

HOUSE BILL NO. HB0135

Alternate construction delivery methods.

Sponsored by: Representative(s) Lubnau, Illoway, Martin,
Pedersen and Powers and Senator(s) Cooper,
Vasey and VonFlatern

A BILL

for

1 AN ACT relating to the construction and improvement of
2 public works; authorizing the use of construction manager
3 and construction manager at risk construction delivery
4 methods in awarding contracts for public improvements;
5 amending resident preference provisions; defining terms;
6 imposing conditions; conforming statutory provisions
7 accordingly; and providing for an effective date.

8

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

10

11 **Section 1.** W.S. 16-6-707 and 16-6-708 are created to
12 read:

13

14 **16-6-707. Construction management alternate delivery**
15 **method.**

16

1 (a) Excluding contracts for professional services,
2 construction management delivery negotiations by public
3 entities and construction managers shall be in accordance
4 with residency and preference requirements imposed under
5 W.S. 16-6-101 through 16-6-107.

6
7 (b) Formal requests for proposal for preconstruction
8 or construction services by a construction manager
9 submitted by a public entity shall require at least the
10 following information:

11
12 (i) The location of the primary place of
13 business;

14
15 (ii) The name and identification of individuals
16 to be assigned to the project;

17
18 (iii) Experience with similar projects;

19
20 (iv) Qualifications;

21
22 (v) Ability to protect the interests of the
23 public entity during the project;

24

1 (vi) Ability to meet project budget and time
2 schedule requirements; and

3

4 (vii) Excluding contracts for professional
5 services, compliance with W.S. 16-6-102.

6

7 **16-6-708. Responsibilities under alternate delivery**
8 **contracts.**

9

10 Any construction manager agent or construction manager at
11 risk contract awarded shall comply with any reporting and
12 administrative requirements as required by the public
13 entity of the recipient of a design, bid and build
14 contract, including retainage, payment and performance
15 bonding and default of contract.

16

17 **Section 2.** W.S. 15-1-113(a) through (e) and (j),
18 16-6-101(a)(i), 16-6-102(a), 16-6-119, 16-6-701(a) by
19 creating new paragraphs (v) through (vii) and by amending
20 and renumbering (v) as (viii), 16-6-702, 18-6-201 by
21 creating a new subsection (c), 18-6-202 by creating a new
22 subsection (d), 21-15-114(a)(viii) by creating a new
23 subparagraph (J), 35-2-429 and 35-3-107 are amended to
24 read:

1

2 **15-1-113. Contracts for public improvements.**

3

4 (a) All contracts for any type of public improvement,
5 excluding contracts for professional services or where the
6 primary purpose is emergency work or maintenance, for any
7 city or town or joint powers board wherein at least one (1)
8 member is a municipality shall be advertised for bid or for
9 response if a request for proposal or qualification for
10 construction manager agent or construction manager at risk
11 is used, if the estimated cost, including all related
12 costs, exceeds a bid threshold of twenty thousand dollars
13 (\$20,000.00), except that a contract for the purchase or
14 lease of a new automobile or truck shall be advertised
15 regardless of cost and if there is an automobile or truck
16 for trade-in, it shall be included as a part of the
17 advertisement and bid. The requirements of W.S.
18 15-1-112(a) do not apply to any city or town trading in an
19 automobile or truck on the purchase of a new automobile or
20 truck.

21

22 (b) The advertisement shall be published on two (2)
23 different occasions, at least seven (7) days apart, in a
24 newspaper having general circulation in the city or town,

1 or if a joint powers board in any city or town which is a
2 member of the board. The published notice shall state the
3 place, date and time when the bids or proposals will be
4 received and bids will be publicly opened and the place
5 where interested persons may obtain complete specifications
6 of work to be performed.

7
8 (c) If the contract is let for bid, the contract
9 shall be let to the lowest bidder who shall be determined
10 qualified and responsible in the sole discretion of the
11 governing body. The governing body may use alternate design
12 and construction delivery methods as defined under W.S.
13 16-6-701 if deemed appropriate. The governing body may
14 reject all bids or responses submitted if it finds that
15 none of them would serve the public interest. For
16 contracts in excess of five hundred thousand dollars
17 (\$500,000.00), cities, towns and joint powers boards may
18 prequalify contractors who wish to submit bids or responses
19 based on such criteria as the project type and experience,
20 expertise, professional qualifications, past performance,
21 staff proposed, schedule proposed, financial strength,
22 qualification of supervisors proposed to be used, technical
23 solutions proposed or references.

24

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

12

13 (e) Before advertising for a bid for any work on the
14 construction of any public improvements and except as
15 provided under W.S. 16-6-707 for alternate design and
16 construction delivery methods, detailed plans and
17 specifications shall be prepared, together with an estimate
18 of the probable cost and a form of the proposed contract.
19 Except as provided under W.S. 16-6-701 through 16-6-706, no
20 contract may provide for the monthly retention of more than
21 ten percent (10%) of the contract price on the amount of
22 work done during the month, as shown by the estimate of the
23 city or town engineer or designated local official. No
24 progress payment may be made until the city or town

1 engineer or designated local official has furnished the
2 estimate, together with a certificate that the amount of
3 work estimated to have been done conforms in all material
4 respects with the requirements of the contract. A joint
5 powers board may designate an official of any member city
6 or town to perform the functions required by this
7 subsection.

8
9 (j) Any officer or employee of the city, town or
10 joint powers board who aids any bidder or respondent in
11 securing a contract to furnish labor, material or supplies
12 at a higher or lower price than that proposed by any other
13 bidder or respondent, or who favors one bidder or
14 respondent over another by giving or withholding
15 information, or who willfully misleads any bidder or
16 respondent in regard to the character of the material or
17 supplies called for, or who knowingly certifies to a
18 greater amount or different kind of material or supplies
19 than has been actually received, is guilty of malfeasance,
20 which renders his office vacant.

21
22 **16-6-101. Definitions.**

23
24 (a) As used in this act:

1

2 (i) "Resident" means a person, partnership,
3 limited partnership, registered limited partnership,
4 registered limited liability company or corporation
5 certified as a resident by the department of employment
6 prior to bidding upon the contract or responding to a
7 request for proposal, subject to the following criteria and
8 subject to W.S. 16-6-102(d):

9

10 (A) Any person who has been a resident of
11 the state for one (1) year or more immediately prior to
12 bidding upon the contract or responding to a request for
13 proposal;

14

15 (B) A partnership or association, each
16 member of which has been a resident of the state for one
17 (1) year or more immediately prior to bidding upon the
18 contract or responding to a request for proposal;

19

20 (C) A corporation organized under the laws
21 of the state with at least fifty percent (50%) of the
22 issued and outstanding shares of stock in the corporation
23 owned by persons who have been residents of the state for
24 one (1) year or more prior to bidding upon the contract or

1 responding to a request for proposal, and which maintains
2 its principal office and place of business within the
3 state, and the president of the corporation has been a
4 resident of the state for one (1) year or more immediately
5 prior to bidding upon the contract or responding to a
6 request for proposal;

7
8 (D) A corporation organized under the laws
9 of the state which has been in existence in the state for
10 one (1) year or more and whose president has been a
11 resident of the state for one (1) year or more immediately
12 prior to bidding upon the contract or responding to a
13 request for proposal and maintains its principal office and
14 place of business within the state. If at least fifty
15 percent (50%) of the issued and outstanding shares of stock
16 in the corporation are owned by nonresidents, shares of the
17 corporation shall:

18
19 (I) Have been acquired by nonresidents
20 one (1) year or more immediately prior to bidding upon the
21 contract or responding to a request for proposal; or

22

1 (II) Be publicly traded and registered
2 under Section 13 or 15(d) of the Securities Exchange Act of
3 1934 for one (1) or more classes of its shares.

4
5 (E) A limited partnership organized under
6 the laws of the state and which maintains its principal
7 office and place of business in the state and the general
8 partners of which have been residents of the state for at
9 least one (1) year or more immediately prior to bidding
10 upon the contract or responding to a request for proposal;

11
12 (F) A registered limited liability
13 partnership organized under the laws of the state and which
14 maintains its principal office and place of business in the
15 state and each member of which has been a resident of the
16 state for one (1) year or more immediately prior to bidding
17 upon the contract or responding to a request for proposal;

18 or

19
20 (G) A limited liability company organized
21 under the laws of the state and which maintains its
22 principal office and place of business in the state and the
23 managing members or the appointed managers of which have
24 been residents of the state for one (1) year or more

1 immediately prior to bidding upon the contract or
2 responding to a request for proposal.

3
4 **16-6-102. Resident contractors; preference limitation**
5 **with reference to lowest bid or qualified response;**
6 **decertification; denial of application for residency.**

7
8 (a) If a contract is let by the state, any department
9 thereof, or any county, city, town, school district,
10 community college district or other public corporation of
11 the state for the erection, construction, alteration or
12 repair of any public building, or other public structure,
13 or for making any addition thereto, or for any public work
14 or improvements, the contract shall be let, if
15 advertisement for bids or request for proposal is not
16 required, to a resident of the state. Unless an alternate
17 design and construction delivery method is used, if
18 advertisement for bids or request for proposal is required
19 the contract shall be let to the responsible certified
20 resident making the lowest bid if the certified resident's
21 bid is not more than five percent (5%) higher than that of
22 the lowest responsible nonresident bidder.

1 **16-6-119. State construction; right to reject bids or**
2 **responses; qualifications of bidders and respondents.**

3
4 Every state agency, board, commission, department or
5 institution shall be authorized to determine the
6 qualifications and responsibilities of bidders or
7 respondents on contracts for the construction of a public
8 project, facility or structure using standard forms and
9 procedures adopted by the department of administration and
10 information, and may recommend that the department of
11 administration and information reject any or all bids or
12 responses based on the qualifications and responsibilities
13 of bidders and respondents and readvertise for bids or
14 responses.

15
16 **16-6-701. Definitions.**

17
18 (a) As used in this act:

19
20 (v) "Alternate design and construction delivery
21 method" means the delivery method described by any
22 qualifications based procurement of design and construction
23 services, including all procedures, actions, events,
24 contractual relationships, obligations and forms of

1 agreement for the successful completion of the design and
2 construction, alteration or repair of any public building,
3 work, improvement, facility, structure or system other than
4 by design, bid and build. Alternate design and
5 construction delivery methods available to a public entity
6 include but are not limited to construction manager agent
7 and construction manager at risk;

8
9 (vi) "Construction manager agent" means a type
10 of construction management delivery where the professional
11 service is procured under existing statutes for
12 professional services. The construction manager agent is a
13 construction consultant providing administrative and
14 management services to the public entity throughout the
15 design and construction phases of a project. Under this
16 delivery method, the construction manager agent is not the
17 contracting agent, is not responsible for purchase orders
18 but may be required to purchase performance bonding;

19
20 (vii) "Construction manager at-risk" means a
21 type of construction management delivery in which the
22 construction manager at-risk is an advocate for the public
23 entity throughout the preconstruction phase of a project.
24 In the construction phase of a project, the construction

manager at-risk is responsible for all project subcontracts and purchase orders and may conduct all or a portion of the construction project work. Under this delivery method, the construction manager at-risk is responsible for providing a guaranteed maximum price for the project to the public entity prior to commencing the construction project and may be subject to performance bonding requirements;

~~(v)~~ (viii) "This act" means W.S. 16-6-701 through ~~16-6-706~~ 16-6-708.

16-6-702. Public entity; contracts; partial payments; alternate delivery methods authorized.

(a) Notwithstanding W.S. 15-1-113(e), a public entity awarding a contract for the construction, alteration or repair of any highway, public building, public work or public improvement, structure or system shall authorize partial payments of the amount due under the contract as stipulated in the contract document or as soon thereafter as practicable, to the contractor if the contractor is satisfactorily performing the contract. No more than ten percent (10%) of the calculated value of any work completed shall be withheld until fifty percent (50%) of the work

1 required by the contract has been performed. Thereafter,
2 the public entity may pay any of the remaining installments
3 without retaining additional funds if, in the opinion of
4 the public entity, satisfactory progress is being made in
5 the work but under no condition shall more than ten percent
6 (10%) be withheld on the remaining fifty percent (50%) of
7 the work required. The withheld percentage of the contract
8 price of the work, improvement or construction shall be
9 retained in an account in the name of the contractor which
10 has been assigned to the public entity until the contract
11 is completed satisfactorily and finally accepted by the
12 public entity. If the public entity finds that
13 satisfactory progress is being made in all phases of the
14 contract, it may, upon written request by the contractor,
15 authorize payment from the withheld percentage. Before the
16 payment is made, the public entity shall determine that
17 satisfactory and substantial reasons exist for the payment
18 and shall require written approval from any surety
19 furnishing bonds for the contract work.

20

21 (b) Alternate design and construction delivery
22 methods may be used by a public entity to design,
23 construct, alter, repair or maintain public works projects.

24

1 **18-6-201. Construction of jails; authority of county**
2 **commissioners; plans and specifications; maximum cost**
3 **permitted; call for bids; limitations applicable only when**
4 **costs paid from general fund.**

5
6 (c) Subsection (a) of this section does not apply to
7 any jail construction project using an alternate design and
8 construction delivery method as defined in W.S. 16-6-701.

9
10 **18-6-202. Construction of jails; opening of bids or**
11 **proposals; awarding of contract; security for completion;**
12 **payment; exemption for alternate delivery methods.**

13
14 (d) Subsections (a) and (b) of this section do not
15 apply to any jail construction project using an alternate
16 design and construction delivery method as defined in W.S.
17 16-6-701.

18
19 **21-15-114. Powers and duties; school facilities**
20 **office created; director.**

21
22 (a) The school facilities commission shall:
23

1 (viii) Enter into construction or renovation
2 project agreements, as appropriate, with school districts.
3 The agreement shall:

4
5 (J) Allow for alternate design and
6 construction delivery methods as defined in W.S. 16-6-701
7 for provision of design and construction services.

8
9 **35-2-429. Construction to be done by contract based**
10 **on competitive bidding; alternate delivery methods.**

11
12 (a) Except as ~~herein otherwise~~ provided under
13 subsection (b) of this section and otherwise, the work of
14 constructing the various buildings shall be done by
15 contract based on competitive bidding. Notice of call for
16 bids shall be for such period of time and in such manner as
17 the trustees may determine, and the trustees shall have the
18 power to reject any and all bids and readvertise for bids
19 as they consider proper.

20
21 (b) Any hospital district may contract for design and
22 construction services through an alternate delivery method
23 as defined in W.S. 16-6-701.

1 **35-3-107. Contracts.**