

ENROLLED ACT NO. 53, SENATE

SIXTY-SECOND LEGISLATURE OF THE STATE OF WYOMING
2013 GENERAL SESSION

AN ACT relating to administration of government; modifying procurement requirements for expenditures for capital construction projects; amending the definition of resident contractor; modifying and specifying preference requirements and procedures; providing that the state treasurer shall collect insurance on destroyed state buildings as specified; removing a dollar limit on materials contracts eligible for a preference; providing that preference requirements apply equally to all business entities and delivery methods; amending reporting requirements; providing a definition; repealing a sunset date; and providing for an effective date.

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

Section 1. W.S. 15-6-302 by creating a new subsection (d), 16-6-101(a)(i)(intro), (A), (B), (C)(intro), (I), (III), (D)(intro), (II), (J)(intro), by creating a new subparagraph (M), (iii)(D), by creating a new paragraph (v) and by renumbering (v) as (vi), 16-6-102(a), 16-6-105(a), 16-6-106, 16-6-107, 16-6-109, 16-6-112(a)(intro), 16-6-119, 16-6-120(b)(intro), 16-6-202(a)(ii), 16-6-206(b), 16-6-301(b), 16-6-701(a)(ii) and (v), 16-6-702, 16-6-1001(a)(intro), (i)(E), (ii)(C) and (iii) and 18-3-504 by creating a new subsection (d) are amended to read:

15-6-302. Call for bids; contents; procedure for awarding and executing contracts.

(d) All bids and contracts for capital construction projects shall be in accord with the Wyoming contractor preference laws of title 16, chapter 6.

16-6-101. Definitions.

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(a) As used in this act:

(i) "Resident" means a natural person, association, ~~partnership, limited partnership, registered limited partnership, registered limited liability company or corporation~~ or business entity authorized to be formed under title 17 of the Wyoming statutes, or the laws of another state that are the functional equivalent, and that is certified as a resident by the department of workforce services following receipt of an affidavit executed and sworn to by a chief executive officer of the entity setting forth information required by the department to determine compliance with this act and prior to bidding upon the contract or responding to a request for proposal, subject to the following criteria:

(A) Any natural 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, association, limited partnership, registered limited partnership, registered limited liability company or corporation~~ business entity, each member or ~~shareholder~~ equity owner 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;

(C) A ~~corporation~~ business entity organized under the laws of the state:

(I) With at least fifty percent (50%) of the ~~issued and outstanding shares of stock in the corporation~~ equity in the business entity owned by persons who have been residents of the state for one (1) year or

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more prior to bidding upon the contract or responding to a request for proposal;

(III) The ~~president of the corporation~~ chief executive officer of the business entity has been a resident of the state for one (1) year or more immediately prior to the business entity's bidding upon the contract or responding to a request for proposal.

(D) A ~~corporation~~ business entity organized under the laws of the state which has been in existence in the state for one (1) year or more and whose ~~president~~ chief executive officer 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~~ equity in the business entity is owned by nonresidents, ~~shares of the corporation~~ the nonresident equity owned by the nonresidents shall:

(II) If it consists of shares in a corporation, 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.

(J) A ~~corporation~~ business entity organized under the laws of any state which has been in existence for two (2) years or more:

(M) No preference under this article shall be awarded to any contractor who is not a certified resident contractor at the time bids are submitted for a public capital construction project, and no contractor

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shall receive a contingent or retroactive resident certification.

(iii) "Chief executive officer" means:

(D) For a limited liability company, a designated member or manager of the limited liability company;

(v) Major maintenance" means the repair or replacement of complete or major portions of building and facility systems at irregular intervals which is required to continue the use of the building or facility at its original capacity for its original intended use and is typically accomplished by contractors due to the personnel demand to accomplish the work in a timely manner, the level of sophistication of the work or the need for warranted work;

~~(v)~~ (vi) "This act" means W.S. 16-6-101 through 16-6-121.

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~~ major maintenance or renovation 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. If advertisement for bids is required, the contract

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shall be let to the responsible certified resident making the lowest bid if the certified resident's bid is not more than five percent (5%) higher than that of the lowest responsible nonresident bidder.

16-6-105. Preference for Wyoming materials and Wyoming agricultural products required in public purchases; exception; cost differential; definition.

(a) Every board, commission or other governing body of any state institution, and every person acting as purchasing agent for the board, commission or other governing body of any state institution or department, and every county, municipality, school district and community college district, shall prefer in all purchases for supplies, material, agricultural products, equipment, machinery and provisions to be used in the construction, major maintenance and upkeep-~~renovation~~ of their respective institutions, supplies, materials, agricultural products, equipment, machinery and provisions produced, manufactured or grown in this state, and supplies, materials, agricultural products, equipment, machinery and provisions supplied by a resident of the state, competent and capable to provide service for the supplies, materials, agricultural products, equipment, machinery and provisions within the state of Wyoming. Preference shall not be granted for articles of inferior quality to those offered by competitors outside of the state. ~~., but~~ A differential of not to exceed five percent (5%) may be allowed in cost of contracts ~~less than five million dollars (\$5,000,000.00)~~ for the Wyoming materials, supplies, agricultural products, equipment, machinery and provisions of quality equal to those of any other state or country.

16-6-106. Statement of Wyoming materials preference in requests for bids and proposals.

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All requests for bids and proposals for materials, supplies, agricultural products, equipment, machinery and provisions for the construction, major maintenance and ~~upkeep~~ renovation of every state, county, municipal, community college district or school district institution shall contain the words "preference is hereby given to materials, supplies, agricultural products, equipment, machinery and provisions produced, manufactured or grown in Wyoming, or supplied by a resident of the state, quality being equal to articles offered by the competitors outside of the state".

16-6-107. Wyoming materials preference required in construction, major maintenance and renovation of public structures; exception.

All public buildings, courthouses, public school buildings, public monuments and other public structures constructed in this state shall be constructed and maintained ~~by using~~ for construction, major maintenance and renovation projects if Wyoming materials are suitable and can be furnished in marketable quantities. Preference shall not be granted for materials of an inferior quality to those offered by competitors outside of the state, but a differential of ~~not to exceed~~ five percent (5%) may be allowed in cost of materials produced or manufactured in Wyoming ~~contracts less than five million dollars (\$5,000,000.00) for the Wyoming materials of equal quality as against materials from states having or enforcing a preference rule against "out-of-state" products shall be allowed in cost of materials produced or manufactured in Wyoming.~~

16-6-109. Use of insurance for rebuilding state structures.

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When buildings belonging to the state are destroyed, ~~by fire,~~ the insurance on the buildings shall be collected by the state treasurer. The governing board of the state institution suffering the loss ~~by fire~~ may draw on the state treasurer for the amount of money collected and use the insurance money for the rebuilding of the structure destroyed ~~by fire~~ if, in the opinion of the governing board, the structure should be rebuilt.

16-6-112. Contractor's bond or other guarantee; when required; conditions; amount; approval; filing; enforcement upon default.

(a) Except as provided under W.S. 9-2-1016(b)(xviii), any contract entered into with the state, any county, city, town, school district or other political subdivision of the state for the ~~erection, construction, alteration, repair or addition to~~ major maintenance or renovation of any public building or other public structure or for any public work or improvement and the contract price exceeds seven thousand five hundred dollars (\$7,500.00), shall require any contractor before beginning work under the contract to furnish the state or any political subdivision, as appropriate, a bond or if the contract price is one hundred fifty thousand dollars (\$150,000.00) or less, any other form of guarantee approved by the state or the political subdivision. The bond or other form of guarantee shall be:

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, major maintenance or renovation of a public project, facility or

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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.

16-6-120. Rulemaking; penalties; enforcement.

(b) Unless punishable under subsection (c) of this section, an individual, ~~partnership, association, limited partnership, registered limited partnership, registered limited liability company or corporation~~ or a business entity and any officer or member thereof that intentionally falsifies information under this act shall be:

16-6-202. Definitions.

(a) As used in this act:

(ii) "Resident" includes any person who is a citizen of the United States, or a person who is authorized to work in the United States by an agency of the federal government, and has resided in the state of Wyoming for at least one (1) year immediately preceding his application for employment;

16-6-206. Failure to employ state laborers; penalty.

(b) In the event a second offense occurs within a twelve (12) month period from the date of the first offense, the person shall be barred from bidding on any contract subject to the provisions of this act or submitting any request for proposal on any project subject to the provisions of this act for one (1) year from the date the second violation is corrected.

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**16-6-301. Preference for resident bidders; exception;
"resident" defined; violation.**

(b) As used in this section, "resident" means any person, ~~partnership, corporation or association~~ or business entity who has been a bona fide resident of this state as defined in W.S. 16-6-101(a)(i), for one (1) year or more immediately prior to bidding upon a contract, and who has an established printing plant in actual operation in the state of Wyoming immediately prior to bidding upon a contract.

16-6-701. Definitions.

(a) As used in this act:

(ii) "Contractor" means any person who is a party to a contract with a public entity to construct, ~~erect, alter, install or repair~~ renovate or perform major maintenance of any highway, public building, public work or public improvement, structure or system;

(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~~ major maintenance or renovation 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, construction manager at risk or design-builder;

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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 repair~~ major maintenance or renovation 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~~ major maintenance, renovation 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,

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construct, ~~alter, repair or maintain~~ renovate or perform major maintenance of a public works projects.

ARTICLE 10
CAPITAL CONSTRUCTION PROJECTS

**16-6-1001. Capital construction projects
restrictions; preference requirements; waivers.**

(a) Unless otherwise prohibited by federal law, any ~~legislatively appropriated~~ funds appropriated or authorized for expenditure ~~during the fiscal biennium ending June 30, 2012 or ending June 30, 2014, which have not been encumbered, obligated by contract or designed as of January 17, 2011,~~ for capital construction projects shall be subject to the restrictions of this section which shall be construed where possible as complimentary and consistent with other statutory requirements relating to competitive bidding and contractor preferences. To the extent the restrictions in this section are inconsistent with other state statutes, this section shall supersede all such inconsistent provisions and shall govern. This section shall be applied as follows:

(i) This paragraph shall apply to any alternate design and construction delivery method as defined in W.S. 16-6-701(a)(v):

(E) Any approved waiver shall be documented in writing and provided to the governor. Notice of all approved waivers shall also be published on a website maintained by the construction management division of the department of administration and information, including a statement of the grounds for the waiver.

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(ii) Unless exempted pursuant to subparagraph (D) of this paragraph, this paragraph shall apply to all construction delivery methods:

(C) A five percent (5%) preference shall be granted to responsible Wyoming resident suppliers for procurements by public entities subject to this paragraph and that are used in and incorporated into a public capital construction project;

(iii) All bids shall be opened in public ~~in an office of the agency~~ at a location designated by the public entity soliciting the bid. This paragraph shall apply to all construction delivery methods;

18-3-504. Powers and duties generally.

(d) All bids and contracts for capital construction projects shall be in accord with the Wyoming contractor preference laws of title 16, chapter 6.

Section 2. W.S. 16-6-101(a)(i)(E) through (G) and 16-6-1001(e) are repealed.

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Section 3. This act is effective July 1, 2014.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk