5 plans shall allow for partnerships between responsible
6 Wyoming design firms, including professional architectural
7 and engineering services, and nonresident firms when
8 necessary to secure specialized services required for a
9 project. The contracting agency shall evaluate and consider
10 overall qualifications, residency, fee proposal, past
11 performance and level of services in the final decisions.

12

13 (c) Any ~~agency~~entity which has received an
14 appropriation of state funds on or after July 1, 2008, for
15 any capital construction project shall conduct a review of
16 each project funded with state funds to assess whether
17 contractors that were awarded contracts using a resident
18 preference complied in all respects to applicable resident
19 preference laws. If the ~~agency~~entity determines that
20 there is reasonable suspicion that a contractor failed to
21 comply with the resident preference laws, the ~~agency~~entity
22 shall report the matter to the department of ~~employment~~
23 workforce services and the attorney general. The
24 department of ~~employment~~workforce services and the

1 attorney general shall take such enforcement action on
2 behalf of the state of Wyoming and the ~~agency~~entity
3 against the contractor as they deem appropriate. An entity
4 shall be required to conduct only one (1) review under this
5 subsection after March 1, 2011.

6
7 (d) The governor may modify any requirement of this
8 section by executive order if he determines it to be
9 necessary to promote effective competitive bidding. Any
10 order shall be effective only until June 30, ~~2012~~2014 or
11 until superseded by law.

12
13 (e) This section is repealed effective June 30, ~~2012~~
14 2014.

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16 **Section 2.** W.S. 16-6-1001(a)(i)(C)(V) is repealed.

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18 **Section 3.** This act is effective immediately upon
19 completion of all acts necessary for a bill to become law
20 as provided by Article 4, Section 8 of the Wyoming
21 Constitution.

22
23 (END)