

## HOUSE BILL NO. HB0050

Government procurement-amendments.

Sponsored by: Joint Appropriations Committee

A BILL

for

1 AN ACT relating to the administration of government;  
 2 modifying provisions related to procurement and contracting  
 3 by governmental entities; specifying duties of the state  
 4 construction department and the University of Wyoming board  
 5 of trustees; requiring rulemaking; and providing for  
 6 effective dates.

7

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

9

10 **Section 1.** W.S. 9-2-3006 is created to read:

11

12 **9-2-3006. Procurement for capital construction**  
 13 **projects.**

14

15 (a) Contracts for capital construction projects let by  
 16 an agency or the University of Wyoming, excluding contracts

1 for professional services under W.S. 9-2-1027 through  
2 9-2-1033 and for capital construction projects delivered  
3 through alternate design and construction delivery methods as  
4 defined in W.S. 16-6-701(a)(v), shall be let through the use  
5 of competitive negotiation, noncompetitive negotiation or  
6 competitive sealed bidding as follows:

7

8 (i) For any contract with an estimated value equal  
9 to fifty thousand dollars (\$50,000.00) or less, the contract  
10 shall be let in accordance with the following:

11

12 (A) Except as provided in subparagraph (B) of  
13 this paragraph, the contract shall be let by competitive  
14 negotiation. In conducting the competitive negotiation, the  
15 agency or the university shall solicit not less than three  
16 (3) independent cost estimates or proposals prior to letting  
17 the contract;

18

19 (B) If the principal representative of an  
20 agency or the university determines competitive negotiation  
21 is not feasible, the contract may be let by noncompetitive  
22 negotiation;

23

1                   (C) The contract shall be let to a resident  
2 of the state in accordance with W.S. 16-6-102(a).

3

4                   (ii) Except as otherwise provided in paragraph  
5 (iii) of this subsection, for any contract with an estimated  
6 value in excess of fifty thousand dollars (\$50,000.00), the  
7 contract shall be let in accordance with the following:

8

9                   (A) The contract shall be let by competitive  
10 sealed bidding. The agency or the university shall give notice  
11 of the opportunity to bid on the contract on the state  
12 procurement website for not less than two (2) consecutive  
13 weeks. The notice shall contain a general description of the  
14 proposed contract and shall indicate the procedures by which  
15 interested persons may apply for consideration;

16

17                   (B) The contract shall be let to a  
18 responsible bidder making the lowest bid except that the  
19 contract shall be let to the responsible certified resident  
20 making the lowest bid if the certified resident's bid is not  
21 more than five percent (5%) higher than that of the lowest  
22 responsible nonresident bidder in accordance with W.S.  
23 16-6-102(a).

1

2           (iii) If the principal representative of an agency  
3 determines that the use of competitive sealed bidding is not  
4 feasible or practical, the principal representative shall  
5 submit a written determination to the department. If approved  
6 by the department, the contract may be let by competitive  
7 negotiation. If competitive negotiation is not feasible or  
8 practical, the principal representative shall submit a  
9 written determination to the governor. If approved by the  
10 governor or the governor's designee the contract may be let  
11 by noncompetitive negotiation. Contracts by the university  
12 may be let by competitive negotiation or noncompetitive  
13 negotiation in accordance with university regulations;

14

15           (iv) The director of the department, upon a  
16 written finding that it would be more efficient to use federal  
17 procurement procedures for capital construction contracts let  
18 by the Wyoming military department concerning state owned  
19 properties under the control of the adjutant general, may  
20 authorize federal procurement procedures instead of the  
21 procedures required under this subsection.

22

1           (b) The department shall adopt standard forms and  
2 procedures for the procurement of capital construction  
3 projects by an agency in accordance with this section.

4

5           (c) Any contract by an agency for a capital  
6 construction project in an amount exceeding fifty thousand  
7 dollars (\$50,000.00) shall require the approval of the  
8 governor or the governor's designee prior to state  
9 commitment.

10

11           (d) Any contract let under this section shall be in  
12 accordance with the applicable contracting and residency  
13 preference laws of W.S. 16-6-101 through 16-6-121, 16-6-201  
14 through 16-6-206, 16-6-701 through 16-6-708 and 16-6-1001.

15

16           (e) Each agency and the University of Wyoming are  
17 authorized to determine the qualifications and  
18 responsibilities of bidders or respondents for capital  
19 construction projects but shall reject any bid with improper  
20 or missing signatures or bids that lack legible numerical  
21 values. Each agency and the university may:

22

1           (i) Reject any or all bids based on the  
2 qualifications and responsibilities of bidders and  
3 respondents and readvertise for bids or responses;

4

5           (ii) Waive informalities or irregularities in any  
6 bid.

7

8           (f) No contract shall be divided for the purpose of  
9 avoiding the requirements of this section.

10

11           **Section 2.** W.S. 9-1-403(b)(v) and by creating a new  
12 paragraph (viii), 9-2-1016(a) by creating a new paragraph  
13 (iv), (b)(iv)(A) through (F), (xix)(A) and (k), 9-2-3001,  
14 9-2-3004(c)(i) through (iii) and (iv)(A), 16-6-119,  
15 21-3-110(a)(viii), 21-15-118(c), 21-17-204 by creating a new  
16 subsection (b) and 24-2-108 are amended to read:

17

18           **9-1-403. State auditor; duties; prohibited acts;**  
19 **powers; investigative subpoenas.**

20

21           (b) The state auditor shall not draw warrants:

22

1           (v) For payment on a contract for professional  
2 consultant or other services unless the agency has certified  
3 that the contract for the services has been reduced to writing  
4 before the services are performed, and that the contract is  
5 in compliance with procedures of the attorney general, is  
6 approved by the attorney general, and, except for contracts  
7 for capital construction projects entered into by an agency  
8 under W.S. 9-2-3006 and contracts of twenty thousand dollars  
9 (\$20,000.00) or less which are entered into by the office of  
10 an elected state official, is filed with and approved by the  
11 department of administration and information. For payment on  
12 a contract for professional or other services entered into by  
13 the department of transportation, filing of the contract with  
14 and approval by the department of administration and  
15 information and approval by the attorney general is not  
16 required, however the attorney general shall first review the  
17 contract if the contract is over twenty thousand dollars  
18 (\$20,000.00);

19

20           (viii) For payment on a contract for capital  
21 construction projects entered into by an agency under W.S.  
22 9-2-3006 unless the agency has certified that the contract  
23 for the project has been reduced to writing before the

1 contract is performed, that the contract is in compliance  
2 with procedures of the attorney general, is approved by the  
3 attorney general and is filed with and approved by the state  
4 construction department.

5

6 **9-2-1016. General services division.**

7

8 (a) As used in this section:

9

10 (iv) "Principal representative" means the  
11 governing board of an agency or its designated  
12 representative, or, if there is no governing board, the  
13 executive head of an agency including an elected state  
14 official.

15

16 (b) For the purpose of this subsection the term  
17 "agencies" does not include the University of Wyoming,  
18 community college districts, or school districts. It does not  
19 include the department of transportation except as to  
20 paragraphs (xi), (xii) and (xiii) of this subsection. The  
21 department through the general services division shall:

22



1           (iv) Adopt standard forms and procedures providing  
2 that bids or contracts for supplies or services shall be  
3 awarded through the use of competitive sealed bidding,  
4 competitive negotiation, noncompetitive negotiation or small  
5 purchase procedures as hereafter provided:

6

7           (A) Bids or contracts for supplies or  
8 services in excess of ~~seven thousand five hundred dollars~~  
9 ~~(\$7,500.00)~~ fifteen thousand dollars (\$15,000.00) shall be  
10 made by competitive sealed bidding when the configuration or  
11 performance specifications, or both, are sufficiently  
12 designed to permit award on the basis of the lowest evaluated  
13 price as determined in accordance with objective, measurable  
14 criteria set forth in the invitation for bids, and when  
15 available sources, the time and place of performance, and  
16 other conditions are appropriate for the use of competitive  
17 sealed bidding;

18

19           (B) ~~Whenever the administrator determines in~~  
20 ~~writing that~~ If the use of competitive sealed bidding is not  
21 feasible or practical, the principal representative shall,  
22 except as otherwise provided in this subparagraph, submit a  
23 written determination to the department. If approved by the

1 department, contracts for supplies or services may be made by  
2 competitive negotiation. An elected state official may ~~also~~  
3 contract for supplies or services for his office by  
4 competitive negotiation without department approval if the  
5 contract is for ~~twenty thousand dollars (\$20,000.00)~~  
6 twenty-five thousand dollars (\$25,000.00) or less and ~~he the~~  
7 elected state official determines that the use of competitive  
8 sealed bidding is not feasible or practical;

9  
10 (C) Contracts may be made by noncompetitive  
11 negotiation only when competition is not feasible, as  
12 determined in writing ~~prior to award by the administrator a~~  
13 principal representative and approved by the governor or his  
14 designee, except as otherwise provided in this subparagraph.  
15 An elected state official may ~~also~~ contract for supplies or  
16 services for his office by noncompetitive negotiation without  
17 the approval of the governor or the governor's designee if  
18 the contract is for ~~twenty thousand dollars (\$20,000.00)~~  
19 twenty-five thousand dollars (\$25,000.00) or less and ~~he the~~  
20 elected state official determines that competition is not  
21 feasible;

22

1                   (D) ~~Bids or~~ Contracts for contractual  
2 services, consulting services, and special projects and  
3 services, for the purpose of hiring professionals,  
4 consultants or contracted services shall be approved as  
5 follows:

6  
7                   (I) Contracts by an agency in an amount  
8 exceeding one thousand five hundred dollars (\$1,500.00), ~~by~~  
9 ~~an agency but not to exceed fifteen thousand dollars~~  
10 ~~(\$15,000.00),~~ require the approval of the ~~governor or his~~  
11 ~~designee principal representative or the principal~~  
12 representative's designee prior to state commitment;

13  
14                   (II) Contracts by an agency in an amount  
15 exceeding fifteen thousand dollars (\$15,000.00) require the  
16 approval of the governor or the governor's designee prior to  
17 state commitment, except as provided in subdivision (III) of  
18 this subparagraph;

19  
20                   (III) Contracts by an elected state  
21 official shall not require the approval of the governor or  
22 the governor's designee prior to state commitment.

23

1                   (E) Agencies shall be authorized to make  
2 small purchases in accordance with rules adopted by the  
3 department. The rules shall include small purchase  
4 procedures which authorize agencies to procure supplies ~~or~~  
5 ~~services~~ not exceeding ~~one thousand five hundred dollars~~  
6 ~~(\$1,500.00)~~ two thousand five hundred dollars (\$2,500.00), or  
7 such higher amount established by the department, but not to  
8 exceed ~~seven thousand five hundred dollars (\$7,500.00)~~  
9 fifteen thousand dollars (\$15,000.00), without compliance  
10 with this paragraph and without prior approval of the  
11 department;

12  
13                   (F) This paragraph shall not apply to the  
14 procurement by the department of corrections of raw materials  
15 used in a correctional industries program to manufacture  
16 goods or to provide services under W.S. 7-16-206(a)(i), the  
17 procurement of goods or services from the department of  
18 corrections under W.S. 7-16-206(a)(i) when the goods or  
19 services produced are not available from other Wyoming  
20 manufacturers or service providers, the procurement of  
21 professional services under W.S. 9-2-1027 through 9-2-1033,  
22 the procurement of capital construction projects under W.S.  
23 9-2-3004 and 9-2-3006 nor to purchases of feed by the game

1 and fish department for winter elk ranges. Subparagraph (E)  
2 of this paragraph shall not apply to the procurement of  
3 services or supplies by the offices of state elected  
4 officials; ~~Subparagraph (D) of this paragraph shall not~~  
5 ~~apply to the procurement of services by the offices of state~~  
6 ~~elected officials if the contract is for twenty thousand~~  
7 ~~dollars (\$20,000.00) or less;~~

8

9 (xix) Lease all property for the state in  
10 accordance with rules of the state building commission.  
11 Leasing of property by the state shall be conducted on a bid  
12 and proposal basis with advertising of space needs and square  
13 footage in community or local newspapers. Leasing contracts  
14 may be entered into by noncompetitive negotiation only if:

15

16 (A) The administrator of the department  
17 determines in writing that competitive bidding is not  
18 feasible; or

19

20 (k) Each elected state official shall report annually  
21 by October 31, to the joint appropriations ~~interim~~ committee  
22 a list of all contracts entered into by the elected state  
23 official during the previous fiscal year for supplies or

1 services, if the contract was not awarded by competitive  
2 sealed bidding. ~~and the administrator did not determine in~~  
3 ~~writing that the use of competitive sealed bidding was not~~  
4 ~~feasible or practical.~~ The report shall also include a list  
5 of all contracts entered into by the elected state official  
6 for contractual services, consulting services or special  
7 projects and services if the contract was not approved by the  
8 governor or his designee.

9

10 **9-2-3001. State construction department created;**  
11 **definitions.**

12

13 (a) There is created the state construction department.

14

15 (b) As used in this article:

16

17 (i) "Agency" means any school district, state  
18 office, department, board, council, commission, separate  
19 operating agency, institution or other instrumentality or  
20 operating unit of the state excluding the University of  
21 Wyoming, the Wyoming business council and the Wyoming  
22 department of transportation. "Agency" shall include a  
23 Wyoming community college if the community college is

1 conducting a capital construction project using state funds  
2 that requires approval by the community college commission  
3 and authorization by the legislature under W.S. 21-18-205(g);  
4

5 (ii) "Capital construction project" means new  
6 construction, demolition, renovation and capital renewal of  
7 or to any public building or facility and any other public  
8 improvement necessary for the public building or facility,  
9 major maintenance as defined in W.S. 16-6-101(a)(v) and major  
10 building and facility repair and replacement as defined in  
11 W.S. 21-15-109(a)(iii);  
12

13 (iii) "Competitive negotiation" means to  
14 negotiate for a contract through a request for proposals  
15 process or any other similar competitive selection process;  
16

17 (iv) "Department" means the state construction  
18 department;  
19

20 (v) "Informalities or irregularities in any bid"  
21 includes:  
22

23 (A) Ambiguity as to any part of a bid;

1

2

(B) A missing unit bid price;

3

4

5

(C) An erasure or change in a unit bid price  
not initialed in ink by the bidder.

6

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**9-2-3004. Duties of the department.**

19

20

(c) The department shall:

21

22

23

(i) Review and make recommendations to the  
governor concerning capital construction budget requests made



1 by the state building commission, school facilities  
2 commission, the University of Wyoming, community college  
3 commission and any ~~state~~ agency;

4  
5 (ii) Adopt rules governing procurement for capital  
6 construction ~~procurement policies and standards and ensure~~  
7 ~~compliance with the policies and standards by state agencies~~  
8 ~~and school districts using any state funds for capital~~  
9 ~~construction~~ projects pursuant to W.S. 9-2-3006. Wyoming  
10 community colleges shall adhere to the rules for any capital  
11 construction project using state funds that requires approval  
12 by the community college commission and authorization by the  
13 legislature under W.S. 21-18-205(g). The University of  
14 Wyoming ~~and Wyoming community colleges~~ may adhere to the  
15 ~~standards and policies~~ rules to the extent feasible, as  
16 determined by the university. ~~or affected college.~~ The  
17 university and Wyoming community colleges shall adhere to any  
18 other capital construction requirement specified by law;

19  
20 (iii) For the procurement of ~~construction of~~  
21 ~~public projects, facilities or structures~~ capital  
22 construction projects, be authorized to accept the  
23 recommendations of agencies on the award or rejection and

1 readvertisement of bids based upon the qualifications and  
2 responsibilities of bidders;

3

4 (iv) Oversee bonding for the procurement of  
5 capital construction projects. Bidders shall provide a bond  
6 or other form of guarantee satisfactory to the state of  
7 Wyoming as hereafter provided:

8

9 (A) A bid bond or other form of bid guarantee  
10 satisfactory to the state may be required in an amount equal  
11 to ten percent (10%) of the aggregate amount of the bid or  
12 contract when a contract to be awarded under the solicitation  
13 is expected to exceed ~~one thousand five hundred dollars~~  
14 ~~(\$1,500.00)~~ one hundred fifty thousand dollars (\$150,000.00).

15 The bond may be provided by a surety company authorized to do  
16 business in the state of Wyoming;

17

18 **16-6-119. State construction; right to reject bids or**  
19 **responses; qualifications of bidders and respondents.**

20

21 Every state agency, board, commission, department or  
22 institution shall be authorized to determine the  
23 qualifications and responsibilities of bidders or respondents

1 on contracts for the construction, major maintenance or  
2 renovation of a public project, facility or structure ~~using~~  
3 ~~standard forms and procedures adopted by the department of~~  
4 ~~administration and information,~~ and may ~~recommend that the~~  
5 ~~department of administration and information~~ reject any or  
6 all bids or responses for which it solicits based on the  
7 qualifications and responsibilities of bidders and  
8 respondents and readvertise for bids or responses.

9

10 **21-3-110. Duties of boards of trustees.**

11

12 (a) The board of trustees in each school district  
13 shall:

14

15 (viii) Obtain competitive bids when any purchase  
16 of insurance, supplies or materials other than textbooks  
17 costing more than ten thousand dollars (\$10,000.00) and less  
18 than twenty-five thousand dollars (\$25,000.00) is  
19 contemplated unless precluded by other regulation or statute.

20 If the amount of the purchase of insurance, supplies or  
21 materials other than textbooks is equal to or exceeds  
22 twenty-five thousand dollars (\$25,000.00), a call for bids  
23 shall be published at least once in a newspaper of general

1 circulation in the district and on the state procurement  
2 website, as defined in W.S. 9-2-3001(b)(vii). ~~When any school~~  
3 ~~building is to be built costing fifty thousand dollars~~  
4 ~~(\$50,000.00) or more or when any repairs, additions or~~  
5 ~~improvements costing fifty thousand dollars (\$50,000.00) or~~  
6 ~~more are to be made to any school building, facility or other~~  
7 ~~district property, the board shall obtain competitive bids~~  
8 ~~and publish a call for bids in a newspaper of general~~  
9 ~~circulation in the state at least once each week for two (2)~~  
10 ~~consecutive weeks.~~ All contracts for capital construction  
11 projects shall be let in accordance with W.S. 9-2-3004 and  
12 9-2-3006. The district shall reserve the right to reject any  
13 and all bids and to waive irregularities and informalities in  
14 ~~the bidding~~ any bid, as defined in W.S. 9-2-3001(b)(v). No  
15 contract shall be divided for the purpose of avoiding this  
16 paragraph. Items for which bids must be obtained may be  
17 described in the published call for bids by stating general  
18 requirements and making detailed specifications available to  
19 prospective bidders at the district's administrative  
20 headquarters. ~~The requirements of this paragraph shall not~~  
21 ~~apply to the procurement of professional services of~~  
22 ~~architects, engineers or surveyors when the board seeks to~~

1 ~~procure professional services pursuant to W.S. 9-2-1027~~  
2 ~~through 9-2-1033;~~

3

4 **21-15-118. Building and facility construction and**  
5 **renovation projects.**

6

7 (c) The projects shall be managed and all necessary  
8 contracts related to the projects shall proceed in accordance  
9 with rules adopted pursuant to W.S. 9-2-3004(c)(ii) and  
10 commission rules and regulations promulgated and adopted  
11 pursuant to W.S. 21-15-114(a)(xv).

12

13 **21-17-204. Additional powers and duties; sectarian or**  
14 **partisan instruction or test prohibited.**

15

16 (b) The board of trustees shall adopt university  
17 regulations consistent with the requirements of W.S. 9-2-3006  
18 for capital construction projects let by the University of  
19 Wyoming.

20

21 **24-2-108. Road and bridge construction.**

22

1 All road and bridge construction work, any part of the cost  
2 of which is paid from the state highway fund, shall be  
3 performed in accordance with the plans and specifications  
4 prepared by the director of the department of transportation  
5 or the chief engineer and approved by the commission, and  
6 shall be performed by or under contracts awarded by the  
7 commission. The director with the assistance of the chief  
8 engineer shall have complete charge, including expenditures  
9 for roads now in existence, or in the future to be  
10 constructed, which are part of state highway systems which  
11 are located within or partially within the national forests'  
12 boundaries. All improvements costing more than ~~two hundred~~  
13 ~~thousand dollars (\$200,000.00)~~ two hundred seventy-five  
14 thousand dollars (\$275,000.00) shall be constructed under  
15 contracts awarded after public notice to the lowest  
16 responsible bidder determined qualified by the transportation  
17 commission of Wyoming which is given the power to determine  
18 the qualifications and responsibilities of bidders. The  
19 commission may reject any or all bids and readvertise for  
20 bids. Improvements costing ~~less than forty thousand dollars~~  
21 ~~(\$40,000.00)~~ sixty thousand dollars (\$60,000.00) or less may  
22 be constructed by the commission upon force account, with its  
23 own forces or under contract, as the commission shall

1 determine. A state highway construction job to be completed  
2 within any calendar year period and to cost more than ~~forty~~  
3 ~~thousand dollars (\$40,000.00)~~ sixty thousand dollars  
4 (\$60,000.00) shall not be constructed by department of  
5 transportation forces in sections or parcels so as to come  
6 within the ~~forty thousand dollars (\$40,000.00)~~ sixty thousand  
7 dollars (\$60,000.00) limitation. Contracts may be entered  
8 into with railroad companies for the construction of grade  
9 separation structures at actual cost under terms and  
10 conditions approved by the commission. Whenever an emergency  
11 arises requiring immediate expenditure of funds for the  
12 repair or rebuilding of bridges, approaches to bridges and  
13 any roadway, when the bridges, approaches to bridges or  
14 roadway are required to be rebuilt immediately and in such  
15 short time that in the judgment of the commission the people  
16 would be seriously inconvenienced in waiting the regular  
17 period for advertising for bids, the commission may enter  
18 into contract for any building or rebuilding of bridges,  
19 approaches or roadway without advertising for the letting of  
20 any contract, provided the amount of the contract shall not  
21 exceed one million dollars (\$1,000,000.00) and provided the  
22 commission requests proposals from at least two (2)  
23 contractors capable of performing the emergency construction

1 or repair. The commission shall adopt general rules and  
2 regulations for the publication of notice to bidders, the  
3 awarding of contracts, and for determining the qualifications  
4 and responsibilities of bidders.

5

6 **Section 3.**

7

8 (a) The state construction department shall adopt  
9 emergency rules necessary to implement this act on or before  
10 October 1, 2020 and final rules to implement this act on or  
11 before March 1, 2021.

12

13 (b) The University of Wyoming board of trustees shall  
14 adopt emergency rules necessary to implement this act on or  
15 before October 1, 2020 and final rules to implement this act  
16 on or before March 1, 2021.

17

18 **Section 4.** This act shall apply only to procurement  
19 initiated on or after the effective date of this section.

20

21 **Section 5.**

22



1           (a) Except as provided in subsection (b) of this  
2 section, this act is effective July 1, 2020.

3

4           (b) Section 5 of this act is effective immediately upon  
5 completion of all acts necessary for a bill to become law as  
6 provided by Article 4, Section 8 of the Wyoming Constitution.

7

8

(END)