

SENATE FILE NO. SF0006

Public works contracting requirements-amendments.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to public works; requiring the adoption of
2 prequalification requirements; allowing the use of
3 equivalent materials or equipment as specified; amending
4 qualification requirements; prohibiting unbalanced unit bid
5 prices; requiring rulemaking; making conforming amendments;
6 and providing for effective dates.

7

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

9

10 **Section 1.** W.S. 9-2-3004(c) by creating a new
11 paragraph (x), 9-2-3006(e)(intro), 15-1-113 by creating a
12 new subsection (t), 16-6-107, 16-6-119, 16-6-120(a),
13 21-3-110(a)(viii), 24-1-132(f) and by creating a new
14 subsection (h) and 41-10-113(a)(xi) are amended to read:

15

16 **9-2-3004. Duties of the department.**

1

2 (c) The department shall:

3

4 (x) Adopt rules for the prequalification of
5 bidders on contracts for public works as provided in W.S.
6 16-6-119(b), excluding those public works under the
7 jurisdiction of the state transportation commission
8 pursuant to W.S. 24-2-108(a) and those public works related
9 to airports pursuant to W.S. 10-3-201(b).

10

11 **9-2-3006. Procurement for capital construction**
12 **projects.**

13

14 (e) Except as otherwise provided in W.S. 16-6-119,
15 each agency and the University of Wyoming are authorized to
16 determine the qualifications and responsibilities of
17 bidders or respondents for capital construction projects
18 but shall reject any bid with improper or missing
19 signatures or bids that lack legible numerical values.
20 Except as otherwise provided in W.S. 16-6-119, each agency
21 and the university may:

22

23 **15-1-113. Contracts for public improvements.**

1

2 (t) The provisions of W.S. 16-6-119 that are
3 applicable to this section and that conflict with the
4 provisions of this section shall control over this section.

5

6 **16-6-107. Wyoming materials preference required in**
7 **public works; exception; other materials requirements.**

8

9 (a) All public works in this state shall be
10 constructed and maintained using materials produced or
11 manufactured in Wyoming if Wyoming materials are suitable
12 and can be furnished in marketable quantities. Preference
13 shall not be granted for materials of an inferior quality
14 to those offered by competitors outside of the state, but a
15 differential of five percent (5%) shall be allowed in cost
16 of materials produced or manufactured in Wyoming.

17

18 (b) Each public entity shall specify performance
19 standards for materials and equipment used in the
20 construction of a public work. The public entity may
21 specify suggested individual brands or manufacturers,
22 provided that similar materials or equipment that meet or

1 exceed specifications shall be accepted as a substitute
2 unless:

3

4 (i) The contracted project is for an existing
5 public work;

6

7 (ii) Substitution of materials or equipment is
8 unworkable; and

9

10 (iii) The specified materials and equipment to
11 be procured are not furniture or movable equipment not
12 available from a Wyoming resident supplier as provided in
13 W.S. 16-6-1001(a)(ii)(A)(II).

14

15 **16-6-119. Contracts for public works; right to reject**
16 **bids or responses; qualifications of bidders and**
17 **respondents.**

18

19 (a) Except as otherwise specified in this section,
20 every public entity shall be authorized to determine the
21 qualifications and responsibilities of bidders or
22 respondents on contracts for public works and may reject
23 any or all bids or responses for which it solicits based on

1 the qualifications and responsibilities of bidders and
2 respondents and readvertise for bids or responses. A public
3 entity that accepts a bid that is not the lowest bid from a
4 responsible, qualified bidder for a public work shall make
5 available to the public its rationale.

6
7 (b) Except for specialty project requirements as
8 determined by rule of a county, city or town, the state
9 transportation commission or the state construction
10 department, each public entity shall accept a bidder or
11 respondent as prequalified for a contract for a public work
12 if the bidder or respondent has been determined to be
13 prequalified for the type of work pursuant to rules
14 promulgated by a county, city or town pursuant to W.S.
15 24-1-132(h), the state transportation commission pursuant
16 to W.S. 24-2-108(a) for road and bridge projects and W.S.
17 10-3-201(b) for airport projects or the state construction
18 department pursuant to W.S. 9-2-3004(c)(x), whichever is
19 applicable to the public work.

20
21 (c) No public entity shall reject a bidder or
22 respondent based solely on the financial strength of the
23 bidder or respondent so long as the bidder or respondent

1 provides sufficient bid, payment or performance bonds
2 through a surety company approved by the public entity.

3
4 (d) No public entity shall accept a bid if it
5 determines that any of the unit bid prices are
6 significantly unbalanced to the potential detriment of the
7 public entity. Successful bidders shall ensure that any
8 schedule of values that is required to be submitted for the
9 project contains similar cost values for similar work.

10
11 **16-6-120. Rulemaking; penalties; enforcement.**

12
13 (a) The department of workforce services shall
14 promulgate rules and regulations as the department
15 determines necessary or convenient to enforce this act
16 except no rules shall be promulgated under this section for
17 the prequalification requirements in W.S. 16-6-119(b).

18
19 **21-3-110. Duties of boards of trustees.**

20
21 (a) The board of trustees in each school district
22 shall:

23

1 (viii) Obtain competitive bids when any purchase
2 of insurance, supplies or materials other than textbooks
3 costing more than twenty-five thousand dollars (\$25,000.00)
4 and less than fifty thousand dollars (\$50,000.00) is
5 contemplated unless precluded by other regulation or
6 statute. If the amount of the purchase of insurance,
7 supplies or materials other than textbooks is equal to or
8 exceeds fifty thousand dollars (\$50,000.00), a call for
9 bids shall be published at least once in a newspaper of
10 general circulation in the district and on the state
11 procurement website, as defined in W.S. 9-2-3001(b)(vii).
12 For any contract for a capital construction project with an
13 estimated value in excess of fifty thousand dollars
14 (\$50,000.00), the board shall publish a call for bids in a
15 newspaper of general circulation in the district at least
16 once each week for two (2) consecutive weeks. All contract
17 for capital construction projects shall be let in
18 accordance with W.S. 9-2-3004 and 9-2-3006 except as
19 provided in this paragraph. Except as otherwise provided in
20 W.S. 16-6-119, the district shall reserve the right to
21 reject any and all bids and to waive irregularities and
22 informalities in any bid, as defined in W.S.
23 9-2-3001(b)(v). No contract shall be divided for the

1 purpose of avoiding this paragraph. Items for which bids
2 must be obtained may be described in the published call for
3 bids by stating general requirements and making detailed
4 specifications available to prospective bidders at the
5 district's administrative headquarters;

6

7 **24-1-132. Contracts for county, city and town bridge**
8 **work; bids; exception.**

9

10 (f) The board of county commissioners, or governing
11 body of the city or town shall award any contract to the
12 lowest responsible bidder. Except as otherwise provided in
13 W.S. 16-6-119, the county commissioners or governing body
14 reserves the right to reject any bid and to waive
15 irregularities and informalities in the bidding. No final
16 payment upon any contract shall be made until the bridge is
17 examined and approved by the professional engineer
18 supervising the construction of the bridge and the payment
19 is approved by the county commissioners or governing body
20 of the city or town or their designees. Within ninety (90)
21 days of the bridge being opened to traffic the board of
22 county commissioners or governing body of the city or town
23 shall notify and provide the design, plans, specifications

1 and load rating for the bridge to the chief engineer of the
2 department of transportation so that the department may
3 comply with national bridge inspection standards.

4

5 (h) The board of county commissioners of every county
6 and the governing body of every city or town shall adopt
7 uniform rules for the prequalification of bidders on
8 contracts for public works as provided in W.S. 16-6-119(b).

9

10 **41-10-113. Powers of district board.**

11

12 (a) For and on behalf of the district the board of
13 any district shall have the following powers:

14

15 (xi) Except as otherwise provided in this act,
16 to enter into contracts and agreements affecting the
17 affairs of the district, including but not limited to
18 contracts with the United States of America and any of its
19 agencies or instrumentalities, and contracts with any
20 municipality or district for the operation of a common or
21 jointly owned project. Any improvement or improvements of
22 any nature made in any district where the entire cost,
23 value or amount of such work including labor and materials

1 shall exceed thirty thousand dollars (\$30,000.00), except
2 such work done by employees of the district with supplies
3 and materials purchased by it as hereinafter provided or
4 except by labor or supplies and materials, or all of such,
5 supplied under agreement with the United States of America,
6 the state of Wyoming, or any federal or state agency,
7 instrumentality or corporation, or other political
8 subdivision, shall be done only under independent contract
9 to be entered into by the district with the lowest
10 responsible bidder submitting the lowest and best bid upon
11 proper terms after due public notice by publication has
12 been given asking for competitive bids. The district shall
13 have the right to reject any and all bids and to waive any
14 irregularity in any bid. Any contract may be let on a lump
15 sum or unit basis. No contract shall be entered into for
16 such work unless the contractor shall give an undertaking
17 with a sufficient surety or sureties approved by the board
18 and in an amount fixed by the board for the faithful
19 performance of the contract. Upon default in the
20 performance of any contract, the proper official may
21 advertise and relet the remainder of the work without
22 further resolution and deduct the cost from the original
23 contract price and recover any excess cost by suit on the

1 original bond, or otherwise. The district shall have the
2 power to make any improvement, or portion thereof, in any
3 district, directly by the officers, agents and employees of
4 the district, with supplies and materials purchased or
5 otherwise acquired therefor. All supplies, materials,
6 equipment, machinery and apparatus purchased by the board
7 for any district (but not by a contractor) costing thirty
8 thousand dollars (\$30,000.00) or more shall be purchased
9 only after notice by publication for competitive bids. The
10 district shall accept the lowest bid, kind, quality and
11 material being equal, but the district shall have the right
12 to reject any and all bids, to waive any irregularity in
13 any bid, and to select a single item from any bid. The
14 provision as to bidding shall not apply to the purchase of
15 patented and manufactured products offered for sale in a
16 noncompetitive market or solely by a manufacturer's
17 authorized dealer. The provisions of W.S. 16-6-119 that
18 apply to this paragraph and that conflict with the
19 provisions of this paragraph shall control;

20

21 **Section 2.** Counties, cities, towns, the state
22 transportation commission and the state construction

1 department shall adopt rules necessary to implement this
2 act on or before July 1, 2021.

3

4 **Section 3.**

5

6 (a) Except as provided in subsection (b) of this
7 section, this act is effective July 1, 2021.

8

9 (b) Sections 2 and 3 of this act are effective
10 immediately upon completion of all acts necessary for a
11 bill to become law as provided by Article 4, Section 8 of
12 the Wyoming Constitution.

13

14 (END)