

HOUSE BILL NO. HB0108

Contractors-final payment provisions restructure.

Sponsored by: Representative(s) Larsen, Furphy and Greear and
Senator(s) Pappas

A BILL

for

1 AN ACT relating to public works and contracts; creating
2 definitions; modifying language for consistency; modifying
3 final settlement and payment to contractors procedures;
4 updating bond requirements; requiring disputes be directed to
5 a prime contractor's surety bond; and providing for an
6 effective date.

7

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

9

10 **Section 1.** W.S. 16-6-101(a) by creating new paragraphs
11 (vi) and (vii) and by renumbering (vi) as (viii), 16-6-102(a),
12 16-6-112(a)(intro), (i), (ii), (iv) and (b), 16-6-113 through
13 16-6-117, 16-6-121(a) and 16-6-1001(a)(iv) are amended to
14 read:

15

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

2

3 (a) As used in this act:

4

5 (vi) "Laborer" means as defined in W.S.

6 16-6-202(a)(i);

7

8 (vii) "Materialman" means as defined in W.S.

9 29-1-201(a)(ix);

10

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

12 16-6-121.

13

14 **16-6-102. Resident contractors; preference limitation**
15 **with reference to lowest bid or qualified response;**
16 **decertification; denial of application for residency.**

17

18 (a) If a contract is let by the state, any department
19 thereof, or any county, city, town, school district,
20 community college district, political subdivision of the
21 state or other public corporation of the state for the
22 construction, major maintenance or renovation of any public
23 building, or other public structure, or for making any

1 addition thereto, or for any public work or improvements, the
2 contract shall be let, if advertisement for bids or request
3 for proposal is not required, to a resident of the state. If
4 advertisement for bids is required, the contract shall be let
5 to the responsible certified resident making the lowest bid
6 if the certified resident's bid is not more than five percent
7 (5%) higher than that of the lowest responsible nonresident
8 bidder.

9

10 **16-6-112. Contractor's bond or other guarantee; when**
11 **required; conditions; amount; approval; filing; enforcement**
12 **upon default.**

13

14 (a) Except as provided under W.S. 9-2-3004(c)(iv), any
15 contract entered into with the state, any county, city, town,
16 school district, the University of Wyoming, a Wyoming
17 community college, a public corporation or other political
18 subdivision of the state for the construction, major
19 maintenance or renovation of any public building or other
20 public structure or for any public work or improvement and
21 the contract price exceeds seven thousand five hundred
22 dollars (\$7,500.00), shall require any contractor before
23 beginning work under the contract to furnish the state or any

1 ~~political subdivision~~ entity, as appropriate, a bond or if
2 the contract price is one hundred fifty thousand dollars
3 (\$150,000.00) or less, any other form of guarantee approved
4 by the state or the ~~political subdivision~~ appropriate entity.

5 The bond or other form of guarantee shall be:

6
7 (i) ~~Conditioned~~ Available and with such conditions
8 that allow for the payment of all taxes, excises, licenses,
9 assessments, contributions, penalties and interest lawfully
10 due the state or ~~any political subdivision~~ appropriate
11 entity;

12
13 (ii) For the use and benefit of any person
14 performing any work or labor or furnishing any material or
15 goods of any kind which were used in the execution of the
16 contract, conditioned for the performance and completion of
17 the contract according to its terms, compliance with all the
18 requirements of law and payment as due of all just claims for
19 work or labor performed, ~~material~~ and materials furnished ~~and~~
20 ~~taxes, excises, licenses, assessments, contributions,~~
21 ~~penalties and interest accrued~~ in the execution of the
22 contract;

23

1 (iv) Approved by and filed with the appropriate
2 officer, agent or other designee of the state or ~~governing~~
3 ~~body of the political subdivision~~ appropriate entity.

4
5 (b) A bond or other guarantee satisfactory to the state
6 or ~~political subdivision~~ appropriate entity, as the case may
7 be, shall include the obligations specified under subsection
8 (a) of this section even though not expressly written into
9 the guarantee.

10
11 **16-6-113. Contractor's bond or other guarantee; right**
12 **of action; notice to obligee; intervention by interested**
13 **parties; pro rata distribution.**

14
15 Any person entitled to the protection of a bond or other form
16 of guarantee approved by the state or ~~any political~~
17 ~~subdivision~~ entity under W.S. 16-6-112, may maintain an
18 action for the amount due him. He shall notify the obligee
19 named in the bond or other guarantee of the beginning of the
20 action, giving the names of the parties, describing the
21 guarantee and stating the amount and nature of his claim. No
22 judgment shall be entered in the action within thirty (30)
23 days after the giving of the notice. The obligee or any person

1 having a cause of action may on his motion, be admitted as a
2 party to the action. The court shall determine the rights of
3 all parties to the action. If the amount realized on the bond
4 or other guarantee is insufficient to discharge all claims in
5 full, the amount shall be distributed among the parties pro
6 rata.

7

8 **16-6-114. Contractor's bond or other guarantee;**
9 **requiring new or additional bond or other guarantee; failure**
10 **to furnish.**

11

12 If in its judgment any of the sureties on a bond or other
13 form of guarantee approved by the state or ~~any political~~
14 ~~subdivision~~-entity under W.S. 16-6-112 are insolvent or for
15 any cause are no longer proper or sufficient sureties, the
16 obligee may within ten (10) days require the contractor to
17 furnish a new or additional bond or other approved guarantee.

18 If ordered by the obligee, all work on the contract shall
19 cease until a new or additional bond or other guarantee is
20 furnished. If the guarantee is not furnished within ten (10)
21 days, the obligee may at its option ~~determine~~-~~terminate~~ the
22 contract and complete the contract as the agent and at the
23 expense of the contractor and his sureties.

1

2 **16-6-115. Contractor's bond or other guarantee;**
3 **limitation of actions.**

4

5 No action shall be maintained on any bond or other form of
6 guarantee satisfactory to the state or any ~~political~~
7 ~~subdivision~~~~entity~~ under W.S. 16-6-112 unless commenced
8 within one (1) year after the date of first ~~publication~~
9 ~~posting~~ of ~~the~~ notice of final payment of the contract ~~as set~~
10 ~~forth in W.S. 16-6-116.~~

11

12 **16-6-116. Final settlement with and payment to**
13 **contractor; required notices.**

14

15 (a) When any public work is let by contract the
16 commission, board or person under whose direction or
17 supervision the work is being carried on and conducted and
18 upon whose approval intermediate and final ~~estimates~~
19 ~~settlements~~ are paid for the construction of the work, ~~forty~~
20 ~~(40) days before the final estimate is paid,~~ shall cause
21 ~~notice~~ to be ~~published in a newspaper of general circulation,~~
22 ~~published nearest the point at which the work is being carried~~
23 ~~on, once a week for three (3) consecutive weeks, and also to~~

1 ~~post in three (3) conspicuous places on the work, a notice~~
2 posted on the project owner's and supervising agency's
3 official website forty (40) days before the final settlement
4 is paid to the prime contractor setting forth in substance,
5 that the commission, board or person has accepted the work as
6 completed according to the plans, ~~and~~ specifications and
7 rules set forth in the contract between the commission, board
8 or person and the contractor, and that the contractor is
9 entitled to final settlement therefor. The notice shall also
10 set forth that upon the 41st day (and the notice shall specify
11 the exact date) after the ~~first publication of the~~ notice was
12 first posted the commission, board or person under whose
13 direction or supervision the work has been carried on will
14 pay to the contractor the full amount due under the contract.
15 This section does not relieve the contractor and the sureties
16 on his bond from any claims for work or labor done or
17 materials or supplies furnished in the execution of the
18 contract.

19

20 (b) The owner or his agent shall provide written notice
21 of the information in this section in the project
22 specifications.

23

1 16-6-117. Final settlement with and payment to
2 contractor; prerequisite filing of contractor's statement of
3 payment; disputed claims.

4
5 In all formal contracts entered into by any person with the
6 state, or any department or commission thereof, or with any
7 county, city, town, school district, ~~high school district,~~
8 the University of Wyoming, a Wyoming community college,
9 political subdivision or other public corporation of this
10 state, for the construction of any public building, or the
11 prosecution and completion of any public work, or for repairs
12 upon any public building or public work, no final payment
13 shall be made until the person files with the officer,
14 department or commission of the state, or with the clerk of
15 the county, city, town or school district, or with a similar
16 officer of any other public corporation by which the contract
17 has been made, a sworn statement setting forth that all claims
18 for material, supplies and labor performed under the contract
19 have been and are paid for the entire period of time for which
20 the final payment is to be made. If any claim for material,
21 ~~and supplies or~~ labor is disputed the sworn statement shall
22 so state, and the amount claimed to be due the ~~laborer~~
23 subcontractor or materialmen shall be ~~deducted from the final~~

1 ~~payment and retained by the state, county, city, town or~~
2 ~~school district authority or public corporation until the~~
3 ~~determination of the dispute, either by judicial action or~~
4 ~~consent of the parties, and then paid by the agent or agency~~
5 ~~to the persons found entitled thereto~~ filed by the claimant
6 as a claim against the prime contractor's surety bond. The
7 final payment to the prime contractor shall be made without
8 regard to any pending claims against the prime contractor's
9 surety bond unless the payor has actual knowledge that the
10 surety bond is deficient to settle known present claims, in
11 which case an amount equal to the disputed claims may be
12 withheld.

13

14 **16-6-121. Notice required to receive protection under**
15 **a bond or guarantee; limitation; notice required by owner in**
16 **project specifications.**

17

18 (a) Any subcontractor or materialman entitled to the
19 protection of a bond or other form of guarantee approved by
20 the state or ~~any political subdivision~~ entity under W.S.
21 16-6-112 shall give notice of his right to that protection to
22 the prime contractor. Failure to give notice to a prime
23 contractor who has complied with subsections (f) and (g) of

1 this section waives the subcontractor or materialman's
2 protection under the bond or guarantee and waives any right
3 to a lien for materials or services provided.

4

5 **16-6-1001. Capital construction projects restrictions;**
6 **preference requirements; waivers.**

7

8 (a) Unless otherwise prohibited by federal law, any
9 funds appropriated or authorized for expenditure for capital
10 construction projects shall be subject to the restrictions of
11 this section which shall be construed where possible as
12 complimentary and consistent with other statutory
13 requirements relating to competitive bidding and contractor
14 preferences. To the extent the restrictions in this section
15 are inconsistent with other state statutes, this section
16 shall supersede all such inconsistent provisions and shall
17 govern. This section shall be applied as follows:

18

19 (iv) Contractor progress payments shall be made
20 only in accordance with this paragraph. If a contracting
21 entity determines that a general contractor in good standing
22 on a project requires a progress payment due for work
23 completed in a workmanlike manner in order to pay a

1 materialman, subcontractor or laborer for their work
2 performed to date, the entity may issue the progress payment
3 upon verification that all materialmen, subcontractors and
4 laborers have been paid for completed work through the date
5 of the most recent previous progress payment, less any
6 contracted amounts held for retainage. If a progress payment
7 has been withheld by a general contractor due to a reasonable
8 dispute between a general contractor and a materialman, or
9 subcontractor, or laborer, further progress payments shall
10 not be paid to the general contractor but shall be retained
11 in accordance with the guidelines addressing disputed final
12 payments the claimant shall file a claim in the disputed
13 amount against the prime contractor's surety bond under the
14 provisions of W.S. 16-6-117. A person submitting false
15 information regarding a progress payment subject to this
16 paragraph shall be subject to the provisions of W.S. 16-6-120.

17

18 **Section 2.** This act is effective July 1, 2019.

19

20

(END)