

HOUSE BILL NO. HB0051

Professional services procurement-amendments.

Sponsored by: Joint Appropriations Committee

A BILL

for

1 AN ACT relating to professional services procurement;
2 renumbering and amending provisions related to the
3 procurement of professional architectural, engineering and
4 land surveying services; modifying applicability of resident
5 firm selection requirements; specifying duties of the state
6 construction department; making conforming amendments;
7 requiring rulemaking; and providing for effective dates.

8

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

10

11 **Section 1.** W.S. 9-2-1016(b)(iv)(F), 9-2-3004(c) by
12 creating a new paragraph (ix), 9-12-104(a)(xii),
13 16-6-1001(b), 21-3-110(a) by creating a new paragraph
14 (xxxvii), 21-17-204 by creating a new subsection (b),
15 21-18-303 by creating a new subsection (c) and 24-2-108 are
16 amended to read:

1

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

3

4 (b) For the purpose of this subsection the term
5 "agencies" does not include the University of Wyoming,
6 community college districts, or school districts. It does not
7 include the department of transportation except as to
8 paragraphs (xi), (xii) and (xiii) of this subsection. The
9 department through the general services division shall:

10

11 (iv) Adopt standard forms and procedures providing
12 that bids or contracts for supplies or services shall be
13 awarded through the use of competitive sealed bidding,
14 competitive negotiation, noncompetitive negotiation or small
15 purchase procedures as hereafter provided:

16

17 (F) This paragraph shall not apply to the
18 procurement by the department of corrections of raw materials
19 used in a correctional industries program to manufacture
20 goods or to provide services under W.S. 7-16-206(a)(i), the
21 procurement of goods or services from the department of
22 corrections under W.S. 7-16-206(a)(i) when the goods or
23 services produced are not available from other Wyoming

1 manufacturers or service providers, the procurement of
2 professional services under W.S. ~~9-2-1027 through 9-2-1033~~
3 9-23-101 through 9-23-107, nor to purchases of feed by the
4 game and fish department for winter elk ranges. Subparagraph
5 (E) of this paragraph shall not apply to the procurement of
6 services or supplies by the offices of state elected
7 officials. Subparagraph (D) of this paragraph shall not apply
8 to the procurement of services by the offices of state elected
9 officials if the contract is for twenty thousand dollars
10 (\$20,000.00) or less;

11

12 **9-2-3004. Duties of the department.**

13

14 (c) The department shall:

15

16 (ix) Administer the Professional Architectural,
17 Engineering and Land Surveying Services Procurement Act.

18

19 **9-12-104. General powers and duties of the council.**

20

21 (a) Except as otherwise limited by this act, the
22 council may:

23

1 (xii) Engage the services of consultants on a
2 contract basis for rendering professional, financial and
3 technical assistance and advice, including for studies and
4 investigation likely to lead to business development. The
5 procurement of the professional services of architects,
6 engineers and surveyors shall be in accordance with W.S.
7 9-23-105(f) through (h) and 9-23-106(g);

8
9 **16-6-1001. Capital construction projects restrictions;**
10 **preference requirements; waivers.**

11
12 (b) No funds subject to this section shall be expended
13 unless the contracting agency has submitted a plan to the
14 governor which promotes the employment of responsible Wyoming
15 resident design firms, including professional architectural
16 and engineering services as defined by W.S. ~~9-2-1028(a)(v)~~
17 9-23-102(a)(v), in the planning and design phases of
18 facilities funded with monies subject to this section. The
19 plans shall allow for partnerships between responsible
20 Wyoming design firms, including professional architectural
21 and engineering services, and nonresident firms when
22 necessary to secure specialized services required for a
23 project. The contracting agency shall evaluate and consider

1 overall qualifications, residency, fee proposal, past
2 performance and level of services in the final decisions.

3

4 **21-3-110. Duties of boards of trustees.**

5

6 (a) The board of trustees in each school district
7 shall:

8

9 (xxxvii) Procure the professional services of
10 architects, engineers and surveyors in accordance with W.S.
11 9-23-101 through 9-23-107.

12

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

16

17 (b) The board of trustees shall procure the
18 professional services of architects, engineers and surveyors
19 in accordance with W.S. 9-23-105(f) through (h) and
20 9-23-106(g).

21

22 **21-18-303. District board generally; powers; board**
23 **approved additional mill levy.**

1

2 (c) The community college district board shall procure
3 the professional services of architects, engineers and
4 surveyors in accordance with W.S. 9-23-105(f) through (h) and
5 9-23-106(g).

6

7 **24-2-108. Road and bridge construction; professional**
8 **services procurement.**

9

10 (a) All road and bridge construction work, any part of
11 the cost of which is paid from the state highway fund, shall
12 be performed in accordance with the plans and specifications
13 prepared by the director of the department of transportation
14 or the chief engineer and approved by the commission, and
15 shall be performed by or under contracts awarded by the
16 commission. The director with the assistance of the chief
17 engineer shall have complete charge, including expenditures
18 for roads now in existence, or in the future to be
19 constructed, which are part of state highway systems which
20 are located within or partially within the national forests'
21 boundaries. All improvements costing more than two hundred
22 thousand dollars (\$200,000.00) shall be constructed under
23 contracts awarded after public notice to the lowest

1 responsible bidder determined qualified by the transportation
2 commission of Wyoming which is given the power to determine
3 the qualifications and responsibilities of bidders. The
4 commission may reject any or all bids and readvertise for
5 bids. Improvements costing less than forty thousand dollars
6 (\$40,000.00) may be constructed by the commission upon force
7 account, with its own forces or under contract, as the
8 commission shall determine. A state highway construction job
9 to be completed within any calendar year period and to cost
10 more than forty thousand dollars (\$40,000.00) shall not be
11 constructed by department of transportation forces in
12 sections or parcels so as to come within the forty thousand
13 dollars (\$40,000.00) limitation. Contracts may be entered
14 into with railroad companies for the construction of grade
15 separation structures at actual cost under terms and
16 conditions approved by the commission. Whenever an emergency
17 arises requiring immediate expenditure of funds for the
18 repair or rebuilding of bridges, approaches to bridges and
19 any roadway, when the bridges, approaches to bridges or
20 roadway are required to be rebuilt immediately and in such
21 short time that in the judgment of the commission the people
22 would be seriously inconvenienced in waiting the regular
23 period for advertising for bids, the commission may enter

1 into contract for any building or rebuilding of bridges,
2 approaches or roadway without advertising for the letting of
3 any contract, provided the amount of the contract shall not
4 exceed one million dollars (\$1,000,000.00) and provided the
5 commission requests proposals from at least two (2)
6 contractors capable of performing the emergency construction
7 or repair. The commission shall adopt general rules and
8 regulations for the publication of notice to bidders, the
9 awarding of contracts, and for determining the qualifications
10 and responsibilities of bidders.

11

12 (b) The commission shall procure the professional
13 services of architects, engineers and surveyors in accordance
14 with W.S. 9-23-105(f) through (h) and 9-23-106(g).

15

16 **Section 2.** W.S. 9-2-1027 through 9-2-1033 as 9-23-101
17 through 9-23-107 are amended and renumbered to read:

18

19

CHAPTER 23

20

PROFESSIONAL ARCHITECTURAL, ENGINEERING AND LAND SURVEYING

21

SERVICES PROCUREMENT ACT

22

23

~~9-2-1027~~ 9-23-101. **Short title.**

1

2 This act is known and may be cited as the "Professional
3 Architectural, Engineering and Land Surveying Services
4 Procurement Act".

5

6 ~~9-2-1028~~ 9-23-102. **Definitions.**

7

8 (a) As used in this act:

9

10 (i) "Agency" means any school district, state
11 office, department, board, council, commission, separate
12 operating agency, institution or other ~~operating entity~~
13 instrumentality or operating unit of the state excluding,
14 ~~except as otherwise provided in W.S. 9-2-1031(f) and~~
15 ~~9-2-1032(g)~~, the University of Wyoming, community college
16 districts, the Wyoming business council and the Wyoming
17 department of transportation;

18

19 (ii) "Department" means the state ~~department of~~
20 ~~administration and information~~ construction department;

21

22 (iii) "Firm" means an individual, corporation,
23 partnership, business trust, association, firm or any other

1 legal entity permitted by law to practice in a specified
2 profession;

3

4 (iv) "Principal representative" means the
5 governing board of ~~a school district, department, institution~~
6 ~~or an~~ agency or its designated representative, or, if there
7 is no governing board, the executive head of ~~a department,~~
8 ~~institution or an~~ agency;

9

10 (v) "Professional services" means:

11

12 (A) The practice of architecture pursuant to
13 W.S. 33-4-101 through 33-4-117;

14

15 (B) The practice of professional engineering
16 or professional land surveying pursuant to W.S. 33-29-201
17 through 33-29-801.

18

19 (vi) "Resident firm" means a firm that:

20

21 (A) Possesses a physical office within the
22 state that is staffed by individuals with professional and
23 technical expertise who are employed in the state; and

1

2 (B) Certifies in the firm's current statement
3 of qualifications or application that if selected for the
4 project the percentage of ~~the contract costs for~~ professional
5 services specified in this subparagraph shall be performed by
6 individuals or consultants employed in the state who will
7 perform their labor or professional services provided under
8 the contract within the boundaries of the state. The
9 individuals who will perform the professional services shall
10 possess the professional and technical qualifications
11 necessary to perform the work required by the contract. The
12 following percentages shall apply to this subparagraph:

13

14 (I) For any projects with ~~project~~
15 ~~contract costs~~ negotiated fees for professional services in
16 an amount equal to ~~twenty million dollars (\$20,000,000.00)~~
17 one million five hundred thousand dollars (\$1,500,000.00) or
18 less - fifty percent (50%) of the ~~contract costs~~ professional
19 services provided under the firm's contract;

20

21 (II) For ~~capital construction~~ any
22 projects with ~~construction contract costs~~ negotiated fees for
23 professional services in an amount greater than ~~twenty~~

1 ~~million dollars (\$20,000,000.00)~~ one million five hundred
2 thousand dollars (\$1,500,000.00) but less than ~~forty million~~
3 ~~dollars (\$40,000,000.00)~~ three million dollars
4 (\$3,000,000.00) - forty percent (40%) of the ~~contract costs~~
5 professional services provided under the firm's contract;
6

7 (III) For ~~capital construction~~ any
8 projects with ~~construction contract costs~~ negotiated fees for
9 professional services in an amount equal to ~~forty million~~
10 ~~dollars (\$40,000,000.00)~~ three million dollars
11 (\$3,000,000.00) or more - thirty percent (30%) of the ~~contract~~
12 ~~costs~~ professional services provided under the firm's
13 contract.
14

15 (vii) "Negotiated fee" means the fee specified in
16 a written contract for professional services entered into in
17 accordance with W.S. 9-23-106;
18

19 (viii) "State procurement website" means a website
20 established and maintained by the state that the department
21 designates to host information and notices related to
22 procurement under this act;
23

1 ~~(vii)~~(ix) "This act" means W.S. ~~9-2-1027 through~~
2 ~~9-2-1033~~9-23-101 through 9-23-107.

3

4 ~~9-2-1029~~9-23-103. **General duties.**

5

6 (a) The department shall:

7

8 (i) Develop and maintain approved lists of
9 qualified architects, engineers and land surveyors for
10 selection under this act; and

11

12 (ii) Develop and administer notification
13 procedures for obtaining professional services under this
14 act.

15

16 ~~9-2-1030~~9-23-104. **Qualification procedures; notice.**

17

18 (a) Any firm desiring to provide professional services
19 to an agency, shall ~~annually~~ submit to the department ~~and or~~
20 the agency a detailed statement of qualifications and
21 performance data, and any other information required by the
22 department or the agency. Each firm shall submit the statement
23 not less than every two (2) years. The department or the

1 agency may request the firm to update its statement before
2 submission in order to reflect changed conditions in the
3 status of the firm.

4
5 (b) ~~If professional services in an amount exceeding~~
6 ~~twenty five thousand dollars (\$25,000.00) are required, the~~
7 ~~department or the agency shall notify all qualified~~
8 ~~architects, engineers and land surveyors of record who have~~
9 ~~submitted an annual statement of qualifications and~~
10 ~~performance data. In addition if professional services in an~~
11 ~~amount exceeding fifty thousand dollars (\$50,000.00) are~~
12 ~~required~~ For any professional services fee estimated by the
13 agency to exceed fifty thousand dollars (\$50,000.00), the
14 agency or the department shall give notice ~~in a newspaper of~~
15 ~~general circulation in the state at least once each week for~~
16 of the need for professional services for not less than two
17 (2) consecutive weeks on the state procurement website prior
18 to initiation of selection procedures in accordance with W.S.
19 ~~9-2-1031-9-23-105~~. All notifications under this subsection
20 shall contain a general description of the proposed project,
21 and shall indicate the procedures by which interested firms
22 may apply for consideration for a contract to provide
23 professional services for the proposed project.

1

2 ~~9-2-1031~~9-23-105. Selection procedures; emergency
3 waiver.

4

5 (a) For each proposed project, the principal
6 representative of the agency for which the project is proposed
7 shall evaluate current statements of qualifications and
8 performance data of firms on file with the department or the
9 agency, together with any applications submitted by other
10 qualified firms, and shall select in accordance with
11 subsection (f) of this section not less than three (3) firms
12 considered qualified to perform the required professional
13 services. The agency shall provide a complete description of
14 the work to the firms selected. These firms shall submit an
15 unpriced proposal to do the work.

16

17 (b) In addition to the requirements of subsection (a)
18 of this section, for any professional services fee estimated
19 by the agency to exceed fifty thousand dollars (\$50,000.00),
20 the principal representative shall interview not less than
21 three (3) firms selected from those which have submitted
22 proposals to do the work. The interview ~~shall be recorded and~~
23 may include discussion of each firm's projections of project

1 costs, qualifications, approaches to the project, ability to
2 furnish required professional services, use of alternative
3 methods for furnishing required professional services and an
4 estimated fee based on the agency's description of the work.
5 The agency shall keep a record of the interview. The
6 estimated fee, if requested by the agency, may be used as a
7 basis, along with the ~~qualifications listed in subsection (a)~~
8 considerations and requirements of subsection (f) of this
9 section, for selection by the principal representative of the
10 most qualified firm for contract negotiations. If unsatisfied
11 with the results of such interviews, the principal
12 representative may select not less than three (3) additional
13 firms for interviews as provided by subsection (a) of this
14 section.

15
16 (c) In addition to the requirements of subsection (a)
17 of this section, for any professional services fee estimated
18 by the agency to be fifty thousand dollars (\$50,000.00) or
19 less, the principal representative shall select three (3)
20 firms from which a project specific submittal shall be
21 requested. The information provided by the firm ~~shall~~may
22 include an estimated fee and preliminary scope of services
23 based on the agency's description of the work. The estimated

1 fee, if requested by the agency, may be used as a basis along
2 with ~~the qualifications listed in subsection (a)~~
3 considerations and requirements of subsection (f) of this
4 section, for selection by the principal representative of the
5 most qualified firm for contract negotiations.

6

7 (d) Nothing in this section prohibits a principal
8 representative from determining that fewer than three (3)
9 firms with current statements on file or which have submitted
10 applications before selection are qualified to perform the
11 required professional services. If a principal representative
12 makes that determination, subsections (b) and (c) of this
13 section apply with respect to the firms the principal
14 representative considers qualified.

15

16 (e) The department, in conjunction with the agencies,
17 shall adopt rules and regulations necessary to implement the
18 selection process provided by this section.

19

20 (f) Every agency, the University of Wyoming, each
21 community college district, the Wyoming business council and
22 the Wyoming department of transportation shall base selection

1 of a firm for professional services in accordance with the
2 following:

3

4 (i) Except as provided in paragraph (ii) of this
5 subsection and subsection (g) of this section, the agency,
6 the University of Wyoming, each community college district,
7 the Wyoming business council and the Wyoming department of
8 transportation shall select firms that are resident firms as
9 defined by this act. Consideration between ~~these~~ firms shall
10 be based upon:

11

12 (A) The ability of professional personnel;

13

14 (B) Past performance;

15

16 (C) Ability to meet time requirements;

17

18 (D) Location;

19

20 (E) Current and projected work loads;

21

22 (F) The volume of work previously awarded to
23 the firm by the agency;

1

2

(G) The equitable distribution of contracts among the firms considered qualified.

4

5

(ii) Nonresident firms may be selected if less than three (3) no firms on file, together with any applications submitted for the project, are resident firms as defined by this act or if the resident firms are determined not qualified by the agency, the University of Wyoming, the community college district, the Wyoming business council or the Wyoming department of transportation. Consideration of qualified nonresident firms shall be based upon the considerations listed in subparagraphs (i)(A) through (G) of this subsection.†

15

16

17

18

19

20

21

22

23

(g) The provisions of this ~~section giving preference to~~ act requiring selection of resident firms shall not apply ~~to~~

1 ~~the extent any proposed project will utilize funds, the~~
2 ~~receipt of which is conditioned to prohibit a residency~~
3 ~~preference if:~~

4
5 (i) Any part of the proposed project is to be paid
6 or has the potential to be paid with funds from the federal
7 government or other nonstate source; and

8
9 (ii) The federal government or the other nonstate
10 source has applicable requirements concerning residency
11 preferences that are inconsistent with this act.

12
13 (h) Whenever an emergency arises requiring professional
14 services, the principal representative of an agency, the
15 University of Wyoming, the community college district, the
16 Wyoming business council and the Wyoming department of
17 transportation may waive any applicable requirement of W.S.
18 9-23-104 and this section if the requirement endangers the
19 health, welfare or safety of the public.

20
21 ~~9-2-1032~~ 9-23-106. **Contract procedure.**

22

1 (a) After completing the selection process, the
2 principal representative shall negotiate a written contract
3 with the selected firm as determined by W.S. ~~9-2-1031~~9-23-105
4 for the provision of services. The principal representative
5 shall consider the estimated value, scope, complexity and
6 professional nature of the services to be rendered when
7 determining a reasonable compensation.

8
9 (b) If the principal representative is unable to
10 negotiate a satisfactory contract with the selected firm at
11 a price he determines fair and reasonable, negotiations with
12 that firm shall be terminated. The principal representative
13 shall then begin negotiations with the firm ranked second in
14 order of preference pursuant to W.S. ~~9-2-1031~~9-23-105. If
15 the principal representative fails to negotiate a contract
16 with the second ranked firm, he shall terminate negotiations.
17 The principal representative shall then begin negotiations
18 with the firm ranked third in order of preference.

19
20 (c) If the principal representative is unable to
21 negotiate a satisfactory contract with any of the selected
22 firms, he shall:

23

1 (i) Select additional firms in order of their
2 competence and qualifications and continue negotiations in
3 accordance with this section and W.S. ~~9-2-1031~~9-23-105,
4 until a contract is reached; or

5

6 (ii) Review the contract under negotiation to
7 determine the possible cause for failure to achieve a
8 negotiated contract.

9

10 (d) Each contract for professional services entered
11 into by the principal representative shall contain a
12 prohibition against gratuities, kickbacks and contingent
13 fees. The ~~architect, registered land surveyor or professional~~
14 ~~engineer~~person providing professional services shall certify
15 ~~under oath~~ that he has not in any way been involved in any
16 gratuities, kickbacks, or contingent fees in connection with
17 his selection or ultimate performance of ~~this~~the contract.

18

19 (e) Each contract for professional services entered
20 into by the principal representative shall contain a
21 prohibition against payment based upon a percentage of the
22 construction cost.

23

1 (f) This act shall not prohibit continuing contracts
2 between any person providing professional services and any
3 agency.

4
5 (g) ~~Each~~ If selection of a resident firm is required
6 under this act, the contract for professional services
7 entered into by an agency, the University of Wyoming, a
8 community college district, the Wyoming business council or
9 the Wyoming department of transportation shall contain a
10 certification by the resident firm providing professional
11 services that the firm will comply with W.S.
12 ~~9-2-1028(a)(vi)(B)-9-23-102(a)(vi)(B).~~ For purposes of this
13 subsection, agency as defined in this act shall include the
14 University of Wyoming, community college districts, the
15 Wyoming business council and the Wyoming department of
16 transportation when the proposed project is funded in whole
17 or in part with state funds. This subsection shall not be
18 construed to require a firm to comply with W.S.
19 9-23-102(a)(vi)(B) if the proposed project is exempt from
20 residence firm selection by W.S. 9-23-105(g) or if selection
21 of a resident firm is waived in accordance with W.S.
22 9-23-105(h).

23

1 ~~9-2-1033~~9-23-107. Prohibited acts; civil penalty;
2 initiation of action.

3

4 (a) No person, including any agency official or
5 employee, shall:

6

7 (i) In any way be involved in any gratuities,
8 kickbacks, or contingent fees in connection with the
9 selection procedure set forth in this act;

10

11 (ii) If providing professional services, pay any
12 fee, commission, gift or other consideration contingent upon
13 the award of a contract for professional services pursuant to
14 this act.

15

16 (b) Any person violating subsection (a) of this section
17 or ~~subsection (d) of W.S. 9-2-1032~~W.S. 9-2-1032(d) is liable
18 for a penalty not to exceed five thousand dollars (\$5,000.00).
19 The penalty may be recovered in a civil action and damages
20 shall be assessed by the court.

21

22 (c) Any action pursuant to this section shall be
23 initiated in Laramie county by the attorney general.

1

2 **Section 3.** W.S. 9-2-1031(f)(iii) renumbered as
3 9-23-105(f)(iii) by this act is repealed.

4

5 **Section 4.** The state construction department shall
6 adopt rules necessary to implement this act on or before July
7 1, 2020.

8

9 **Section 5.** This act shall apply only to procurement
10 initiated on or after the effective date of this section.

11

12 **Section 6.**

13

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

16

17 (b) Sections 4 and 6 of this act are effective
18 immediately upon completion of all acts necessary for a bill
19 to become law as provided by Article 4, Section 8 of the
20 Wyoming Constitution.

21

22

(END)