

ENROLLED ACT NO. 30, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

AN ACT relating to the administration of government; modifying provisions related to procurement and contracting by governmental entities; specifying duties of the state construction department and the University of Wyoming board of trustees; requiring rulemaking; and providing for effective dates.

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

Section 1. W.S. 9-2-3006 is created to read:

9-2-3006. Procurement for capital construction projects.

(a) Contracts for capital construction projects let by an agency or the University of Wyoming, excluding contracts for professional services under W.S. 9-2-1027 through 9-2-1033 and for capital construction projects delivered through alternate design and construction delivery methods as defined in W.S. 16-6-701(a)(v), shall be let through the use of competitive negotiation, noncompetitive negotiation or competitive sealed bidding as follows:

(i) For any contract with an estimated value equal to fifty thousand dollars (\$50,000.00) or less, the contract shall be let in accordance with the following:

(A) Except as provided in subparagraph (B) of this paragraph, the contract shall be let by competitive negotiation. In conducting the competitive negotiation, the agency or the university shall solicit not less than three (3) independent cost estimates or proposals prior to letting the contract;

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(B) If the principal representative of an agency or the university determines competitive negotiation is not feasible, the contract may be let by noncompetitive negotiation;

(C) The contract shall be let to a resident of the state in accordance with W.S. 16-6-102(a).

(ii) Except as otherwise provided in paragraph (iii) of this subsection, for any contract with an estimated value in excess of fifty thousand dollars (\$50,000.00), the contract shall be let in accordance with the following:

(A) The contract shall be let by competitive sealed bidding. The agency or the university shall give notice of the opportunity to bid on the contract on the state procurement website for not less than two (2) consecutive weeks. The notice shall contain a general description of the proposed contract and shall indicate the procedures by which interested persons may apply for consideration;

(B) The contract shall be let to a responsible bidder making the lowest bid except that the contract 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 in accordance with W.S. 16-6-102(a).

(iii) If the principal representative of an agency determines that the use of competitive sealed bidding is not feasible or practical, the principal representative shall submit a written determination to the department. If approved by the department, the contract may be let by competitive negotiation. If competitive negotiation is not feasible or

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practical, the principal representative shall submit a written determination to the governor. If approved by the governor or the governor's designee the contract may be let by noncompetitive negotiation. Contracts by the university may be let by competitive negotiation or noncompetitive negotiation in accordance with university regulations;

(iv) The director of the department, upon a written finding that it would be more efficient to use federal procurement procedures for capital construction contracts let by the Wyoming military department concerning state owned properties under the control of the adjutant general, may authorize federal procurement procedures instead of the procedures required under this subsection.

(b) The department shall adopt standard forms and procedures for the procurement of capital construction projects by an agency in accordance with this section.

(c) Any contract by an agency for a capital construction project in an amount exceeding fifty thousand dollars (\$50,000.00) shall require the approval of the governor or the governor's designee prior to state commitment.

(d) Any contract let under this section shall be in accordance with the applicable contracting and residency preference laws of W.S. 16-6-101 through 16-6-121, 16-6-201 through 16-6-206, 16-6-701 through 16-6-708 and 16-6-1001.

(e) Each agency and the University of Wyoming are authorized to determine the qualifications and responsibilities of bidders or respondents for capital construction projects but shall reject any bid with improper

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or missing signatures or bids that lack legible numerical values. Each agency and the university may:

(i) Reject any or all bids based on the qualifications and responsibilities of bidders and respondents and readvertise for bids or responses;

(ii) Waive informalities or irregularities in any bid.

(f) No contract shall be divided for the purpose of avoiding the requirements of this section.

Section 2. W.S. 9-1-403(b)(v) and by creating a new paragraph (viii), 9-2-1016(a) by creating a new paragraph (iv), (b)(iv)(A) through (F), (xix)(A) and (k), 9-2-3001, 9-2-3004(c)(i) through (iii) and (iv)(A), 16-6-119, 21-3-110(a)(viii), 21-15-118(c), 21-17-204 by creating a new subsection (b) and 24-2-108 are amended to read:

9-1-403. State auditor; duties; prohibited acts; powers; investigative subpoenas.

(b) The state auditor shall not draw warrants:

(v) For payment on a contract for professional consultant or other services unless the agency has certified that the contract for the services has been reduced to writing before the services are performed, and that the contract is in compliance with procedures of the attorney general, is approved by the attorney general, and, except for contracts for capital construction projects entered into by an agency under W.S. 9-2-3006 and contracts of ~~twenty thousand dollars (\$20,000.00)~~ twenty-five thousand dollars (\$25,000.00) or less which are entered into by the office of an elected state

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official, is filed with and approved by the department of administration and information. For payment on a contract for professional or other services entered into by the department of transportation, filing of the contract with and approval by the department of administration and information and approval by the attorney general is not required, however the attorney general shall first review the contract if the contract is over twenty thousand dollars (\$20,000.00);

(viii) For payment on a contract for capital construction projects entered into by an agency under W.S. 9-2-3006 unless the agency has certified that the contract for the project has been reduced to writing before the contract is performed, that the contract is in compliance with procedures of the attorney general, is approved by the attorney general and is filed with and approved by the state construction department.

9-2-1016. General services division.

(a) As used in this section:

(iv) "Principal representative" means the governing board of an agency or its designated representative, or, if there is no governing board, the executive head of an agency including an elected state official.

(b) For the purpose of this subsection the term "agencies" does not include the University of Wyoming, community college districts, or school districts. It does not include the department of transportation except as to paragraphs (xi), (xii) and (xiii) of this subsection. The department through the general services division shall:

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(iv) Adopt standard forms and procedures providing that bids or contracts for supplies or services shall be awarded through the use of competitive sealed bidding, competitive negotiation, noncompetitive negotiation or small purchase procedures as hereafter provided:

(A) Bids or contracts for supplies or services in excess of ~~seven thousand five hundred dollars (\$7,500.00)~~ fifteen thousand dollars (\$15,000.00) shall be made by competitive sealed bidding when the configuration or performance specifications, or both, are sufficiently designed to permit award on the basis of the lowest evaluated price as determined in accordance with objective, measurable criteria set forth in the invitation for bids, and when available sources, the time and place of performance, and other conditions are appropriate for the use of competitive sealed bidding;

(B) ~~Whenever the administrator determines in writing that~~ If the use of competitive sealed bidding is not feasible or practical, the principal representative shall, except as otherwise provided in this subparagraph, submit a written determination to the department. If approved by the department, contracts for supplies or services may be made by competitive negotiation. An elected state official may also contract for supplies or services for his office by competitive negotiation without department approval if the contract is for ~~twenty thousand dollars (\$20,000.00)~~ twenty-five thousand dollars (\$25,000.00) or less and ~~he the~~ elected state official determines that the use of competitive sealed bidding is not feasible or practical;

(C) Contracts may be made by noncompetitive negotiation only when competition is not feasible, as determined in writing ~~prior to award by the administrator a~~

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principal representative and approved by the governor or his designee, except as otherwise provided in this subparagraph. An elected state official may ~~also~~ contract for supplies or services for his office by noncompetitive negotiation without the approval of the governor or the governor's designee if the contract is for ~~twenty thousand dollars (\$20,000.00)~~ twenty-five thousand dollars (\$25,000.00) or less and ~~he~~ the elected state official determines that competition is not feasible;

(D) ~~Bids or~~ Contracts for contractual services, consulting services, and special projects and services, for the purpose of hiring professionals, consultants or contracted services shall be approved as follows:

(I) Contracts by an agency in an amount exceeding one thousand five hundred dollars (\$1,500.00), ~~by an agency but not to exceed fifteen thousand dollars (\$15,000.00),~~ require the approval of the ~~governor or his designee prior to state commitment~~ principal representative or the principal representative's designee before the state executes the contract;

(II) Contracts by an agency in an amount exceeding fifteen thousand dollars (\$15,000.00) require the approval of the governor or the governor's designee before the state executes the contract, except as provided in subdivision (III) of this subparagraph;

(III) Contracts by an elected state official shall not require the approval of the governor or the governor's designee before the state executes the contract.

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(E) Agencies shall be authorized to make small purchases in accordance with rules adopted by the department. The rules shall include small purchase procedures which authorize agencies to procure supplies ~~or services~~ not exceeding ~~one thousand five hundred dollars (\$1,500.00)~~ two thousand five hundred dollars (\$2,500.00), or such higher amount established by the department, but not to exceed ~~seven thousand five hundred dollars (\$7,500.00)~~ fifteen thousand dollars (\$15,000.00), without compliance with this paragraph and without prior approval of the department;

(F) This paragraph shall not apply to the procurement by the department of corrections of raw materials used in a correctional industries program to manufacture goods or to provide services under W.S. 7-16-206(a)(i), the procurement of goods or services from the department of corrections under W.S. 7-16-206(a)(i) when the goods or services produced are not available from other Wyoming manufacturers or service providers, the procurement of professional services under W.S. 9-2-1027 through 9-2-1033, the procurement of capital construction projects under W.S. 9-2-3004 and 9-2-3006 nor to purchases of feed by the game and fish department for winter elk ranges. Subparagraph (E) of this paragraph shall not apply to the procurement of services or supplies by the offices of state elected officials; ~~Subparagraph (D) of this paragraph shall not apply to the procurement of services by the offices of state elected officials if the contract is for twenty thousand dollars (\$20,000.00) or less;~~

(xix) Lease all property for the state in accordance with rules of the state building commission. Leasing of property by the state shall be conducted on a bid and proposal basis with advertising of space needs and square

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footage in community or local newspapers. Leasing contracts may be entered into by noncompetitive negotiation only if:

(A) The administrator of the department determines in writing that competitive bidding is not feasible; or

(k) Each elected state official shall report annually by October 31, to the joint appropriations ~~interim~~ committee a list of all contracts entered into by the elected state official during the previous fiscal year for supplies or services, if the contract was not awarded by competitive sealed bidding. ~~and the administrator did not determine in writing that the use of competitive sealed bidding was not feasible or practical.~~ The report shall also include a list of all contracts entered into by the elected state official for contractual services, consulting services or special projects and services if the contract was not approved by the governor or his designee.

9-2-3001. State construction department created; definitions.

(a) There is created the state construction department.

(b) As used in this article:

(i) "Agency" means any school district, state office, department, board, council, commission, separate operating agency, institution or other instrumentality or operating unit of the state excluding the University of Wyoming, the Wyoming business council and the Wyoming department of transportation. "Agency" shall include a Wyoming community college if the community college is conducting a capital construction project using state funds

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that requires approval by the community college commission or authorization by the legislature under W.S. 21-18-205(g);

(ii) "Capital construction project" means new construction, demolition, renovation and capital renewal of or to any public building or facility and any other public improvement necessary for the public building or facility, major maintenance as defined in W.S. 16-6-101(a)(v) and major building and facility repair and replacement as defined in W.S. 21-15-109(a)(iii);

(iii) "Competitive negotiation" means to negotiate for a contract through a request for proposals process or any other similar competitive selection process;

(iv) "Department" means the state construction department;

(v) "Informalities or irregularities in any bid" includes:

(A) Ambiguity as to any part of a bid;

(B) A missing unit bid price;

(C) An erasure or change in a unit bid price not initialed in ink by the bidder.

(vi) "Principal representative" means the governing board of an agency or its designated representative or, if there is no governing board, the executive head of an agency. When applicable, "principal representative" shall include the University of Wyoming board of trustees or its designated representative;

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(vii) "State procurement website" means a website that the department designates to host information and notices related to procurement under this article.

9-2-3004. Duties of the department.

(c) The department shall:

(i) Review and make recommendations to the governor concerning capital construction budget requests made by the state building commission, school facilities commission, the University of Wyoming, community college commission and any ~~state~~ agency;

(ii) Adopt rules governing procurement for capital construction ~~procurement policies and standards and ensure compliance with the policies and standards by state agencies and school districts using any state funds for capital construction~~ projects pursuant to W.S. 9-2-3006. Wyoming community colleges shall adhere to the rules for any capital construction project using state funds that requires approval by the community college commission or authorization by the legislature under W.S. 21-18-205(g). The University of Wyoming ~~and Wyoming community colleges~~ may adhere to the ~~standards and policies~~ rules to the extent feasible, as determined by the university. ~~or affected college.~~ The university and Wyoming community colleges shall adhere to any other capital construction requirement specified by law;

(iii) For the procurement of ~~construction of public projects, facilities or structures~~ capital construction projects, be authorized to accept the recommendations of agencies on the award or rejection and readvertisement of bids based upon the qualifications and responsibilities of bidders;

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(iv) Oversee bonding for the procurement of capital construction projects. Bidders shall provide a bond or other form of guarantee satisfactory to the state of Wyoming as hereafter provided:

(A) A bid bond or other form of bid guarantee satisfactory to the state may be required in an amount equal to ten percent (10%) of the aggregate amount of the bid or contract when a contract to be awarded under the solicitation is expected to exceed ~~one thousand five hundred dollars (\$1,500.00)~~ one hundred fifty thousand dollars (\$150,000.00). The bond may be provided by a surety company authorized to do business in the state of Wyoming;

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 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 for which it solicits based on the qualifications and responsibilities of bidders and respondents and readvertise for bids or responses.

21-3-110. Duties of boards of trustees.

(a) The board of trustees in each school district shall:

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(viii) Obtain competitive bids when any purchase of insurance, supplies or materials other than textbooks costing more than ten thousand dollars (\$10,000.00) and less than twenty-five thousand dollars (\$25,000.00) is contemplated unless precluded by other regulation or statute. If the amount of the purchase of insurance, supplies or materials other than textbooks is equal to or exceeds twenty-five thousand dollars (\$25,000.00), a call for bids shall be published at least once in a newspaper of general circulation in the district and on the state procurement website, as defined in W.S. 9-2-3001(b)(vii). ~~When any school building is to be built costing fifty thousand dollars (\$50,000.00) or more or when any repairs, additions or improvements costing fifty thousand dollars (\$50,000.00) or more are to be made to any school building, facility or other district property, the board shall obtain competitive bids and~~ For any contract for a capital construction project with an estimated value in excess of fifty thousand dollars (\$50,000.00), the board shall publish a call for bids in a newspaper of general circulation in the ~~state-district~~ at least once each week for two (2) consecutive weeks. All contracts for capital construction projects shall be let in accordance with W.S. 9-2-3004 and 9-2-3006 except as provided in this paragraph. The district shall reserve the right to reject any and all bids and to waive irregularities and informalities in ~~the bidding~~ any bid, as defined in W.S. 9-2-3001(b)(v). No contract shall be divided for the purpose of avoiding this paragraph. Items for which bids must be obtained may be described in the published call for bids by stating general requirements and making detailed specifications available to prospective bidders at the district's administrative headquarters. ~~The requirements of this paragraph shall not apply to the procurement of professional services of architects, engineers or surveyors~~

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~~when the board seeks to procure professional services pursuant to W.S. 9-2-1027 through 9-2-1033;~~

21-15-118. Building and facility construction and renovation projects.

(c) The projects shall be managed and all necessary contracts related to the projects shall proceed in accordance with rules adopted pursuant to W.S. 9-2-3004(c)(ii) and commission rules and regulations promulgated and adopted pursuant to W.S. 21-15-114(a)(xv).

21-17-204. Additional powers and duties; sectarian or partisan instruction or test prohibited.

(b) The board of trustees shall adopt university regulations consistent with the requirements of W.S. 9-2-3006 for capital construction projects let by the University of Wyoming.

24-2-108. Road and bridge construction.

All road and bridge construction work, any part of the cost of which is paid from the state highway fund, shall be performed in accordance with the plans and specifications prepared by the director of the department of transportation or the chief engineer and approved by the commission, and shall be performed by or under contracts awarded by the commission. The director with the assistance of the chief engineer shall have complete charge, including expenditures for roads now in existence, or in the future to be constructed, which are part of state highway systems which are located within or partially within the national forests' boundaries. All improvements costing more than ~~two hundred thousand dollars (\$200,000.00)~~ two hundred seventy-five

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thousand dollars (\$275,000.00) shall be constructed under contracts awarded after public notice to the lowest responsible bidder determined qualified by the transportation commission of Wyoming which is given the power to determine the qualifications and responsibilities of bidders. The commission may reject any or all bids and readvertise for bids. Improvements costing ~~less than forty thousand dollars (\$40,000.00)~~ sixty thousand dollars (\$60,000.00) or less may be constructed by the commission upon force account, with its own forces or under contract, as the commission shall determine. A state highway construction job to be completed within any calendar year period and to cost more than ~~forty thousand dollars (\$40,000.00)~~ sixty thousand dollars (\$60,000.00) shall not be constructed by department of transportation forces in sections or parcels so as to come within the ~~forty thousand dollars (\$40,000.00)~~ sixty thousand dollars (\$60,000.00) limitation. Contracts may be entered into with railroad companies for the construction of grade separation structures at actual cost under terms and conditions approved by the commission. Whenever an emergency arises requiring immediate expenditure of funds for the repair or rebuilding of bridges, approaches to bridges and any roadway, when the bridges, approaches to bridges or roadway are required to be rebuilt immediately and in such short time that in the judgment of the commission the people would be seriously inconvenienced in waiting the regular period for advertising for bids, the commission may enter into contract for any building or rebuilding of bridges, approaches or roadway without advertising for the letting of any contract, provided the amount of the contract shall not exceed one million dollars (\$1,000,000.00) and provided the commission requests proposals from at least two (2) contractors capable of performing the emergency construction or repair. The commission shall adopt general rules and regulations for the publication of notice to bidders, the

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awarding of contracts, and for determining the qualifications and responsibilities of bidders.

Section 3.

(a) The state construction department shall adopt emergency rules necessary to implement this act on or before October 1, 2020 and final rules to implement this act on or before March 1, 2021.

(b) The University of Wyoming board of trustees shall adopt emergency rules necessary to implement this act on or before October 1, 2020 and final rules to implement this act on or before March 1, 2021.

Section 4. This act shall apply only to procurement initiated on or after the effective date of this section.

Section 5.

(a) Except as provided in subsection (b) of this section, this act is effective October 1, 2020.

ORIGINAL HOUSE
BILL NO. HB0050

ENGROSSED

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(b) Sections 3 and 5 of this act are effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(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