

ENROLLED ACT NO. 44, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2006 BUDGET SESSION

AN ACT relating to the construction and improvement of public works; authorizing the use of construction manager and construction manager at risk construction delivery methods in awarding contracts for public improvements; amending resident preference provisions; defining terms; imposing conditions; conforming statutory provisions accordingly; and providing for an effective date.

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

Section 1. W.S. 16-6-707 and 16-6-708 are created to read:

16-6-707. Construction management alternate delivery method.

(a) Excluding contracts for professional services, construction management delivery negotiations by public entities and construction managers shall be in accordance with residency and preference requirements imposed under W.S. 16-6-101 through 16-6-107.

(b) Formal requests for proposal for preconstruction or construction services by a construction manager submitted by a public entity shall require at least the following information:

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

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

(iii) Experience with similar projects;

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(iv) Qualifications;

(v) Ability to protect the interests of the public entity during the project;

(vi) Ability to meet project budget and time schedule requirements; and

(vii) Excluding contracts for professional services, compliance with W.S. 16-6-102.

16-6-708. Responsibilities under alternate delivery contracts.

Any construction manager agent or construction manager at risk contract awarded shall comply with any reporting and administrative requirements as required by the public entity of the recipient of a design, bid and build contract, including retainage, payment and performance bonding and default of contract.

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

15-1-113. Contracts for public improvements.

(a) All contracts for any type of public improvement, excluding contracts for professional services or where the primary purpose is emergency work or maintenance, for any city or town or joint powers board wherein at least one (1)

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member is a municipality shall be advertised for bid or for response if a request for proposal or qualification for construction manager agent or construction manager at risk is used, if the estimated cost, including all related costs, exceeds a bid threshold of twenty thousand dollars (\$20,000.00), except that a contract for the purchase or lease of a new automobile or truck shall be advertised regardless of cost and if there is an automobile or truck for trade-in, it shall be included as a part of the advertisement and bid. The requirements of W.S. 15-1-112(a) do not apply to any city or town trading in an automobile or truck on the purchase of a new automobile or truck.

(b) The advertisement shall be published on two (2) different occasions, at least seven (7) days apart, in a newspaper having general circulation in the city or town, or if a joint powers board in any city or town which is a member of the board. The published notice shall state the place, date and time when the bids or proposals will be received and bids will be publicly opened and the place where interested persons may obtain complete specifications of work to be performed.

(c) If the contract is let for bid, the contract shall be let to the lowest bidder who shall be determined qualified and responsible in the sole discretion of the governing body. The governing body may use alternate design and construction delivery methods as defined under W.S. 16-6-701 if deemed appropriate. The governing body may reject all bids or responses submitted if it finds that none of them would serve the public interest. For contracts in excess of five hundred thousand dollars (\$500,000.00), cities, towns and joint powers boards may prequalify contractors who wish to submit bids or responses based on such criteria as the project type and experience,

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expertise, professional qualifications, past performance, staff proposed, schedule proposed, financial strength, qualification of supervisors proposed to be used, technical solutions proposed or references.

(d) Every contract shall be executed by the mayor or in his absence or disability, by the president or other presiding officer of the governing body and by the clerk or designee of the governing body. The successful bidder or respondent shall furnish to the city, town or joint powers board a bond as specified in the advertisement, or if the contract price is one hundred thousand dollars (\$100,000.00) or less, any other form of financial guarantee satisfactory to the city, town or joint powers board. The bond or other form of financial guarantee shall meet the requirements of W.S. 16-6-112.

(e) Before advertising for a bid for any work on the construction of any public improvements and except as provided under W.S. 16-6-707 for alternate design and construction delivery methods, detailed plans and specifications shall be prepared, together with an estimate of the probable cost and a form of the proposed contract. Except as provided under W.S. 16-6-701 through 16-6-706, no contract may provide for the monthly retention of more than ten percent (10%) of the contract price on the amount of work done during the month, as shown by the estimate of the city or town engineer or designated local official. No progress payment may be made until the city or town engineer or designated local official has furnished the estimate, together with a certificate that the amount of work estimated to have been done conforms in all material respects with the requirements of the contract. A joint powers board may designate an official of any member city or town to perform the functions required by this subsection.

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

16-6-101. Definitions.

(a) As used in this act:

(i) "Resident" means a person, partnership, limited partnership, registered limited partnership, registered limited liability company or corporation certified as a resident by the department of employment prior to bidding upon the contract or responding to a request for proposal, subject to the following criteria and subject to W.S. 16-6-102(d):

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

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

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

(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 the contract or responding to a request for proposal 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 the contract or responding to a request for proposal; 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

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least one (1) year or more immediately prior to bidding upon the contract or responding to a request for proposal;

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

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

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

(a) If a contract is let by the state, any department thereof, or any county, city, town, school district, community college district or other public corporation of the state for the erection, construction, alteration or repair of any public building, or other public structure, or for making any addition thereto, or for any public work or improvements, the contract shall be let, if advertisement for bids or request for proposal is not required, to a resident of the state. Unless an alternate design and construction delivery method is used, if advertisement for bids or request for proposal is required the contract shall be let to the responsible certified resident making the lowest bid if the certified resident's

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bid is not more than five percent (5%) higher than that of the lowest responsible nonresident bidder.

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

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

16-6-701. Definitions.

(a) As used in this act:

(v) "Alternate design and construction delivery method" means the delivery method described by any qualifications based procurement of design and construction services, including all procedures, actions, events, contractual relationships, obligations and forms of agreement for the successful completion of the design and construction, alteration or repair of any public building, work, improvement, facility, structure or system other than by design, bid and build. Alternate design and construction delivery methods available to a public entity include construction manager agent and construction manager at risk;

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(vi) "Construction manager agent" means a type of construction management delivery where the professional service is procured under existing statutes for professional services. The construction manager agent is a construction consultant providing administrative and management services to the public entity throughout the design and construction phases of a project. Under this delivery method, the construction manager agent is not the contracting agent and is not responsible for purchase orders;

(vii) "Construction manager at-risk" means a type of construction management delivery in which the construction manager at-risk is an advocate for the public entity as determined by the contracts throughout the preconstruction phase of a project. In the construction phase of a project, the construction manager at-risk is responsible for all project subcontracts and purchase orders and may conduct all or a portion of the construction project work. Under this delivery method, the construction manager at-risk is responsible for providing a guaranteed maximum price for the project to the public entity prior to commencing the construction project and the construction manager at-risk shall be required to bond any project with a guaranteed maximum price in excess of one hundred thousand dollars (\$100,000.00) in accordance with W.S. 16-6-112;

~~(v)~~(viii) "This act" means W.S. 16-6-701 through ~~16-6-706~~16-6-708.

16-6-702. Public entity; contracts; partial payments; alternate delivery methods authorized.

(a) Notwithstanding W.S. 15-1-113(e), a public entity awarding a contract for the construction, alteration or

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repair of any highway, public building, public work or public improvement, structure or system shall authorize partial payments of the amount due under the contract as stipulated in the contract document or as soon thereafter as practicable, to the contractor if the contractor is satisfactorily performing the contract. No more than ten percent (10%) of the calculated value of any work completed shall be withheld until fifty percent (50%) of the work required by the contract has been performed. Thereafter, the public entity may pay any of the remaining installments without retaining additional funds if, in the opinion of the public entity, satisfactory progress is being made in the work but under no condition shall more than ten percent (10%) be withheld on the remaining fifty percent (50%) of the work required. The withheld percentage of the contract price of the work, improvement or construction shall be retained in an account in the name of the contractor which has been assigned to the public entity until the contract is completed satisfactorily and finally accepted by the public entity. If the public entity finds that satisfactory progress is being made in all phases of the contract, it may, upon written request by the contractor, authorize payment from the withheld percentage. Before the payment is made, the public entity shall determine that satisfactory and substantial reasons exist for the payment and shall require written approval from any surety furnishing bonds for the contract work.

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

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

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(c) Subsection (a) of this section does not apply to any jail construction project using an alternate design and construction delivery method as defined in W.S. 16-6-701.

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

(d) Subsections (a) and (b) of this section do not apply to any jail construction project using an alternate design and construction delivery method as defined in W.S. 16-6-701.

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

(a) The school facilities commission shall:

(viii) Enter into construction or renovation project agreements, as appropriate, with school districts. The agreement shall:

(J) Allow for alternate design and construction delivery methods as defined in W.S. 16-6-701 for provision of design and construction services.

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

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

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power to reject any and all bids and readvertise for bids as they consider proper.

(b) Any hospital district may contract for design and construction services through an alternate delivery method as defined in W.S. 16-6-701.

35-3-107. Contracts.

All contracts for work to be done, the expense of which is more than five hundred dollars (\$500.00), ~~shall~~may employ alternate design and construction delivery methods as defined in W.S. 16-6-701 and shall be let to the lowest responsible bidder, upon notice of not less than twenty (20) days of the terms and conditions of the contract to be let. The board of trustees shall have power to reject any and all responses or bids and readvertise for the letting of such work.

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Section 3. This act is effective July 1, 2006.

(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