

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

AN ACT relating to public works and contracts; modifying and conforming provisions governing public contracting; repealing provisions; and providing for an effective date.

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

**Section 1.** 9-2-3004(c)(iv)(C), 15-1-113(d), (e) and (h), 16-6-101(a) by creating new paragraphs (vi) through (xi) and by renumbering (vi) as (xii), 16-6-102(a), 16-6-105(a)(i)(intro) and (ii), 16-6-106, 16-6-107, 16-6-110(a)(intro), 16-6-112(a) and (b), 16-6-113 through 16-6-117, 16-6-118(b), 16-6-119, 16-6-121(a), (c), (e) and (f), 16-6-202(a) by creating a new paragraph (iv) and by renumbering (iv) as (v), 16-6-203(a)(intro), 16-6-205(b), 16-6-701(a)(ii), (iii), (v) through (vii), (ix)(intro), (A), (B), (D), (E), (xi) through (xiii) and by creating a new paragraph (xiv), 16-6-702 through 16-6-704, 16-6-708(a) and 16-6-1001(a)(intro), (ii)(A)(II), (B) and (C), (iv) and by creating a new subsection (f) are amended to read:

**9-2-3004. Duties of the department.**

(c) The department shall:

(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:

(C) Before any contract ~~exceeding fifty thousand dollars (\$50,000.00) in amount, for the construction, alteration or repair of any public building or public work or improvement of the state~~ for a capital construction project is awarded to any person, the person

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

shall furnish to the state a performance and payment bond ~~executed by a surety company authorized to do business in the state of Wyoming or other form of surety satisfactory to the state, in an amount equal to one hundred percent (100%) of the contract price~~ guarantee in accordance with the standards and monetary limits provided in W.S. 16-6-112;

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

(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 fifty thousand dollars (\$150,000.00) 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~~ or other form of guarantee in accordance with 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. A city, town or joint powers board may withhold a percentage of the calculated value of any work completed as retainage in accordance with W.S. 16-6-702(b).~~ No progress payment may be

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

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.

~~(h) Before any contractor or his representative receives a final payment on any contract for which a bond or other financial guarantee is required, The city, town or joint powers board shall publish in a newspaper of general circulation in the city or town, or in the case of a joint powers board in any member city or town, at least ten (10) days prior to the final payment, a notice to the effect that persons having claims for labor and material furnished the contractor shall present them to the city, town or joint powers board prior to the date specified for payment~~ issue payments to contractors in accordance with W.S. 16-6-116(a).

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

(a) As used in this act:

(vi) "Laborer" means as defined in W.S. 16-6-202(a)(i);

(vii) "Materialman" means as defined in W.S. 29-1-201(a)(ix);

(viii) "Public entity" means the state of Wyoming, any state office, board, council, commission, separate operating agency, department, institution or other instrumentality or operating unit of the state, including the University of Wyoming, any political subdivision of the

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

state, any county, city, town, school district, community college district or any public corporation of the state;

(ix) "Public work" includes alteration, construction, demolition, enlargement, improvement, major maintenance, reconstruction, renovation and repair of any highway, public building, public facility, public monument, public structure or public system;

(x) "State procurement website" means a website that the state construction department designates to host information and notices related to procurement for public works;

(xi) "Substantial completion" or "substantially complete" means the public entity has determined that the construction of the public work or designated portion thereof is sufficiently complete in accordance with the contract and associated documents so that the work may be occupied or utilized for its intended purposes;

~~(vi)~~(xii) "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 construction, 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~~a public entity for a public work, the contract

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

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 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) A five percent (5%) materials preference for Wyoming materials shall be applied in public purchases, subject to the following:

(i) The preference requirement shall apply to ~~all~~ all public entities;

(ii) As used in this section, "materials" means supplies, material, agricultural products, equipment, machinery and provisions to be used in ~~the construction, major maintenance, renovation, a public work, including the~~ regular maintenance and upkeep of ~~public institutions a public work;~~

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

All requests by a public entity for bids and proposals for materials, supplies, agricultural products, equipment, machinery and ~~provisions for the construction, major maintenance and renovation of every state, county, municipal, community college district or school district institution~~ public works shall contain the words "preference is hereby given to materials, supplies, agricultural products,

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

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 public works; exception.**

All ~~public buildings, courthouses, public school buildings, public monuments and other public structures constructed~~ public works in this state shall be constructed and maintained using materials produced or manufactured in Wyoming ~~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 five percent (5%) shall be allowed in cost of materials produced or manufactured in Wyoming.

**16-6-110. Limitation on work hours; overtime; exceptions.**

(a) No person shall require laborers, workmen or mechanics to work more than eight (8) hours in any one (1) calendar day or forty (40) hours in any one (1) week upon any public works of ~~the state or any of its political subdivisions~~ a public entity except as hereafter authorized. ~~An employee~~ A laborer, workman or mechanic may agree to work more than eight (8) hours per day or more than forty (40) hours in any week, provided the ~~employee-laborer, workman or mechanic~~ shall be paid at the rate of one and one-half (1 1/2) times the regularly established hourly rate for all work in excess of forty (40) hours in any one (1) week. This section does not apply:

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

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

(a) ~~Except as provided under W.S. 9-2-3004(e)(iv),~~ Any contract entered into with ~~the state, any county, city, town, school district or other political subdivision of the state for the construction, major maintenance or renovation of any public building or other public structure or for any public work or improvement and~~ a public entity for a public work where the contract price exceeds ~~fifty thousand dollars (\$50,000.00)~~ one hundred fifty thousand dollars (\$150,000.00), shall require any contractor before beginning work under the contract to furnish the ~~state or any political subdivision, as appropriate,~~ public entity a bond. ~~or~~ If the contract price is one hundred fifty thousand dollars (\$150,000.00) or less, the public entity may require the contractor to furnish any other form of guarantee approved by the ~~state or the political subdivision~~ public entity. The bond or other form of guarantee shall be:

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

(ii) For the use and benefit of any person performing any work or labor or furnishing any material or goods of any kind which were used in the execution of the contract, conditioned for the performance and completion of the contract according to its terms, compliance with all the requirements of law and payment as due of all just claims for work or labor performed, material and materials furnished and taxes, excises, licenses, assessments, contributions,

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

~~penalties and interest accrued~~ in the execution of the contract;

(iii) In an amount not less than ~~fifty percent (50%)~~ one hundred percent (100%) of the contract price unless the price ~~exceeds~~ is one hundred fifty thousand dollars (\$150,000.00) or less, in which case the ~~appropriate officer, agent or the governing body~~ public entity may fix a sufficient amount;

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

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

**16-6-113. Contractor's performance and payment bond or other guarantee; right of action; notice to obligee; intervention by interested parties; pro rata distribution.**

Any person entitled to the protection of a bond or other form of guarantee approved by ~~the state or any political subdivision~~ a public entity under W.S. 16-6-112, may maintain an action for the amount due him. He shall notify the obligee named in the bond or other guarantee of the beginning of the action, giving the names of the parties, describing the guarantee and stating the amount and nature of his claim. No judgment shall be entered in the action within thirty (30) days after the giving of the notice. The obligee or any person having a cause of action may on his motion, be admitted as a party to the action. The court shall determine the rights of

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

all parties to the action. If the amount realized on the bond or other guarantee is insufficient to discharge all claims in full, the amount shall be distributed among the parties pro rata.

**16-6-114. Contractor's performance and payment bond or other guarantee; requiring new or additional bond or other guarantee; failure to furnish.**

If in its judgment any of the sureties on a bond or other form of guarantee approved by the ~~state or any political subdivision~~ public entity under W.S. 16-6-112 are insolvent or for any cause are no longer proper or sufficient sureties, the obligee may within ten (10) days require the contractor to furnish a new or additional bond or other approved guarantee. If ordered by the obligee, all work on the contract shall cease until a new or additional bond or other guarantee is furnished. If the guarantee is not furnished within ten (10) days, the obligee may at its option ~~determine~~ terminate the contract and complete the contract as the agent and at the expense of the contractor and his sureties.

**16-6-115. Contractor's performance and payment bond or other guarantee; limitation of actions.**

No action shall be maintained on any bond or other form of guarantee satisfactory to the ~~state or any political subdivision~~ public entity under W.S. 16-6-112 unless commenced within one (1) year after the date of ~~first publication of notice of final payment of the contract~~ final completion of the public work as provided in W.S. 16-6-116(a)(iv).

**16-6-116. Payment to contractor; substantial completion; final completion; required notices.**

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

(a) When any public work is let by contract, the ~~commission, board or person~~ public entity under whose direction or supervision the work is being carried on and conducted ~~and upon whose approval intermediate and final estimates are paid for the construction of the work, forty (40) days before the final estimate is paid,~~ shall:

(i) Issue a certificate of substantial completion after determination that the public work, or designated portion thereof the public entity agrees to accept separately, is substantially complete;

(ii) Upon issuance of a certificate of substantial completion, cause notice to be published in a newspaper of general circulation, published nearest the point at which the work is being carried on, once a week for ~~three (3) two (2)~~ consecutive weeks, and also to post in ~~three (3) conspicuous places on the work, a notice setting posted on the state procurement website or the public entity's official website. The notice shall set forth in substance, that the commission, board or person~~ public entity has accepted the work, or designated portion thereof, as ~~completed~~ substantially complete according to the ~~plans and specifications and rules set forth in the contract between the commission, board or person and the contractor, contract and associated documents~~ and that the general contractor is entitled to ~~final settlement therefor~~. The notice shall also set forth that payment as provided in paragraph (iii) of this subsection upon the 41st day (and the notice shall specify the exact date) after the first publication of the notice was first published and posted. If the contract provides for multiple substantial completions, this paragraph shall apply to each substantial completion designated in the contract;

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

(iii) Upon the 41st day after the notice required under paragraph (ii) of this subsection was first published and posted, the ~~commission, board or person~~ public entity under whose direction or supervision the work has been carried on ~~will~~ shall pay to the general contractor ~~the full any~~ payment retained by the public entity under W.S. 16-6-702(b) together with any other amount due under the contract, ~~less~~ less any amount withheld for the portion of the public work that is incomplete or not completed in accordance with the contract and associated documents;

(iv) Issue a certificate of final completion after determination that the contract is fully performed and all portions of the public work are acceptable under the contract and associated documents. Any amounts withheld under paragraph (iii) of this subsection for the portion of the public work that was determined incomplete or not in accordance with the contract and associated documents and due under the contract shall be paid to the general contractor. The public entity shall post the date of final completion for the public work on the state procurement website or the public entity's official website.

(b) This section does not relieve the general contractor and the sureties on his bond from any claims for work or labor done or materials or supplies furnished in the execution of the contract.

(c) The public entity shall provide written notice of the requirements of this section in the project specifications.

**16-6-117. Payment to contractor; prerequisite filing of contractor's statement of payment; disputed claims.**

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

In all ~~formal~~ contracts entered into by any person with ~~the state, or any department or commission thereof, or with any county, city, town, school district, high school district, or other public corporation of this state,~~ a public entity for the construction of any public building, or the prosecution and completion of any public work, or for repairs upon any public building or a public work, no ~~final payment~~ payments under W.S. 16-6-116(a) shall be made until the person files with the ~~officer, department or commission of the state, or with the clerk of the county, city, town or school district, or with a similar officer of any other public corporation by~~ public entity with which the contract has been made, a sworn statement setting forth that all claims for material, supplies and labor performed under the contract have been and are paid for the entire period of time for which the ~~final~~ payment is to be made. If any claim for material, and supplies or labor is disputed the sworn statement shall so state, and the amount claimed to be due the ~~laborer shall~~ subcontractor or materialmen may be ~~deducted from the final payment and retained by the state, county, city, town or school district authority or public corporation until the determination of the dispute, either by judicial action or consent of the parties, and then paid by the agent or agency to the persons found entitled thereto.~~ filed by the claimant as a claim against the general contractor's surety bond. Payment to the general contractor under W.S. 16-6-116(a) shall be paid without regard to any pending claims against the general contractor's surety bond unless the public entity has actual knowledge that the surety bond is deficient to settle known present claims, in which case an amount equal to the disputed claims may be withheld.

**16-6-118. Unlawful interest of officeholders in public contracts or works; exception.**

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

(b) Notwithstanding subsection (a) of this section, an act shall not be unlawful under this section if any person who is interested in any public contract or ~~shall represent~~ who represents any person, company or corporation, ~~but shall disclose~~ interested in any public contract discloses the nature and extent thereof to all the contracting parties concerned therewith, ~~and shall absent~~ absents himself during the considerations and vote thereon, ~~and does~~ does not attempt to influence any of the contracting parties and does not act directly or indirectly for the ~~governing body~~ public entity in the inspection, operation, administration or performance of any contract. ~~, then the acts are not unlawful under this section.~~ This section does not apply ~~as~~ to the operation, administration, inspection or performance of banking and deposit contracts and relationships after the selection of a depository.

**16-6-119. Contracts for public works; right to reject bids or responses; qualifications of bidders and respondents.**

Every ~~state agency, board, commission, department, or institution~~ public entity 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,~~ public works 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.

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

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

(a) Any subcontractor or materialman entitled to the protection of a bond or other form of guarantee approved by ~~the state or any political subdivision~~ a public entity under W.S. 16-6-112 shall give notice of his right to that protection to the ~~prime-general~~ contractor. Failure to give notice to a ~~prime-general~~ contractor who has complied with subsections (f) and (g) of this section waives the subcontractor or materialman's protection under the bond or guarantee. ~~and waives any right to a lien for materials or services provided.~~

(c) The notice shall be sent to the ~~prime-general~~ contractor by certified mail, electronic means or delivered to and receipted by the ~~prime-general~~ contractor or his agent. Notice by certified mail or electronic means is effective on the date the notice is mailed or sent electronically.

(e) This section shall only apply where the ~~prime-general~~ contractor's contract is for ~~fifty thousand dollars (\$50,000.00) or more~~ an amount exceeding one hundred fifty thousand dollars (\$150,000.00).

(f) The ~~prime-general~~ contractor shall post on the construction site a prominent sign citing this section and stating that any subcontractor or materialman shall give notice to the ~~prime-general~~ contractor of a right to protection under the bond or guarantee and that failure to provide the notice shall waive the subcontractor or materialman's protection under the bond or guarantee. ~~and shall waive any right to a lien for materials or services provided.~~

**16-6-202. Definitions.**

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

(a) As used in this act:

(iv) "Public work" means as described in W.S. 16-6-101(a)(ix);

(iv)(v) "This act" means W.S. 16-6-201 through 16-6-206.

**16-6-203. Required resident labor on public works projects; exception.**

(a) Every person who is ~~charged with the duty of construction, reconstructing, improving, enlarging, altering or repairing any public works project or improvement for the state or any political subdivision, municipal corporation, or other governmental unit,~~ responsible for a public work shall employ only Wyoming laborers on the ~~project or improvement~~ public work. Every contract for a public work let by any person shall contain a provision requiring that Wyoming labor be used except other laborers may be used when Wyoming laborers are not available for the employment from within the state or are not qualified to perform the work involved. The contract shall contain a provision requiring specific acknowledgement of the requirements of this section. A person required to employ Wyoming laborers may employ other than Wyoming laborers if:

**16-6-205. Enforcement.**

(b) ~~Along with each application for payment for a contract subject to this act,~~ If requested in writing by the department of workforce services or contracting entity, the general contractor shall provide to the department or contracting entity a payroll report for the period requested for all contractors and subcontractors involved in the

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

project in a form that is consistent with federally certified reporting requirements and includes residency status for each laborer.

**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, renovate or perform major maintenance of any highway, public building, public work or public improvement, structure or system~~ for a public work;

(iii) "Public entity" means ~~this state or a county, city, town or any political subdivision thereof~~ as defined in W.S. 16-6-101(a)(viii);

(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, 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;

(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

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

consultant providing administrative and management services to the public entity throughout the design and construction phases of a ~~project~~ public work. 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~~ public work, 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~~ public work. Under this delivery method, the construction manager at-risk is responsible for providing a guaranteed maximum price for the ~~project~~ public work to the public entity prior to commencing the ~~construction project~~ public work and the construction manager at-risk shall be required to bond any project ~~with a guaranteed maximum price in excess of two hundred fifty thousand dollars (\$250,000.00)~~ in accordance with W.S. 16-6-112;

(ix) "Design-build" means a type of construction delivery method in which there is a single contract between the public entity and a design-builder who furnishes architectural, engineering and other related design services as required for the public ~~project~~ work, as well as labor, materials and other construction services necessary ~~to construct the project~~ for the public work. A design-builder may be selected by the public entity based on evaluation of responses to a request for qualifications, fixed scope request for proposal or fixed price request for proposal. The following shall apply:

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

(A) A design-builder may be selected based solely on a response to a request for qualification for ~~projects~~ public works with an estimated construction cost of five hundred thousand dollars (\$500,000.00) or less provided there are not less than two (2) respondents;

(B) Responses to a fixed scope request for proposal or a fixed price request for proposal shall be used as the bases for selection for a ~~project~~ public work with an estimated construction cost of more than five hundred thousand dollars (\$500,000.00);

(D) The respondent chosen by evaluation to provide the best overall value for the ~~project~~ public work shall be selected in response to a fixed scope request for proposal or a fixed price request for proposal. The best overall value shall be determined based on criteria set forth by the public entity letting the ~~project~~ public work and may include, but is not limited to, qualifications, price, quality of materials and products, past experience and schedule;

(E) All unsuccessful respondents to a response for a fixed scope request for proposal or fixed price request for proposal may be compensated at the discretion of the public entity based upon a percentage of the price of the ~~project~~ public work as proposed by the successful respondent in the respondent's original proposal. Any compensation provided pursuant to this subparagraph shall be clearly specified in the request for proposal.

(xi) "Fixed price request for proposal" means a request for an oral and written presentation of all qualifications deemed pertinent to the ~~project~~ public work by the public entity in addition to a schematic design and

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

detailed description of all materials and products proposed to accommodate a preliminary project program prepared by the public entity and provided in the fixed price request for proposal. The successful respondent shall construct the ~~project~~-public work described in their design and material and product description for a fixed price prepared by the public entity and provided in the fixed price request for proposal. The final guaranteed maximum price and scope for the ~~project~~-public work may be altered from the request for proposal and negotiated with the successful respondent at the discretion of the public entity;

(xii) "Fixed scope request for proposal" means a request for an oral and written presentation of all qualifications deemed pertinent to the ~~project~~-public work by the public entity in addition to a guaranteed maximum price for a preliminary design prepared by the design builder incorporating all elements of a fixed scope for the ~~project~~-public work prepared by the public entity and provided in the fixed scope request for proposal. The final guaranteed maximum price and scope for the ~~project~~-public work may be altered from the request for proposal and negotiated with the successful respondent at the discretion of the public entity;

(xiii) "Request for qualification" means a request for an oral or written presentation of all qualifications deemed pertinent to the ~~project~~-public work by the public entity. The request for qualification shall include not less than all the provisions contained in W.S. 16-6-707(b) ~~i~~.

(xiv) "Public work" means as described in W.S. 16-6-101(a)(ix).

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

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

(a) ~~Notwithstanding W.S. 15-1-113(e),~~ A public entity awarding a contract for ~~the construction, major maintenance or renovation of any highway, public building,~~ a 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.

(b) In all contracts with a public entity for a public work, the public entity may retain no more than ~~ten percent (10%)~~ five percent (5%) 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~~ as retainage. The retained payment shall be due and payable as prescribed by W.S. 16-6-116(a). ~~The withheld percentage of the contract price of the work, major maintenance, renovation or construction shall be retained~~ payment shall be held in an account in the name of the contractor which account 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.

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

~~(b)(c)~~ Alternate design and construction delivery methods may be used by a public entity ~~to design, construct, renovate or perform major maintenance of a public works projects~~ for a public work.

**16-6-703. Public work; completion by public entity; partial payments.**

If it becomes necessary for a public entity to take over the completion of any ~~contract public work~~, all of the amounts owing the contractor, including ~~the withheld percentage any payment retained under W.S. 16-6-702(b)~~, shall first be applied toward the cost of completion of the ~~contract public work~~. Any balance ~~remaining in of~~ the retained ~~percentage payment remaining~~ after completion ~~of the public work~~ by the public entity shall be payable to the contractor or the contractor's creditors. The retained ~~percentage payment~~ which may be due any contractor shall be due and payable as prescribed by W.S. ~~16-6-116-16-6-116(a)~~.

**16-6-704. Interest bearing deposit agreement; option to enter into.**

If requested by the general contractor, a public entity shall enter into an interest bearing deposit agreement with any depository designated by the general contractor, after notice to the surety, to provide an agent for the custodial care and servicing of any deposits placed with him pursuant to this act on any contract of more than ~~twenty-five thousand dollars (\$25,000.00)~~ fifty thousand dollars (\$50,000.00). The services shall include the safekeeping of the obligations and the rendering of all services required to effectuate the purposes of this act.

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

**16-6-708. Responsibilities under alternative delivery contracts.**

(a) Any construction manager agent, construction manager at risk or design-builder 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~~retained payments, payment and performance bonding and default of contract.

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

(a) Unless otherwise prohibited by federal law, any funds appropriated to or authorized for expenditure by a public entity 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:

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

(A) The procurement of furniture and movable equipment shall be done by competitive bid based upon:

(II) If specified products are not available from any Wyoming resident supplier, specifications addressing performance standards and functional requirements

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

determined by the agency-public entity. The agency-public entity may specify suggested individual brands or manufacturers, provided that similar products that meet or exceed specifications shall be accepted as substitute products. Specified products that are not available to any responsible Wyoming resident suppliers shall not be used in any group or package within the bid documents which would exclude responsible Wyoming resident suppliers from submitting a bid on the final bid package. ~~As used in this subdivision, "agency" means any department, agency or other instrumentality of the state or of a political subdivision of the state to which funds are appropriated or authorized for expenditure for capital construction projects and includes any entity that the agency contracts with to administer or award any bid.~~

(B) No person who was employed by the agency-public entity to prepare the bid documents, whether with or without compensation, shall be eligible to bid on the final bid package;

(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;

(iv) Contractor progress payments shall be made only in accordance with this paragraph. If a contracting public entity determines that a general contractor in good standing on a project requires a progress payment due for work completed in a workmanlike manner in order to pay a materialman, subcontractor or laborer for their work performed to date, the entity may issue the progress payment upon verification that all materialmen, subcontractors and

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

laborers have been paid for completed work through the date of the most recent previous progress payment, less any contracted amounts lawfully held for retainage. If a progress payment has been withheld by a general contractor due to a reasonable dispute between a general contractor and a materialman, or subcontractor, or laborer, ~~further progress payments shall not be paid to the general contractor but shall be retained in accordance with the guidelines addressing disputed final payments~~ the claimant may present a claim in the disputed amount against the general contractor's surety bond under the provisions of W.S. 16-6-117. A person submitting false information regarding a progress payment subject to this paragraph shall be subject to the provisions of W.S. 16-6-120.

(f) As used in this section:

(i) "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);

(ii) "Public entity" means as defined in W.S. 16-6-101(a)(viii).

**Section 2.** W.S. 16-6-105(a)(i)(A) through (C), 16-6-701(a)(iv) and 16-6-1001(b) through (d) are repealed.

**Section 3.** This act shall apply only to procurement initiated and contracts executed on or after the effective date of this act.

ORIGINAL HOUSE  
BILL NO. HB0052

ENGROSSED

ENROLLED ACT NO. 31, HOUSE OF REPRESENTATIVES

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

**Section 4.** This act is effective July 1, 2020.

(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