

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 41-10-113(a)(xi) are
14 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).

9

10 **9-2-3006. Procurement for capital construction**
11 **projects.**

12

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

21

22 **15-1-113. Contracts for public improvements.**

23

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

4
5 **16-6-107. Wyoming materials preference required in**
6 **public works; exception; other materials requirements.**

7
8 (a) All public works in this state shall be
9 constructed and maintained using materials produced or
10 manufactured in Wyoming if Wyoming materials are suitable
11 and can be furnished in marketable quantities. Preference
12 shall not be granted for materials of an inferior quality
13 to those offered by competitors outside of the state, but a
14 differential of five percent (5%) shall be allowed in cost
15 of materials produced or manufactured in Wyoming.

16
17 (b) Each public entity shall specify reasonable
18 performance standards for materials and equipment used in
19 the construction of a public work. The public entity may
20 specify suggested individual brands or manufacturers,
21 provided that similar materials or equipment that meet or
22 exceed specifications shall be accepted as a substitute
23 unless:

1

2 (i) The contracted project is for an existing
3 public work;

4

5 (ii) Substitution of materials or equipment is
6 unworkable; and

7

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

12

13 **16-6-119. Contracts for public works; right to reject**
14 **bids or responses; qualifications of bidders and**
15 **respondents.**

16

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

1 entity that accepts a bid that is not the lowest bid for a
2 public work shall provide a report in writing to the state
3 construction department or to the state transportation
4 commission, whichever is applicable to the public work.

5
6 (b) Except for specialty project requirements as
7 determined by rule of the state transportation commission
8 or the state construction department, each public entity
9 shall accept a bidder or respondent as prequalified for a
10 contract for a public work if the bidder or respondent has
11 been determined to be prequalified for the type of work
12 pursuant to rules promulgated by the state transportation
13 commission pursuant to W.S. 24-2-108(a) or the state
14 construction department pursuant to W.S. 9-2-3004(c)(x),
15 whichever is applicable to the public work.

16
17 (c) No public entity shall reject a bidder or
18 respondent based solely on the financial strength of the
19 bidder or respondent so long as the bidder or respondent
20 provides sufficient bid, payment or performance bonds
21 through a surety company approved by the public entity.

22

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

7
8 **16-6-120. Rulemaking; penalties; enforcement.**

9
10 (a) The department of workforce services shall
11 promulgate rules and regulations as the department
12 determines necessary or convenient to enforce this act
13 except no rules shall be promulgated under this section for
14 the prequalification requirements in W.S. 16-6-119(b).

15
16 **21-3-110. Duties of boards of trustees.**

17
18 (a) The board of trustees in each school district
19 shall:

20
21 (viii) Obtain competitive bids when any purchase
22 of insurance, supplies or materials other than textbooks
23 costing more than twenty-five thousand dollars (\$25,000.00)

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

1 specifications available to prospective bidders at the
2 district's administrative headquarters;

3

4 **24-1-132. Contracts for county, city and town bridge**
5 **work; bids; exception.**

6

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

1

2 **41-10-113. Powers of district board.**

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

6

7 (xi) Except as otherwise provided in this act,
8 to enter into contracts and agreements affecting the
9 affairs of the district, including but not limited to
10 contracts with the United States of America and any of its
11 agencies or instrumentalities, and contracts with any
12 municipality or district for the operation of a common or
13 jointly owned project. Any improvement or improvements of
14 any nature made in any district where the entire cost,
15 value or amount of such work including labor and materials
16 shall exceed thirty thousand dollars (\$30,000.00), except
17 such work done by employees of the district with supplies
18 and materials purchased by it as hereinafter provided or
19 except by labor or supplies and materials, or all of such,
20 supplied under agreement with the United States of America,
21 the state of Wyoming, or any federal or state agency,
22 instrumentality or corporation, or other political
23 subdivision, shall be done only under independent contract

1 to be entered into by the district with the lowest
2 responsible bidder submitting the lowest and best bid upon
3 proper terms after due public notice by publication has
4 been given asking for competitive bids. The district shall
5 have the right to reject any and all bids and to waive any
6 irregularity in any bid. Any contract may be let on a lump
7 sum or unit basis. No contract shall be entered into for
8 such work unless the contractor shall give an undertaking
9 with a sufficient surety or sureties approved by the board
10 and in an amount fixed by the board for the faithful
11 performance of the contract. Upon default in the
12 performance of any contract, the proper official may
13 advertise and relet the remainder of the work without
14 further resolution and deduct the cost from the original
15 contract price and recover any excess cost by suit on the
16 original bond, or otherwise. The district shall have the
17 power to make any improvement, or portion thereof, in any
18 district, directly by the officers, agents and employees of
19 the district, with supplies and materials purchased or
20 otherwise acquired therefor. All supplies, materials,
21 equipment, machinery and apparatus purchased by the board
22 for any district (but not by a contractor) costing thirty
23 thousand dollars (\$30,000.00) or more shall be purchased

1 only after notice by publication for competitive bids. The
2 district shall accept the lowest bid, kind, quality and
3 material being equal, but the district shall have the right
4 to reject any and all bids, to waive any irregularity in
5 any bid, and to select a single item from any bid. The
6 provision as to bidding shall not apply to the purchase of
7 patented and manufactured products offered for sale in a
8 noncompetitive market or solely by a manufacturer's
9 authorized dealer. The provisions of W.S. 16-6-119 that
10 apply to this paragraph and that conflict with the
11 provisions of this paragraph shall control;
12

13 **Section 2.** The state transportation commission and
14 the state construction department shall adopt rules
15 necessary to implement this act on or before July 1, 2021.
16

17 **Section 3.**

18
19 (a) Except as provided in subsection (b) of this
20 section, this act is effective July 1, 2021.
21

22 (b) Sections 2 and 3 of this act are effective
23 immediately upon completion of all acts necessary for a

1 bill to become law as provided by Article 4, Section 8 of
2 the Wyoming Constitution.

3

4

(END)