

HOUSE BILL NO. HB0186

Alternative construction delivery systems-2.

Sponsored by: Representative(s) Nicholas and Jorgensen

A BILL

for

1 AN ACT relating to the construction and improvement of
 2 public works; authorizing the use of alternate design and
 3 construction delivery methods in awarding contracts for
 4 public improvements under the direction of state and local
 5 government including institutions of higher education,
 6 school districts and other political subdivisions; defining
 7 terms; imposing conditions; conforming statutory provisions
 8 accordingly; and providing for an effective date.

9

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

11

12 **Section 1.** W.S. 16-6-707 through 16-6-710 are created
 13 to read:

14

15 **16-6-707. Construction management alternative**
 16 **delivery method.**

17

1 (a) Construction management delivery negotiations by
2 public entities and construction managers shall be in
3 accordance with residency and preference requirements
4 imposed under W.S. 16-6-101 through 16-6-107.

5

6 (b) Formal requests for proposal for preconstruction
7 or construction services by a construction manager
8 submitted by a public entity shall include but are not
9 limited to:

10

11 (i) Location of the primary place of business;

12

13 (ii) The name and identification of individuals
14 to be assigned to the project;

15

16 (iii) Experience with similar projects;

17

18 (iv) Qualifications;

19

20 (v) Ability to work on the project as a team
21 member;

22

23 (vi) Ability to protect the interests of the
24 public entity during the project;

1

2 (vii) Ability to meet project budgetary and
3 scheduling criteria; and

4

5 (viii) Compliance with W.S. 16-6-102.

6

7 **16-6-708. Design build alternate delivery method.**

8

9 (a) A public entity shall submit a request for
10 qualifications for obtaining candidates for a design build
11 delivery method and shall submit a request for proposal to
12 establish the scope of work, completion time schedule and
13 all other requirements determined to substantially affect
14 the cost and quality of the project. Under this alternate
15 design and construction delivery method, the design builder
16 shall be required to obtain a surety and performance bond.

17

18 (b) Formal requests for proposal for design and
19 construction services under the design build method shall
20 include but not be limited to:

21

22 (i) The location of the primary place of
23 business;

24

1 (ii) The names and identification of individuals
2 to be assigned to the design portion of the contract;

3

4 (iii) The names and identification of
5 individuals to be assigned to the construction portion of
6 the contract;

7

8 (iv) Experience with similar projects;

9

10 (v) Qualifications;

11

12 (vi) Ability to protect the interests of the
13 public entity;

14

15 (vii) Ability to meet project budget and time
16 schedule requirements;

17

18 (viii) Compliance with W.S. 16-6-102.

19

20 (c) After review of proposals submitted in response
21 to a request pursuant to subsection (b) of this section and
22 for any contract for a project amount less than one million
23 dollars (\$1,000,000.00), or if there is only one (1)
24 respondent to the request regardless of the contract

1 amount, the public entity may select the respondent. If
2 the contract involves a project of one million dollars
3 (\$1,000,000.00) or more, the public entity shall select two
4 (2) respondents to be personally interviewed by the entity
5 including an oral presentation by each respondent. During
6 the interview process, the respondents shall be provided
7 with the project scope of work, the project budgetary
8 limitations, the completion deadlines and all other
9 requirements included in the request for proposal. The
10 public entity shall disclose all criteria included in the
11 proposal, assign a percentage value to each criterion,
12 disclose the scoring process and quality criteria used to
13 assess proposals. Each respondent to the request shall be
14 reimbursed by the public entity in an amount equal to five-
15 tenths percent (.5%) of the project budget. Proposals
16 responding to a request for proposal shall include:

17

18 (i) A technical proposal, including:

19

20 (A) Complete schematic design documents
21 including an overall site, civil and landscaping plan,
22 complete floor plans for all floor and mezzanine spaces, at
23 least four (4) elevations, a roof framing plan, details and
24 perspectives indicating the scope and quality of the design

1 and complete outline specifications with mechanical and
2 electrical systems clearly identified or indicated within
3 the schematic drawings or outline specifications;

4

5 (B) A preliminary project schedule
6 reflecting the scope of work defined in the schematic
7 design documents;

8

9 (C) A letter from the design builder
10 surety, advising the owner of the respondent's ability to
11 obtain payment and performance bonds for the project.

12

13 (ii) A guaranteed maximum price proposal
14 including a detailed estimate of the costs for the scope of
15 work defined in the schematic design documents; and

16

17 (iii) An oral presentation to the public entity
18 on the proposal.

19

20 **16-6-709. Job order contract alternate delivery**
21 **method.**

22

23 (a) If a job order method is used by a public entity
24 for alternate design and construction delivery, and the

1 project is for indefinite quantities, the request for
2 proposal shall include:

3

4 (i) A statement by the public entity of the
5 scope of work for each separate item included in the
6 delivery contract;

7

8 (ii) Estimated quantities of each contract item
9 specified by the public entity;

10

11 (iii) Location of the respondent's primary place
12 of business;

13

14 (iv) Respondent's experience in similar work
15 requested in the job order request for proposal;

16

17 (v) Ability of the respondent to schedule and
18 complete requested work;

19

20 (vi) Respondent's estimate of the hours and days
21 required to accomplish each separate work item included
22 within the request for proposal;

23

1 (vii) Respondent's proposed unit prices for each
2 separate item included within the request for proposal; and

3

4 (viii) Respondent's statement as to compliance
5 with W.S. 16-6-102.

6

7 (b) If the scope of construction or other work is
8 defined and will be specified in the work orders issued
9 during the duration of a contract, formal requests for
10 proposal submitted by a public entity shall include:

11

12 (i) A statement by the public entity as to the
13 various types of services, estimated quantities, scope of
14 work and the duration of contract;

15

16 (ii) The location of the primary place of
17 business of the respondent;

18

19 (iii) Experience of the respondent in
20 accomplishing work similar to the work anticipated in the
21 proposed project;

22

23 (iv) Ability of the respondent to schedule and
24 complete the proposed project;

1

2 (v) The lump sum fee as retainer for the entire
3 duration of the contract;

4

5 (vi) Ability of the respondent to document and
6 account for direct costs associated with work on a monthly
7 basis;

8

9 (vii) Respondent's proposed percentage fee added
10 to the direct costs for all overhead and profit; and

11

12 (viii) Statement by respondent as to compliance
13 with W.S. 16-6-102.

14

15 (c) If the scope of work is for financial,
16 maintenance, operations, preconstruction services, design
17 or other services of undetermined cost or duration, formal
18 requests for proposal submitted by a public entity shall
19 include:

20

21 (i) A scope of work provided by the public
22 entity;

23

1 (ii) Location of the primary place of business
2 of the respondent;

3

4 (iii) Experience of the respondent in
5 accomplishing work similar to the work involved in the
6 project;

7

8 (iv) Ability of the respondent to meet work
9 schedule and completion dates;

10

11 (v) The hourly or other rates of the respondent
12 for requested project services;

13

14 (vi) Compliance of the respondent to W.S.
15 16-6-102.

16

17 **16-6-710. Responsibilities under alternate delivery**
18 **contracts.**

19

20 Any contract awarded under W.S. 16-6-707, 16-6-708 or
21 16-6-709 shall comply with all reporting and administrative
22 requirements assigned by the public entity to the recipient
23 of a design bid build or traditional contract.

24

1 **Section 2.** W.S. 15-1-113(a), (c) through (e) and (j),
2 16-6-101(a) (i), 16-6-102(a), 16-6-119, 16-6-701(a) by
3 creating new paragraphs (v) through (xiii) and by amending
4 and renumbering (v) as (xiv), 16-6-702, 18-6-201(a),
5 18-6-202 by creating a new subsection (d),
6 21-15-114(a) (viii) by creating a new subparagraph (J),
7 35-2-429 and 35-3-107 are amended to read:

8

9 **15-1-113. Contracts for public improvements.**

10

11 (a) All contracts for any type of public improvement,
12 excluding contracts for professional services or where the
13 primary purpose is emergency work or maintenance, for any
14 city or town or joint powers board wherein at least one (1)
15 member is a municipality shall be advertised for bid or for
16 response if a request for proposal or qualification under
17 W.S. 16-6-707 through 16-7-710, if the estimated cost,
18 including all related costs, exceeds a bid threshold of
19 twenty thousand dollars (\$20,000.00), except that a
20 contract for the purchase or lease of a new automobile or
21 truck shall be advertised regardless of cost and if there
22 is an automobile or truck for trade-in, it shall be
23 included as a part of the advertisement and bid. The
24 requirements of W.S. 15-1-112(a) do not apply to any city

1 or town trading in an automobile or truck on the purchase
2 of a new automobile or truck.

3

4 (c) The contract shall be let to the lowest bidder or
5 most qualified respondent who shall be determined qualified
6 and responsible in the sole discretion of the governing
7 body. A governing body may use alternate design and
8 construction delivery methods as authorized under W.S.
9 16-6-707 through 16-6-710 if deemed appropriate. The
10 governing body may reject all bids or responses submitted
11 if it finds that none of them would serve the public
12 interest. For contracts in excess of five hundred thousand
13 dollars (\$500,000.00), cities, towns and joint powers
14 boards may prequalify contractors who wish to submit bids
15 or responses based on such criteria as the project type and
16 experience, expertise, professional qualifications, past
17 performance, staff proposed, schedule proposed, financial
18 strength, qualification of supervisors proposed to be used,
19 technical solutions proposed or references.

20

21 (d) Every contract shall be executed by the mayor or
22 in his absence or disability, by the president or other
23 presiding officer of the governing body and by the clerk or
24 designee of the governing body. The successful bidder or

1 respondent shall furnish to the city, town or joint powers
2 board a bond as specified in the advertisement, or if the
3 contract price is one hundred thousand dollars
4 (\$100,000.00) or less, any other form of financial
5 guarantee satisfactory to the city, town or joint powers
6 board. The bond or other form of financial guarantee shall
7 meet the requirements of W.S. 16-6-112.

8
9 (e) Before advertising for a bid for any work on the
10 construction of any public improvements and except as
11 provided under W.S. 16-6-707 through 16-6-710 for alternate
12 design and construction delivery methods, detailed plans
13 and specifications shall be prepared, together with an
14 estimate of the probable cost and a form of the proposed
15 contract. Except as provided under W.S. 16-6-701 through
16 16-6-706, no contract may provide for the monthly retention
17 of more than ten percent (10%) of the contract price on the
18 amount of work done during the month, as shown by the
19 estimate of the city or town engineer or designated local
20 official. No progress payment may be made until the city
21 or town engineer or designated local official has furnished
22 the estimate, together with a certificate that the amount
23 of work estimated to have been done conforms in all
24 material respects with the requirements of the contract. A

1 joint powers board may designate an official of any member
2 city or town to perform the functions required by this
3 subsection.

4
5 (j) Any officer or employee of the city, town or
6 joint powers board who aids any bidder or respondent in
7 securing a contract to furnish labor, material or supplies
8 at a higher or lower price than that proposed by any other
9 bidder or respondent, or who favors one bidder or
10 respondent over another by giving or withholding
11 information, or who willfully misleads any bidder or
12 respondent in regard to the character of the material or
13 supplies called for, or who knowingly certifies to a
14 greater amount or different kind of material or supplies
15 than has been actually received, is guilty of malfeasance,
16 which renders his office vacant.

17

18 **16-6-101. Definitions.**

19

20 (a) As used in this act:

21

22 (i) "Resident" means a person, partnership,
23 limited partnership, registered limited partnership,
24 registered limited liability company or corporation

1 certified as a resident by the department of employment
2 prior to bidding upon or responding to the contract,
3 subject to the following criteria and subject to W.S.
4 16-6-102(d):

5

6 (A) Any person who has been a resident of
7 the state for one (1) year or more immediately prior to
8 bidding upon or responding to the contract;

9

10 (B) A partnership or association, each
11 member of which has been a resident of the state for one
12 (1) year or more immediately prior to bidding upon or
13 responding to the contract;

14

15 (C) A corporation organized under the laws
16 of the state with at least fifty percent (50%) of the
17 issued and outstanding shares of stock in the corporation
18 owned by persons who have been residents of the state for
19 one (1) year or more prior to bidding upon or responding to
20 the contract, and which maintains its principal office and
21 place of business within the state, and the president of
22 the corporation has been a resident of the state for one
23 (1) year or more immediately prior to bidding upon or
24 responding to the contract;

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(D) A corporation organized under the laws of the state which has been in existence in the state for one (1) year or more and whose president has been a resident of the state for one (1) year or more immediately prior to bidding upon or responding to the contract and maintains its principal office and place of business within the state. If at least fifty percent (50%) of the issued and outstanding shares of stock in the corporation are owned by nonresidents, shares of the corporation shall:

(I) Have been acquired by nonresidents one (1) year or more immediately prior to bidding upon or responding to the contract; or

(II) Be publicly traded and registered under Section 13 or 15(d) of the Securities Exchange Act of 1934 for one (1) or more classes of its shares.

(E) A limited partnership organized under the laws of the state and which maintains its principal office and place of business in the state and the general partners of which have been residents of the state for at

1 least one (1) year or more immediately prior to bidding
2 upon or responding to the contract;

3

4 (F) A registered limited liability
5 partnership organized under the laws of the state and which
6 maintains its principal office and place of business in the
7 state and each member of which has been a resident of the
8 state for one (1) year or more immediately prior to bidding
9 upon or responding to the contract; or

10

11 (G) A limited liability company organized
12 under the laws of the state and which maintains its
13 principal office and place of business in the state and the
14 managing members or the appointed managers of which have
15 been residents of the state for one (1) year or more
16 immediately prior to bidding upon or responding to the
17 contract.

18

19 **16-6-102. Resident contractors; preference limitation**
20 **with reference to lowest bid or qualified response;**
21 **decertification; denial of application for residency.**

22

23 (a) If a contract is let by the state, any department
24 thereof, or any county, city, town, school district,

1 community college district or other public corporation of
2 the state for the erection, construction, alteration or
3 repair of any public building, or other public structure,
4 or for making any addition thereto, or for any public work
5 or improvements, the contract shall be let, if
6 advertisement for bids is not required, to a resident of
7 the state. If advertisement for bids is required the
8 contract shall be let to the responsible certified resident
9 making the lowest bid if the certified resident's bid is
10 not more than five percent (5%) higher than that of the
11 lowest responsible nonresident bidder or respondent.

12

13 **16-6-119. State construction; right to reject bids or**
14 **responses; qualifications of bidders and respondents.**

15

16 Every state agency, board, commission, department or
17 institution shall be authorized to determine the
18 qualifications and responsibilities of bidders or
19 respondents on contracts for the construction of a public
20 project, facility or structure using standard forms and
21 procedures adopted by the department of administration and
22 information, and may recommend that the department of
23 administration and information reject any or all bids or
24 responses based on the qualifications and responsibilities

1 of bidders and respondents and readvertise for bids or
2 responses.

3

4 **16-6-701. Definitions.**

5

6 (a) As used in this act:

7

8 (v) "Alternative design and construction
9 delivery method" means the delivery method described by any
10 negotiated procurement of design and construction services,
11 including all procedures, actions, events, contractual
12 relationships, obligations and forms of agreement for the
13 successful completion of the design and construction,
14 alteration or repair of any public building, work,
15 improvement, facility, structure or system other than by
16 design, bid and build. Alternative design and construction
17 delivery methods available to a public entity include but
18 are not limited to construction management, design build
19 and job order contract;

20

21 (vi) "Construction management method" means a
22 design and construction delivery method in which the
23 contract for the project design is negotiated with a design
24 professional and the contract for pre-construction services

1 and construction services is negotiated with a construction
2 manager. Under this method, initial project budgeting,
3 planning and design work is a cooperative effort involving
4 the public entity, designer and construction manager.
5 Construction management delivery includes but is not
6 limited to construction manager agency and construction
7 manager at-risk;

8
9 (vii) "Construction manager agency" means a type
10 of construction management delivery in which the
11 construction manager agency acts as a construction
12 consultant to the public entity and may provide
13 administrative and management services to the public entity
14 throughout the design and construction phases of a project.
15 Under this delivery method, the construction manager agency
16 is not the contracting agency, is not responsible for
17 purchase orders and may not be required to purchase
18 performance bonding;

19
20 (viii) "Construction manager at-risk" means a
21 type of construction management delivery in which the
22 construction manager at-risk acts as an advocate for the
23 public entity throughout the preconstruction phase of a
24 project. In the construction phase of a project, the

1 construction manager at-risk is responsible for all project
2 subcontracts and purchase orders and may conduct all or a
3 portion of the construction project work. Under this
4 delivery method, the construction manager at-risk is
5 responsible for providing a guaranteed maximum price for
6 the project to the public entity prior to commencing the
7 construction project and may be subject to performance
8 bonding requirements;

9
10 (ix) "Design bid build method" means a design
11 and construction delivery method in which the contract for
12 project design is negotiated with a design professional.
13 After completion of project design and specifications by
14 the contract design professional, a contract for project
15 construction is then awarded by competitive bid to the
16 lowest responsible bidder for a lump-sum price;

17
18 (x) "Design build method" means a design and
19 construction delivery method in which the public entity
20 negotiates a single contract to provide all project design
21 and construction services based upon a programmatic scope
22 with a design-builder;

23

1 (xi) "Job order contract" means a design and
2 construction delivery method in which the public entity is
3 responsible for defining each job order contract of not
4 more than two (2) years in duration, for the procurement of
5 services which may require indefinite quantities of
6 services, an undefined scope of work or a need for services
7 that are of undetermined cost or duration;

8
9 (xii) "Negotiated procurement" means the
10 selection and award of a design or construction contract by
11 the public entity based upon written responses and if
12 required, personal interviews, to a formal request for
13 proposal or for qualification;

14
15 (xiii) "Public entity" means the state, any
16 department, agency or board of the state, the University of
17 Wyoming and any community college district within the
18 state, any county, city, town or municipality within the
19 state, any school district, hospital district or other
20 political subdivision of the state authorized to contract
21 for design and construction services;

22
23 ~~(v)~~ (xiv) "This act" means W.S. 16-6-701 through
24 ~~16-6-706~~ 16-6-710.

1

2 **16-6-702. Public entity; contracts; partial payments;**
3 **alternative delivery methods authorized.**

4

5 (a) Notwithstanding W.S. 15-1-113(e), a public entity
6 awarding a contract for the construction, alteration or
7 repair of any highway, public building, public work or
8 public improvement, structure or system shall authorize
9 partial payments of the amount due under the contract as
10 stipulated in the contract document or as soon thereafter
11 as practicable, to the contractor if the contractor is
12 satisfactorily performing the contract. No more than ten
13 percent (10%) of the calculated value of any work completed
14 shall be withheld until fifty percent (50%) of the work
15 required by the contract has been performed. Thereafter,
16 the public entity may pay any of the remaining installments
17 without retaining additional funds if, in the opinion of
18 the public entity, satisfactory progress is being made in
19 the work but under no condition shall more than ten percent
20 (10%) be withheld on the remaining fifty percent (50%) of
21 the work required. The withheld percentage of the contract
22 price of the work, improvement or construction shall be
23 retained in an account in the name of the contractor which
24 has been assigned to the public entity until the contract

1 is completed satisfactorily and finally accepted by the
2 public entity. If the public entity finds that satisfactory
3 progress is being made in all phases of the contract, it
4 may, upon written request by the contractor, authorize
5 payment from the withheld percentage. Before the payment is
6 made, the public entity shall determine that satisfactory
7 and substantial reasons exist for the payment and shall
8 require written approval from any surety furnishing bonds
9 for the contract work.

10
11 (b) Alternative design and construction delivery
12 methods may be used by a public entity to design,
13 construct, alter, repair or maintain public works projects.

14
15 **18-6-201. Construction of jails; authority of county**
16 **commissioners; plans and specifications; maximum cost**
17 **permitted; call for bids; limitations applicable only when**
18 **costs paid from general fund.**

19
20 (a) Whenever the board of county commissioners deems
21 it in the best interest of the county to have a jail
22 constructed they shall employ alternate design and
23 construction delivery methods as authorized under W.S.
24 16-6-707 through 16-6-710 or cause plans and specifications

1 for a jail to be prepared by a competent architect. After
2 the plans and specifications are prepared, reviewed and
3 critiqued by the sheriff and adopted by the board of county
4 commissioners they shall deposit them in the office of the
5 county clerk for the county where they shall be available
6 for the inspection of all persons. Unless project design
7 and construction services are to be under an alternate
8 delivery method, the board of county commissioners shall
9 give notice that they will receive sealed proposals for the
10 building of the jail according to the plans and
11 specifications by publication in a newspaper once each week
12 for four (4) consecutive weeks in any newspaper of general
13 circulation within the county. The notices shall state that
14 the commissioners will until a specified day not less than
15 thirty (30) days from publication of the notice receive
16 sealed proposals for the building of all or part of the
17 jail. Proposals shall be delivered to the county clerk.

18

19 **18-6-202. Construction of jails; opening of bids or**
20 **proposals; awarding of contract; security for completion;**
21 **payment; exemption for alternate delivery methods.**

22

23 (d) Subsections (a) and (b) of this section do not
24 apply to any jail construction project using an alternate

1 design and construction delivery method authorized under
2 W.S. 16-6-707 through 16-6-710.

3

4 **21-15-114. Powers and duties; school facilities**
5 **office created; director.**

6

7 (a) The school facilities commission shall:

8

9 (viii) Enter into construction or renovation
10 project agreements, as appropriate, with school districts.

11 The agreement shall:

12

13 (J) Allow for alternate delivery methods
14 for provision of design and construction services as
15 authorized under W.S. 16-6-707 through 16-6-710.

16

17 **35-2-429. Construction to be done by contract based**
18 **on competitive bidding; alternate delivery methods.**

19

20 (a) Except as ~~herein otherwise~~ provided under
21 subsection (b) of this section and otherwise, the work of
22 constructing the various buildings shall be done by
23 contract based on competitive bidding. Notice of call for
24 bids shall be for such period of time and in such manner as

1 the trustees may determine, and the trustees shall have the
2 power to reject any and all bids and readvertise for bids
3 as they consider proper.

4

5 (b) Public entities may, as authorized under W.S.
6 16-6-707 through 16-6-710, contract for design and
7 construction services through an alternate delivery method.

8

9 **35-3-107. Contracts.**

10

11 All contracts for work to be done, the expense of which is
12 more than five hundred dollars (\$500.00), shall employ
13 alternate delivery design and construction methods as
14 authorized under W.S. 16-6-707 through 16-6-710 or shall be
15 let to the lowest responsible bidder, upon notice of not
16 less than twenty (20) days of the terms and conditions of
17 the contract to be let. The board of trustees shall have
18 power to reject any and all responses or bids and
19 readvertise for the letting of such work.

20

21 **Section 3.** This act is effective July 1, 2004.

22

23

(END)