

**WORKING DRAFT**

HOUSE BILL NO. \_\_\_\_\_

Alternate construction delivery methods.

Sponsored by: (s) Hdraft

A BILL

for

1 AN ACT relating to the construction and improvement of  
 2 public works; authorizing the choice of alternate design  
 3 and construction delivery methods in awarding contracts for  
 4 public improvements; amending resident preference  
 5 provisions; defining terms; imposing conditions; conforming  
 6 statutory provisions accordingly; and providing for an  
 7 effective date.

8

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

10

11 **Section 1.** W.S. 16-6-707 through 16-6-709 are created  
 12 to read:

13

14 **16-6-707. Construction management alternate delivery**  
 15 **method.**

1

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

7

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

12

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

15

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

18

19 (iii) Experience with similar projects;

20

21 (iv) Qualifications;

22

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

1

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

4

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

7

8 **16-6-708. Design build alternative delivery method.**

9

10 (a) Excluding contracts for professional services, if  
11 a public entity elects to use a design build delivery  
12 method for a construction project it shall submit a request  
13 for qualifications for obtaining candidates and shall  
14 submit a request for proposal to establish the scope of  
15 work, completion time schedule and all other requirements  
16 determined to substantially affect the cost and quality of  
17 the project. Under this alternate design and construction  
18 delivery method, the respondent shall be required to obtain  
19 a surety and performance bond.

20

21 (b) Formal requests for proposal for design and  
22 construction services under the design build method shall  
23 require at least the following information:

24

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

3

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

6

7           (iii) The names and identification of  
8 individuals to be assigned to the construction portion of  
9 the contract;

10

11           (iv) Experience with similar projects;

12

13           (v) Qualifications;

14

15           (vi) Ability to protect the interests of the  
16 public entity during the project;

17

18           (vii) Ability to meet project budget and time  
19 schedule requirements;

20

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

23

1           (c) After review of proposals submitted in response  
2 to a request pursuant to subsection (b) of this section and  
3 for any contract for a project amount less than one million  
4 dollars (\$1,000,000.00), or if there is only one (1)  
5 respondent to the request regardless of the contract  
6 amount, the public entity may select the respondent. If  
7 the contract involves a project of one million dollars  
8 (\$1,000,000.00) or more, the public entity shall select two  
9 (2) respondents to be personally interviewed by the entity  
10 including an oral presentation by each respondent. During  
11 the interview process, the respondents shall be provided  
12 with the project scope of work, the project budgetary  
13 limitations, the completion deadlines and all other  
14 requirements included in the request for proposal. The  
15 public entity shall disclose all criteria included in the  
16 proposal, assign a percentage value to each criterion, and  
17 disclose the scoring process and quality criteria used to  
18 assess proposals. Proposals responding to a request for  
19 proposal shall include:

20

21           (i) A technical proposal, including:

22

23                   (A) Complete schematic design documents  
24 including an overall site, civil and landscaping plan,

1 complete floor plans for all floor and mezzanine spaces, at  
2 least four (4) elevations, a roof framing plan, details and  
3 perspectives indicating the scope and quality of the design  
4 and complete outline specifications with mechanical and  
5 electrical systems clearly identified or indicated within  
6 the schematic drawings or outline specifications;

7

8 (B) A preliminary project schedule  
9 reflecting the scope of work defined in the schematic  
10 design documents;

11

12 (C) A letter from the respondent's surety,  
13 advising the owner of the respondent's ability to obtain  
14 payment and performance bonds for the project.

15

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

19

20 (iii) An oral presentation to the public entity  
21 on the proposal.

22

23 **16-6-709. Responsibilities under alternate delivery**  
24 **contracts.**

1

2 Any contract awarded under W.S. 16-6-707 or 16-6-708 shall  
3 comply with all reporting and administrative requirements  
4 assigned by the public entity to the recipient of a design  
5 bid build contract, including retainage, payment and  
6 performance bonding and default of contract.

7

8 **Section 2.** W.S. 15-1-113(a), (c) through (e) and (j),  
9 16-6-101(a)(i), 16-6-102(a), 16-6-119, 16-6-701(a) by  
10 creating new paragraphs (v) through (viii) and by amending  
11 and renumbering (v) as (ix), 16-6-702, 18-6-201 by creating  
12 a new subsection (c), 18-6-202 by creating a new subsection  
13 (d), 21-15-114(a)(viii) by creating a new subparagraph (J),  
14 35-2-429 and 35-3-107 are amended to read:

15

16 **15-1-113. Contracts for public improvements.**

17

18 (a) All contracts for any type of public improvement,  
19 excluding contracts for professional services or where the  
20 primary purpose is emergency work or maintenance, for any  
21 city or town or joint powers board wherein at least one (1)  
22 member is a municipality shall be advertised for bid or for  
23 response if a request for proposal or qualification under  
24 W.S. 16-6-707 through 16-7-709 is used, if the estimated

1 cost, including all related costs, exceeds a bid threshold  
2 of twenty thousand dollars (\$20,000.00), except that a  
3 contract for the purchase or lease of a new automobile or  
4 truck shall be advertised regardless of cost and if there  
5 is an automobile or truck for trade-in, it shall be  
6 included as a part of the advertisement and bid. The  
7 requirements of W.S. 15-1-112(a) do not apply to any city  
8 or town trading in an automobile or truck on the purchase  
9 of a new automobile or truck.

10  
11 (c) The contract shall be let to the lowest bidder or  
12 most qualified respondent who shall be determined qualified  
13 and responsible in the sole discretion of the governing  
14 body. The governing body may use alternate design and  
15 construction delivery methods as authorized under W.S.  
16 16-6-707 through 16-6-709 if deemed appropriate. The  
17 governing body may reject all bids or responses submitted  
18 if it finds that none of them would serve the public  
19 interest. For contracts in excess of five hundred thousand  
20 dollars (\$500,000.00), cities, towns and joint powers  
21 boards may prequalify contractors who wish to submit bids  
22 or responses based on such criteria as the project type and  
23 experience, expertise, professional qualifications, past  
24 performance, staff proposed, schedule proposed, financial

1 strength, qualification of supervisors proposed to be used,  
2 technical solutions proposed or references.

3

4 (d) Every contract shall be executed by the mayor or  
5 in his absence or disability, by the president or other  
6 presiding officer of the governing body and by the clerk or  
7 designee of the governing body. The successful bidder or  
8 respondent shall furnish to the city, town or joint powers  
9 board a bond as specified in the advertisement, or if the  
10 contract price is one hundred thousand dollars  
11 (\$100,000.00) or less, any other form of financial  
12 guarantee satisfactory to the city, town or joint powers  
13 board. The bond or other form of financial guarantee shall  
14 meet the requirements of W.S. 16-6-112.

15

16 (e) Before advertising for a bid for any work on the  
17 construction of any public improvements and except as  
18 provided under W.S. 16-6-707 through 16-6-709 for alternate  
19 design and construction delivery methods, detailed plans  
20 and specifications shall be prepared, together with an  
21 estimate of the probable cost and a form of the proposed  
22 contract. Except as provided under W.S. 16-6-701 through  
23 16-6-706, no contract may provide for the monthly retention  
24 of more than ten percent (10%) of the contract price on the

1 amount of work done during the month, as shown by the  
2 estimate of the city or town engineer or designated local  
3 official. No progress payment may be made until the city  
4 or town engineer or designated local official has furnished  
5 the estimate, together with a certificate that the amount  
6 of work estimated to have been done conforms in all  
7 material respects with the requirements of the contract. A  
8 joint powers board may designate an official of any member  
9 city or town to perform the functions required by this  
10 subsection.

11

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

24

1           **16-6-101. Definitions.**

2

3           (a) As used in this act:

4

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

12

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

17

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

22

23                   (C) A corporation organized under the laws  
24 of the state with at least fifty percent (50%) of the

1 issued and outstanding shares of stock in the corporation  
2 owned by persons who have been residents of the state for  
3 one (1) year or more prior to bidding upon the contract or  
4 responding to a request for proposal, and which maintains  
5 its principal office and place of business within the  
6 state, and the president of the corporation has been a  
7 resident of the state for one (1) year or more immediately  
8 prior to bidding upon the contract or responding to a  
9 request for proposal;

10  
11 (D) A corporation organized under the laws  
12 of the state which has been in existence in the state for  
13 one (1) year or more and whose president has been a  
14 resident of the state for one (1) year or more immediately  
15 prior to bidding upon the contract or responding to a  
16 request for proposal and maintains its principal office and  
17 place of business within the state. If at least fifty  
18 percent (50%) of the issued and outstanding shares of stock  
19 in the corporation are owned by nonresidents, shares of the  
20 corporation shall:

21  
22 (I) Have been acquired by nonresidents  
23 one (1) year or more immediately prior to bidding upon the  
24 contract or responding to a request for proposal; or

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(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 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

1 been residents of the state for one (1) year or more  
2 immediately prior to bidding upon the contract or  
3 responding to a request for proposal.

4

5 **16-6-102. Resident contractors; preference limitation**  
6 **with reference to lowest bid or qualified response;**  
7 **decertification; denial of application for residency.**

8

9 (a) If a contract is let by the state, any department  
10 thereof, or any county, city, town, school district,  
11 community college district or other public corporation of  
12 the state for the erection, construction, alteration or  
13 repair of any public building, or other public structure,  
14 or for making any addition thereto, or for any public work  
15 or improvements, the contract shall be let, if  
16 advertisement for bids or request for proposal is not  
17 required, to a resident of the state. If advertisement for  
18 bids or request for proposal is required the contract shall  
19 be let to the responsible certified resident making the  
20 lowest bid if the certified resident's bid is not more than  
21 five percent (5%) higher than that of the lowest  
22 responsible nonresident bidder or respondent.

23

1           **16-6-119. State construction; right to reject bids or**  
2 **responses; qualifications of bidders and respondents.**

3  
4 Every state agency, board, commission, department or  
5 institution shall be authorized to determine the  
6 qualifications and responsibilities of bidders or  
7 respondents on contracts for the construction of a public  
8 project, facility or structure using standard forms and  
9 procedures adopted by the department of administration and  
10 information, and may recommend that the department of  
11 administration and information reject any or all bids or  
12 responses based on the qualifications and responsibilities  
13 of bidders and respondents and readvertise for bids or  
14 responses.

15  
16           **16-6-701. Definitions.**

17  
18           (a) As used in this act:

19  
20                   (v) "Alternate design and construction delivery  
21 method" means the delivery method described by any  
22 qualifications based procurement of design and construction  
23 services, including all procedures, actions, events,  
24 contractual relationships, obligations and forms of

1 agreement for the successful completion of the design and  
2 construction, alteration or repair of any public building,  
3 work, improvement, facility, structure or system other than  
4 by design, bid and build. Alternate design and  
5 construction delivery methods available to a public entity  
6 include but are not limited to construction manager agent,  
7 construction manager at risk and design build;

8  
9 (vi) "Construction manager agent" means a type  
10 of construction management delivery where the professional  
11 service is procured under existing statutes for  
12 professional services. The construction manager agent is a  
13 construction consultant providing administrative and  
14 management services to the public entity throughout the  
15 design and construction phases of a project. Under this  
16 delivery method, the construction manager agent is not the  
17 contracting agent, is not responsible for purchase orders  
18 and may not be required to purchase performance bonding;

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

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

8  
9 (viii) "Design build method" means a design and  
10 construction delivery method in which the public entity  
11 negotiates a single qualifications based contract to  
12 provide all project design and construction services based  
13 upon a programmatic scope with a design builder team for  
14 public buildings;

15  
16 (v)(ix) "This act" means W.S. 16-6-701 through  
17 ~~16-6-706~~ 16-6-709.

18  
19 **16-6-702. Public entity; contracts; partial payments;**  
20 **alternate delivery methods authorized.**

21  
22 (a) Notwithstanding W.S. 15-1-113(e), a public entity  
23 awarding a contract for the construction, alteration or  
24 repair of any highway, public building, public work or

1 public improvement, structure or system shall authorize  
2 partial payments of the amount due under the contract as  
3 stipulated in the contract document or as soon thereafter  
4 as practicable, to the contractor if the contractor is  
5 satisfactorily performing the contract. No more than ten  
6 percent (10%) of the calculated value of any work completed  
7 shall be withheld until fifty percent (50%) of the work  
8 required by the contract has been performed. Thereafter,  
9 the public entity may pay any of the remaining installments  
10 without retaining additional funds if, in the opinion of  
11 the public entity, satisfactory progress is being made in  
12 the work but under no condition shall more than ten percent  
13 (10%) be withheld on the remaining fifty percent (50%) of  
14 the work required. The withheld percentage of the contract  
15 price of the work, improvement or construction shall be  
16 retained in an account in the name of the contractor which  
17 has been assigned to the public entity until the contract  
18 is completed satisfactorily and finally accepted by the  
19 public entity. If the public entity finds that satisfactory  
20 progress is being made in all phases of the contract, it  
21 may, upon written request by the contractor, authorize  
22 payment from the withheld percentage. Before the payment is  
23 made, the public entity shall determine that satisfactory  
24 and substantial reasons exist for the payment and shall

1 require written approval from any surety furnishing bonds  
2 for the contract work.

3

4 (b) Alternate design and construction delivery  
5 methods as authorized under W.S. 16-6-707 through 16-6-709  
6 may be used by a public entity to design, construct, alter,  
7 repair or maintain public works projects.

8

9 **18-6-201. Construction of jails; authority of county**  
10 **commissioners; plans and specifications; maximum cost**  
11 **permitted; call for bids; limitations applicable only when**  
12 **costs paid from general fund.**

13

14 (c) Subsection (a) of this section does not apply to  
15 any jail construction project using an alternate design and  
16 construction delivery method authorized under W.S. 16-6-707  
17 through 16-6-709.

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 16-6-709.

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 16-6-709.

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) Any hospital district may, as authorized under  
6 W.S. 16-6-707 through 16-6-709, 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 16-6-709 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~~may  
18 have 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, 2005.

22

23

(END)