

ORIGINAL HOUSE
BILL NO. HB0033

ENROLLED ACT NO. 22, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2021 GENERAL SESSION

AN ACT relating to crimes and offenses; providing legislative findings; creating criminal offenses related to interference with public contracts; defining terms; specifying penalties; and providing for an effective date.

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

Section 1. The legislature finds that the cost to the public is increased and the quality of goods, services and construction paid with public funds is decreased when contracts for those goods, services and construction are obtained by any means other than through the independent and non-collusive submission of bids or offers by individual contractors or suppliers, and the evaluation of those bids or offers by the governmental entity is pursuant only to criteria publicly announced in advance.

Section 2. W.S. 6-5-401 through 6-5-408 are created to read:

ARTICLE 4

INTERFERENCE WITH PUBLIC CONTRACTING

6-5-401. Definitions.

(a) As used in this article:

(i) "Governmental entity" means any unit of state or local government or any branch, subdivision or agency thereof or any school district or special district;

(ii) "Kickback" means any money, fee, commission, credit, gift, gratuity, thing of value or compensation of any kind that is provided, directly or

ORIGINAL HOUSE
BILL NO. HB0033

ENROLLED ACT NO. 22, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2021 GENERAL SESSION

indirectly, to any public official, public servant, prime contractor, prime contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract;

(iii) "Prime contractor" means any person who has entered into a public contract;

(iv) "Prime contractor employee" means any officer, partner, employee or agent of a prime contractor;

(v) "Public contract" means any contract for goods, services or construction awarded to any person with or without bid by any governmental entity, regardless of any procedures for the bid or contract process that are required by law;

(vi) "Public officer" means as defined by W.S. 6-5-101(a)(v);

(vii) "Public servant" means as defined by W.S. 6-5-101(a)(vi);

(viii) "Subcontract" means a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining goods, services or construction of any kind under a public contract;

(ix) "Subcontractor" means any person, except for the prime contractor, who offers to furnish or furnishes any goods, services or construction of any kind under a public contract or a subcontract entered into in connection with a public contract. "Subcontractor" shall

ORIGINAL HOUSE
BILL NO. HB0033

ENROLLED ACT NO. 22, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2021 GENERAL SESSION

include any person who offers to furnish or furnishes goods, services or construction to the prime contractor or a higher-tier subcontractor;

(x) "Subcontractor employee" means any officer, partner, employee or agent of a subcontractor.

6-5-402. Bid rigging; penalties; prohibitions.

(a) A person commits bid rigging when he knowingly conspires with any other person who is or would be a competitor to any submitted or not submitted bid to a governmental entity with the intent that the bid submitted or not submitted will result in the award of a public contract to the person or to another person and the person:

(i) Provides the other person or receives from the other person or another person information concerning the price or a material term of any bid that would otherwise not be disclosed to a competitor in an independent, non-collusive submission of bids; or

(ii) Submits a bid that is of such price or other material term that he does not intend the bid to be accepted.

(b) Bid rigging is a felony punishable by imprisonment for not more than five (5) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.

6-5-403. Bid rotating; penalties; prohibitions.

(a) A person commits bid rotating when, pursuant to any collusive scheme, plan or agreement with another, he engages in a pattern of submitting sealed bids to

ORIGINAL HOUSE
BILL NO. HB0033

ENROLLED ACT NO. 22, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2021 GENERAL SESSION

governmental entities with the intent that the award of those bids rotates or is distributed among persons that submit bids on a substantial number of the same or similar public contracts. For purposes of this subsection, a pattern of submitting sealed bids shall include not less than three (3) contract bids within a period of ten (10) years.

(b) Bid rotating is a felony punishable by imprisonment for not more than five (5) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.

6-5-404. Acquisition or disclosure of bidding information by a public servant.

(a) A public servant who knowingly opens a sealed bid at a time or place other than that designated in the invitation to bid or as otherwise provided for by state law or local ordinance, or who knowingly opens a bid outside of the presence of witnesses if required by state law or local ordinance, is guilty of a felony punishable by imprisonment for not more than five (5) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.

(b) Any public servant who knowingly discloses to any interested person any information related to the terms of a sealed bid, except when the information is obtained as provided by law or if the disclosure is necessary to the public servant's responsibilities relating to the bid, is guilty of a felony punishable by imprisonment for not more than five (5) years, a fine of not more than ten thousand dollars (\$10,000.00), or both. This subsection shall not apply to any public servant who makes any disclosure of information related to a sealed bid when that disclosure

ORIGINAL HOUSE
BILL NO. HB0033

ENROLLED ACT NO. 22, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2021 GENERAL SESSION

would otherwise be made available to the public upon request.

(c) This section shall apply only to public contracts for which sealed bids are submitted.

6-5-405. Interference with contract submission and award by a public servant.

(a) A public servant who knowingly conveys, either directly or indirectly and outside of the publicly available official invitation to bid or pre-qualify to bid or solicitation for contracts, any information concerning the specifications for a contract or the identity of any specific potential prime contractors or subcontractors, when disclosure of that information is intended to influence the likelihood of acceptance of a bid or offer, is guilty of a misdemeanor punishable by imprisonment for not more than one (1) year, a fine of not more than one thousand dollars (\$1,000.00), or both. This subsection shall not apply to a public servant who conveys information intended to clarify plans or specifications regarding a public contract where disclosure of that information is also made available to the public upon request.

(b) A public servant who, either directly or indirectly, knowingly informs a bidder or offeror that the bid or offer will be accepted or executed only if specified persons are included as subcontractors is guilty of a felony punishable by imprisonment for not more than five (5) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.

(c) Any public servant who knowingly awards a public contract based on criteria that were not publicly

ORIGINAL HOUSE
BILL NO. HB0033

ENROLLED ACT NO. 22, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2021 GENERAL SESSION

disseminated via an invitation to bid that is published pursuant to law, a pre-bid or pre-qualification conference or any other lawful procedure for soliciting contracts is guilty of a felony punishable by imprisonment for not more than five (5) years, a fine of not more than ten thousand dollars (\$10,000.00), or both. This subsection shall not apply to any public servant who provides a person a copy of the transcript or other summary of any pre-bid or pre-qualification conference where the transcript or summary would otherwise be made available to the public upon request.

(d) This section shall apply only to public contracts for which sealed bids are submitted.

6-5-406. Kickbacks; penalties; civil action.

(a) A person is guilty of providing or accepting kickbacks when he knowingly:

(i) Provides, attempts to provide or offers to provide any kickback;

(ii) Solicits, accepts or attempts to accept any kickback; or

(iii) Includes, either directly or indirectly, the amount of any kickback in the contract price charged by a subcontractor to a prime contractor or a higher-tier subcontractor or includes, either directly or indirectly, in the contract price the amount of any kickback in the contract price charged by a prime contractor to a governmental entity for a public contract.

ORIGINAL HOUSE
BILL NO. HB0033

ENROLLED ACT NO. 22, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2021 GENERAL SESSION

(b) Providing or accepting kickbacks is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000.00), imprisonment for not more than one (1) year, or both.

(c) A governmental entity may file a civil action to recover a civil penalty of two (2) times the amount of each kickback from any person who knowingly engages in conduct prohibited by paragraph (a)(iii) of this section. This subsection shall not be construed to limit any governmental entity from seeking to recover damages as authorized by any other law. A civil action shall not be commenced under this subsection after six (6) years of the later of the date on which:

(i) The conduct establishing the civil action occurred; or

(ii) The governmental entity knew or should have known that the conduct establishing the civil action occurred.

6-5-407. Bribery of an inspector employed by a contractor.

(a) A person commits bribery of an inspector when:

(i) He offers to any person any property or other thing of value with the intent to obtain a wrongful certification or approval of the quality or completion of any goods, services or construction supplied or performed in the course of performing the obligations of a public contract; or

ORIGINAL HOUSE
BILL NO. HB0033

ENROLLED ACT NO. 22, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2021 GENERAL SESSION

(ii) He is employed by a prime contractor or subcontractor to work pursuant to a public contract and he accepts any property or other thing of value knowing that the property or thing of value was intentionally offered for the purpose of influencing the certification or approval of the quality or completion of any goods, services or construction supplied or performed under a subcontract and he issues a wrongful certification.

(b) Bribery of an inspector is a felony punishable by imprisonment for not more than ten (10) years, a fine of not more than five thousand dollars (\$5,000.00), or both.

6-5-408. Prohibitions for bidding.

(a) Any person convicted of any offense under this article or of any substantially similar offense under federal law or the laws of another state shall be barred for three (3) years from the date of conviction from contracting with any governmental entity.

(b) No partnership, company or corporation shall be barred under this section if an employee of the partnership, company or corporation is convicted under this section if the employee is no longer employed by the partnership, company or corporation and the partnership, company or corporation:

(i) Has been found not guilty or the case against the partnership, company or corporation has been dismissed if charged under this section; or

(ii) Demonstrates to the satisfaction of the governmental entity with which it seeks to contract that the employee's offense was not authorized, requested,

ORIGINAL HOUSE
BILL NO. HB0033

ENROLLED ACT NO. 22, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2021 GENERAL SESSION

commanded or performed by a director or officer of the partnership, company or corporation.

Section 3. This act is effective July 1, 2021.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk