

HOUSE BILL NO. HB0052

Public works and contracts.

Sponsored by: Joint Appropriations Committee

A BILL

for

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

4

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

6

7 **Section 1.** 9-2-3004(c)(iv)(C), 15-1-113(d), (e) and
 8 (h), 16-6-101(a) by creating new paragraphs (vi) through (xi)
 9 and by renumbering (vi) as (xii), 16-6-102(a),
 10 16-6-105(a)(i)(intro) and (ii), 16-6-106, 16-6-107,
 11 16-6-110(a)(intro), 16-6-112(a) and (b), 16-6-113 through
 12 16-6-117, 16-6-118(b), 16-6-119, 16-6-121(a), (c), (e) and
 13 (f), 16-6-202(a) by creating a new paragraph (iv) and by
 14 renumbering (iv) as (v), 16-6-203(a)(intro), 16-6-205(b),
 15 16-6-701(a)(ii), (iii), (v) through (vii), (ix)(intro), (A),
 16 (B), (D), (E), (xi) through (xiii) and by creating a new

1 paragraph (xiv), 16-6-702 through 16-6-704, 16-6-708(a) and
2 16-6-1001(a)(intro), (ii)(A)(II), (B) and (C), (iv) and by
3 creating a new subsection (f) are amended to read:

4

5 **9-2-3004. Duties of the department.**

6

7 (c) The department shall:

8

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

13

14 (C) Before any contract ~~exceeding fifty~~
15 ~~thousand dollars (\$50,000.00) in amount, for the~~
16 ~~construction, alteration or repair of any public building or~~
17 ~~public work or improvement of the state~~ for a capital
18 construction project is awarded to any person, the person
19 shall furnish to the state a performance and payment bond
20 ~~executed by a surety company authorized to do business in the~~
21 ~~state of Wyoming~~ or other form of ~~surety satisfactory to the~~
22 ~~state, in an amount equal to one hundred percent (100%) of~~

1 ~~the contract price guarantee in accordance with the standards~~
2 ~~and monetary limits provided in W.S. 16-6-112;~~

3
4 **15-1-113. Contracts for public improvements.**

5
6 (d) Every contract shall be executed by the mayor or in
7 his absence or disability, by the president or other presiding
8 officer of the governing body and by the clerk or designee of
9 the governing body. The successful bidder or respondent shall
10 furnish to the city, town or joint powers board a bond ~~as~~
11 ~~specified in the advertisement, or if the contract price is~~
12 ~~one hundred fifty thousand dollars (\$150,000.00) or less, any~~
13 ~~other form of financial guarantee satisfactory to the city,~~
14 ~~town or joint powers board. The bond or other form of~~
15 ~~financial guarantee shall meet the requirements of or other~~
16 ~~form of guarantee in accordance with W.S. 16-6-112.~~

17
18 (e) Before advertising for a bid for any work on the
19 construction of any public improvements and except as
20 provided under W.S. 16-6-707 for alternate design and
21 construction delivery methods, detailed plans and
22 specifications shall be prepared, together with an estimate
23 of the probable cost and a form of the proposed contract.

1 ~~Except as provided under W.S. 16-6-701 through 16-6-706, no~~
2 ~~contract may provide for the monthly retention of more than~~
3 ~~ten percent (10%) of the contract price on the amount of work~~
4 ~~done during the month, as shown by the estimate of the city~~
5 ~~or town engineer or designated local official. A city, town~~
6 ~~or joint powers board may withhold a percentage of the~~
7 ~~calculated value of any work completed as retainage in~~
8 ~~accordance with W.S. 16-6-702(b).~~ No progress payment may be
9 made until the city or town engineer or designated local
10 official has furnished the estimate, together with a
11 certificate that the amount of work estimated to have been
12 done conforms in all material respects with the requirements
13 of the contract. A joint powers board may designate an
14 official of any member city or town to perform the functions
15 required by this subsection.

16

17 (h) ~~Before any contractor or his representative~~
18 ~~receives a final payment on any contract for which a bond or~~
19 ~~other financial guarantee is required, The city, town or joint~~
20 ~~powers board shall publish in a newspaper of general~~
21 ~~circulation in the city or town, or in the case of a joint~~
22 ~~powers board in any member city or town, at least ten (10)~~
23 ~~days prior to the final payment, a notice to the effect that~~

1 ~~persons having claims for labor and material furnished the~~
2 ~~contractor shall present them to the city, town or joint~~
3 ~~powers board prior to the date specified for payment~~ issue
4 payments to contractors in accordance with W.S. 16-6-116(a).

5
6 **16-6-101. Definitions.**

7
8 (a) As used in this act:

9
10 (vi) "Laborer" means as defined in W.S.
11 16-6-202(a)(i);

12
13 (vii) "Materialman" means as defined in W.S.
14 29-1-201(a)(ix);

15
16 (viii) "Public entity" means the state of Wyoming,
17 any state office, board, council, commission, separate
18 operating agency, department, institution or other
19 instrumentality or operating unit of the state, including the
20 University of Wyoming, any political subdivision of the
21 state, any county, city, town, school district, community
22 college district or any public corporation of the state;

23

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

6
7 (x) "State procurement website" means a website
8 established and maintained by the state that the state
9 construction department designates to host information and
10 notices related to procurement for public works;

11
12 (xi) "Substantial completion" or "substantially
13 complete" means the public entity has determined that the
14 construction of the public work or designated portion thereof
15 is sufficiently complete in accordance with the contract and
16 associated documents so that the work may be occupied or
17 utilized for its intended purposes;

18
19 ~~(vi)~~(xii) "This act" means W.S. 16-6-101 through
20 16-6-121.

21

1 **16-6-102. Resident contractors; preference limitation**
2 **with reference to lowest bid or qualified response;**
3 **decertification; denial of application for residency.**

4
5 (a) If a contract is let by ~~the state, any department~~
6 ~~thereof, or any county, city, town, school district,~~
7 ~~community college district or other public corporation of the~~
8 ~~state for the construction, major maintenance or renovation~~
9 ~~of any public building, or other public structure, or for~~
10 ~~making any addition thereto, or for any public work or~~
11 ~~improvements~~ a public entity for a public work, the contract
12 shall be let, if advertisement for bids or request for
13 proposal is not required, to a resident of the state. If
14 advertisement for bids is required, the contract shall be let
15 to the responsible certified resident making the lowest bid
16 if the certified resident's bid is not more than five percent
17 (5%) higher than that of the lowest responsible nonresident
18 bidder.

19
20 **16-6-105. Preference for Wyoming materials and Wyoming**
21 **agricultural products required in public purchases;**
22 **exception; cost differential; definition.**

23

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

4

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

7

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

13

14 **16-6-106. Statement of Wyoming materials preference in**
15 **requests for bids and proposals.**

16

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

1 equipment, machinery and provisions produced, manufactured or
2 grown in Wyoming, or supplied by a resident of the state,
3 quality being equal to articles offered by the competitors
4 outside of the state".

5

6 **16-6-107. Wyoming materials preference required in**
7 **public works; exception.**

8

9 All ~~public buildings, courthouses, public school buildings,~~
10 ~~public monuments and other public structures constructed~~
11 public works in this state shall be constructed and maintained
12 using materials produced or manufactured in Wyoming ~~for~~
13 ~~construction, major maintenance and renovation projects~~ if
14 Wyoming materials are suitable and can be furnished in
15 marketable quantities. Preference shall not be granted for
16 materials of an inferior quality to those offered by
17 competitors outside of the state, but a differential of five
18 percent (5%) shall be allowed in cost of materials produced
19 or manufactured in Wyoming.

20

21 **16-6-110. Limitation on work hours; overtime;**
22 **exceptions.**

23

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

13

14 **16-6-112. Contractor's performance and payment bond or**
15 **other guarantee; when required; conditions; amount; approval;**
16 **filing; enforcement upon default.**

17

18 (a) ~~Except as provided under W.S. 9-2-3004(c)(iv), Any~~
19 contract entered into with ~~the state, any county, city, town,~~
20 ~~school district or other political subdivision of the state~~
21 ~~for the construction, major maintenance or renovation of any~~
22 ~~public building or other public structure or for any public~~
23 ~~work or improvement and~~ a public entity for a public work

1 ~~where~~ the contract price exceeds ~~fifty thousand dollars~~
2 ~~(\$50,000.00)~~ one hundred fifty thousand dollars
3 (\$150,000.00), shall require any contractor before beginning
4 work under the contract to furnish the ~~state or any political~~
5 ~~subdivision, as appropriate,~~ public entity a bond. ~~or~~ If the
6 contract price is one hundred fifty thousand dollars
7 (\$150,000.00) or less, the public entity may require the
8 contractor to furnish any other form of guarantee approved by
9 the ~~state or the political subdivision~~ public entity. The
10 bond or other form of guarantee shall be:

11

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

16

17 (ii) For the use and benefit of any person
18 performing any work or labor or furnishing any material or
19 goods of any kind which were used in the execution of the
20 contract, conditioned for the performance and completion of
21 the contract according to its terms, compliance with all the
22 requirements of law and payment as due of all just claims for
23 work or labor performed, ~~material~~ and materials furnished ~~and~~

1 ~~taxes, excises, licenses, assessments, contributions,~~
2 ~~penalties and interest accrued~~ in the execution of the
3 contract;

4
5 (iii) In an amount not less than ~~fifty percent~~
6 ~~(50%)~~ one hundred percent (100%) of the contract price unless
7 the price ~~exceeds~~ is one hundred fifty thousand dollars
8 (\$150,000.00) or less, in which case the ~~appropriate officer,~~
9 ~~agent or the governing body~~ public entity may fix a sufficient
10 amount;

11
12 (iv) Approved by and filed with the appropriate
13 officer, agent, governing body or other designee of the ~~state~~
14 ~~or governing body of the political subdivision~~ public entity.

15
16 (b) A bond or other guarantee satisfactory to the ~~state~~
17 ~~or political subdivision, as the case may be,~~ public entity
18 shall include the obligations specified under subsection (a)
19 of this section even though not expressly written into the
20 guarantee.

21

1 **16-6-113. Contractor's performance and payment bond or**
2 **other guarantee; right of action; notice to obligee;**
3 **intervention by interested parties; pro rata distribution.**

4
5 Any person entitled to the protection of a bond or other form
6 of guarantee approved by ~~the state or any political~~
7 ~~subdivision~~ a public entity under W.S. 16-6-112, may maintain
8 an action for the amount due him. He shall notify the obligee
9 named in the bond or other guarantee of the beginning of the
10 action, giving the names of the parties, describing the
11 guarantee and stating the amount and nature of his claim. No
12 judgment shall be entered in the action within thirty (30)
13 days after the giving of the notice. The obligee or any person
14 having a cause of action may on his motion, be admitted as a
15 party to the action. The court shall determine the rights of
16 all parties to the action. If the amount realized on the bond
17 or other guarantee is insufficient to discharge all claims in
18 full, the amount shall be distributed among the parties pro
19 rata.

20
21 **16-6-114. Contractor's performance and payment bond or**
22 **other guarantee; requiring new or additional bond or other**
23 **guarantee; failure to furnish.**

1

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

14

15 **16-6-115. Contractor's performance and payment bond or**
16 **other guarantee; limitation of actions.**

17

18 No action shall be maintained on any bond or other form of
19 guarantee satisfactory to the ~~state or any political~~
20 ~~subdivision~~ public entity under W.S. 16-6-112 unless
21 commenced within one (1) year after the date of first
22 ~~publication of notice of final payment of the contract~~ final

1 completion of the public work as provided in W.S.
2 16-6-116(a)(iv).

3

4 **16-6-116. Payment to contractor; substantial**
5 **completion; final completion; required notices.**

6

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

13

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

18

19 (ii) Upon issuance of a certificate of substantial
20 completion, cause notice to be ~~published in a newspaper of~~
21 ~~general circulation, published nearest the point at which the~~
22 ~~work is being carried on, once a week for three (3)~~
23 ~~consecutive weeks, and also to post in three (3) conspicuous~~

1 ~~places on the work, a notice setting~~ posted on the state
2 procurement website or the public entity's official website.
3 The notice shall set forth in substance, that the ~~commission,~~
4 ~~board or person~~ public entity has accepted the work, or
5 designated portion thereof, as ~~completed~~ substantially
6 complete according to the ~~plans and specifications and rules~~
7 ~~set forth in the contract between the commission, board or~~
8 ~~person and the contractor,~~ contract and associated documents
9 and that the general contractor is entitled to final
10 ~~settlement therefor~~. ~~The notice shall also set forth that~~
11 payment as provided in paragraph (iii) of this subsection
12 upon the 41st day (and the notice shall specify the exact
13 date) after the ~~first publication of the~~ notice was first
14 posted. If the contract provides for multiple substantial
15 completions, this paragraph shall apply to each substantial
16 completion designated in the contract;

17
18 (iii) Upon the 41st day after the notice required
19 under paragraph (ii) of this subsection was first posted, the
20 ~~commission, board or person~~ public entity under whose
21 direction or supervision the work has been carried on ~~will~~
22 shall pay to the general contractor ~~the full~~ any payment
23 retained by the public entity under W.S. 16-6-702(b) together

1 with any other amount due under the contract, ~~,-~~ less any amount
2 withheld for the portion of the public work that is incomplete
3 or not completed in accordance with the contract and
4 associated documents;

5
6 (iv) Issue a certificate of final completion after
7 determination that the contract is fully performed and all
8 portions of the public work are acceptable under the contract
9 and associated documents. Any amounts withheld under
10 paragraph (iii) of this subsection for the portion of the
11 public work that was determined incomplete or not in
12 accordance with the contract and associated documents and due
13 under the contract shall be paid to the general contractor.
14 The public entity shall post the date of final completion for
15 the public work on the state procurement website or the public
16 entity's official website.

17
18 (b) This section does not relieve the general
19 contractor and the sureties on his bond from any claims for
20 work or labor done or materials or supplies furnished in the
21 execution of the contract.

22

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

4
5 **16-6-117. Payment to contractor; prerequisite filing of**
6 **contractor's statement of payment; disputed claims.**

7
8 In all ~~formal~~ contracts entered into by any person with ~~the~~
9 ~~state, or any department or commission thereof, or with any~~
10 ~~county, city, town, school district, high school district, or~~
11 ~~other public corporation of this state, a public entity~~ for
12 ~~the construction of any public building, or the prosecution~~
13 ~~and completion of any public work, or for repairs upon any~~
14 ~~public building or a~~ public work, no ~~final payment~~ payments
15 under W.S. 16-6-116(a) shall be made until the person files
16 with the ~~officer, department or commission of the state, or~~
17 ~~with the clerk of the county, city, town or school district,~~
18 ~~or with a similar officer of any other public corporation by~~
19 public entity with which the contract has been made, a sworn
20 statement setting forth that all claims for material,
21 supplies and labor performed under the contract have been and
22 are paid for the entire period of time for which the ~~final~~
23 payment is to be made. If any claim for material, ~~and~~ supplies

1 or labor is disputed the sworn statement shall so state, and
2 the amount claimed to be due the ~~laborer shall~~ subcontractor
3 or materialmen may be ~~deducted from the final payment and~~
4 ~~retained by the state, county, city, town or school district~~
5 ~~authority or public corporation until the determination of~~
6 ~~the dispute, either by judicial action or consent of the~~
7 ~~parties, and then paid by the agent or agency to the persons~~
8 ~~found entitled thereto.~~ filed by the claimant as a claim
9 against the general contractor's surety bond. Payment to the
10 general contractor under W.S. 16-6-116(a) shall be paid
11 without regard to any pending claims against the general
12 contractor's surety bond unless the public entity has actual
13 knowledge that the surety bond is deficient to settle known
14 present claims, in which case an amount equal to the disputed
15 claims may be withheld.

16

17 **16-6-118. Unlawful interest of officeholders in public**
18 **contracts or works; exception.**

19

20 (b) Notwithstanding subsection (a) of this section, an
21 act shall not be unlawful under this section if any person
22 who is interested in any public contract or ~~shall represent~~
23 who represents any person, company or corporation, ~~but shall~~

1 ~~disclose~~ interested in any public contract discloses the
2 nature and extent thereof to all the contracting parties
3 concerned therewith, ~~and shall absent~~ absents himself during
4 the considerations and vote thereon, ~~and does~~ not attempt to
5 influence any of the contracting parties and does not act
6 directly or indirectly for the ~~governing body~~ public entity
7 in the inspection, operation, administration or performance
8 of any contract. ~~, then the acts are not unlawful under this~~
9 ~~section.~~ This section does not apply ~~as~~ to the operation,
10 administration, inspection or performance of banking and
11 deposit contracts and relationships after the selection of a
12 depository.

13

14 **16-6-119. Contracts for public works; right to reject**
15 **bids or responses; qualifications of bidders and respondents.**

16

17 Every ~~state agency, board, commission, department, or~~
18 ~~institution~~ public entity shall be authorized to determine
19 the qualifications and responsibilities of bidders or
20 respondents on contracts for ~~the construction, major~~
21 ~~maintenance or renovation of a public project, facility or~~
22 ~~structure using standard forms and procedures adopted by the~~
23 ~~department of administration and information,~~ public works

1 and may ~~recommend that the department of administration and~~
2 ~~information~~ reject any or all bids or responses based on the
3 qualifications and responsibilities of bidders and
4 respondents and readvertise for bids or responses.

5

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

9

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

20

21 (c) The notice shall be sent to the ~~prime~~ general
22 contractor by certified mail, electronic means or delivered
23 to and receipted by the ~~prime~~ general contractor or his agent.

1 Notice by certified mail or electronic means is effective on
2 the date the notice is mailed or sent electronically.

3

4 (e) This section shall only apply where the prime
5 general contractor's contract is for ~~fifty thousand dollars~~
6 ~~(\$50,000.00) or more~~ an amount exceeding one hundred fifty
7 thousand dollars (\$150,000.00).

8

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

18

19 **16-6-202. Definitions.**

20

21 (a) As used in this act:

22

1 (iv) "Public work" means as described in W.S.
2 16-6-101(a)(ix);

3

4 ~~(iv)~~(v) "This act" means W.S. 16-6-201 through
5 16-6-206.

6

7 **16-6-203. Required resident labor on public works**
8 **projects; exception.**

9

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

1 required to employ Wyoming laborers may employ other than
2 Wyoming laborers if:

3

4 **16-6-205. Enforcement.**

5

6 (b) ~~Along with each application for payment for a~~
7 ~~contract subject to this act, If requested in writing by the~~
8 ~~department of workforce services or contracting entity,~~ the
9 general contractor shall provide to the department or
10 contracting entity a payroll report for the period requested
11 for all contractors and subcontractors involved in the
12 project in a form that is consistent with federally certified
13 reporting requirements and includes residency status for each
14 laborer.

15

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

17

18 (a) As used in this act:

19

20 (ii) "Contractor" means any person who is a party
21 to a contract with a public entity ~~to construct, renovate or~~
22 ~~perform major maintenance of any highway, public building,~~

1 ~~public work or public improvement, structure or system~~ for a
2 public work;

3

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

7

8 (v) "Alternate design and construction delivery
9 method" means the delivery method described by any
10 qualifications based procurement of design and construction
11 services, including all procedures, actions, events,
12 contractual relationships, obligations and forms of agreement
13 for the successful completion of ~~the design and construction,~~
14 ~~major maintenance or renovation of~~ any public ~~building,~~ work,
15 ~~improvement, facility, structure or system~~ other than by
16 design, bid and build. Alternate design and construction
17 delivery methods available to a public entity include
18 construction manager agent, construction manager at risk or
19 design-builder;

20

21 (vi) "Construction manager agent" means a type of
22 construction management delivery where the professional
23 service is procured under existing statutes for professional

1 services. The construction manager agent is a construction
2 consultant providing administrative and management services
3 to the public entity throughout the design and construction
4 phases of a ~~project~~public work. Under this delivery method,
5 the construction manager agent is not the contracting agent
6 and is not responsible for purchase orders;

7
8 (vii) "Construction manager at-risk" means a type
9 of construction management delivery in which the construction
10 manager at-risk is an advocate for the public entity as
11 determined by the contracts throughout the preconstruction
12 phase of a project. In the construction phase of a ~~project~~
13 public work, the construction manager at-risk is responsible
14 for all project subcontracts and purchase orders and may
15 conduct all or a portion of the ~~construction project~~public
16 work. Under this delivery method, the construction manager
17 at-risk is responsible for providing a guaranteed maximum
18 price for the ~~project~~public work to the public entity prior
19 to commencing the ~~construction project~~public work and the
20 construction manager at-risk shall be required to bond any
21 project ~~with a guaranteed maximum price in excess of two~~
22 ~~hundred fifty thousand dollars (\$250,000.00)~~ in accordance
23 with W.S. 16-6-112;

1

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

13

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

19

20 (B) Responses to a fixed scope request for
21 proposal or a fixed price request for proposal shall be used
22 as the bases for selection for a ~~project-public work~~ with an

1 estimated construction cost of more than five hundred
2 thousand dollars (\$500,000.00);

3

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

13

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

22

1 (xi) "Fixed price request for proposal" means a
2 request for an oral and written presentation of all
3 qualifications deemed pertinent to the ~~project~~public work by
4 the public entity in addition to a schematic design and
5 detailed description of all materials and products proposed
6 to accommodate a preliminary project program prepared by the
7 public entity and provided in the fixed price request for
8 proposal. The successful respondent shall construct the
9 ~~project~~public work described in their design and material
10 and product description for a fixed price prepared by the
11 public entity and provided in the fixed price request for
12 proposal. The final guaranteed maximum price and scope for
13 the ~~project~~public work may be altered from the request for
14 proposal and negotiated with the successful respondent at the
15 discretion of the public entity;

16

17 (xii) "Fixed scope request for proposal" means a
18 request for an oral and written presentation of all
19 qualifications deemed pertinent to the ~~project~~public work by
20 the public entity in addition to a guaranteed maximum price
21 for a preliminary design prepared by the design builder
22 incorporating all elements of a fixed scope for the ~~project~~
23 public work prepared by the public entity and provided in the

1 fixed scope request for proposal. The final guaranteed
 2 maximum price and scope for the ~~project~~ public work may be
 3 altered from the request for proposal and negotiated with the
 4 successful respondent at the discretion of the public entity;

5
 6 (xiii) "Request for qualification" means a request
 7 for an oral or written presentation of all qualifications
 8 deemed pertinent to the ~~project~~ public work by the public
 9 entity. The request for qualification shall include not less
 10 than all the provisions contained in W.S. 16-6-707(b) ~~i-~~

11
 12 (xiv) "Public work" means as described in W.S.
 13 16-6-101(a)(ix).

14
 15 **16-6-702. Public entity; contracts; partial payments;**
 16 **retainage; alternate delivery methods authorized.**

17
 18 (a) ~~Notwithstanding W.S. 15-1-113(e),~~ A public entity
 19 awarding a contract for ~~the construction, major maintenance~~
 20 ~~or renovation of any highway, public building,~~ a public work
 21 ~~or public improvement, structure or system~~ shall authorize
 22 partial payments of the amount due under the contract as
 23 stipulated in the contract document or as soon thereafter as

1 practicable, to the contractor if the contractor is
2 satisfactorily performing the contract.

3
4 (b) In all contracts with a public entity for a public
5 work, the public entity may retain no more than ten percent
6 (10%) five percent (5%) of the calculated value of any work
7 completed ~~shall be withheld until fifty percent (50%) of the~~
8 ~~work 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 the~~
11 ~~public entity, satisfactory progress is being made in the~~
12 ~~work but under no condition shall more than ten percent (10%)~~
13 ~~be withheld on the remaining fifty percent (50%) of the work~~
14 ~~required as retainage. The retained payment shall be due and~~
15 payable as prescribed by W.S. 16-6-116(a). The withheld
16 ~~percentage of the contract price of the work, major~~
17 ~~maintenance, renovation or construction shall be retained~~
18 payment shall be held in an account in the name of the
19 contractor which account has been assigned to the public
20 entity. ~~until the contract is completed satisfactorily and~~
21 ~~finally accepted by the public entity.~~ If the public entity
22 finds that satisfactory progress is being made in all phases
23 of the contract it may, upon written request by the

1 contractor, authorize payment from the withheld percentage.
2 Before the payment is made, the public entity shall determine
3 that satisfactory and substantial reasons exist for the
4 payment and shall require written approval from any surety
5 furnishing bonds for the contract work.

6

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

11

12 **16-6-703. Public work; completion by public entity;**
13 **partial payments.**

14

15 If it becomes necessary for a public entity to take over the
16 completion of any ~~contract public work~~, all of the amounts
17 owing the contractor, including ~~the withheld percentage any~~
18 ~~payment retained under W.S. 16-6-702(b)~~, shall first be
19 applied toward the cost of completion of the ~~contract public~~
20 ~~work~~. Any balance ~~remaining in of~~ the retained ~~percentage~~
21 ~~payment remaining~~ after completion ~~of the public work~~ by the
22 public entity shall be payable to the contractor or the
23 contractor's creditors. The retained ~~percentage payment~~

1 which may be due any contractor shall be due and payable as
2 prescribed by W.S. ~~16-6-116~~ 16-6-116(a).

3

4 **16-6-704. Interest bearing deposit agreement; option to**
5 **enter into.**

6

7 If requested by the general contractor, a public entity shall
8 enter into an interest bearing deposit agreement with any
9 depository designated by the general contractor, after notice
10 to the surety, to provide an agent for the custodial care and
11 servicing of any deposits placed with him pursuant to this
12 act on any contract of more than ~~twenty five thousand dollars~~
13 ~~(\$25,000.00)~~ fifty thousand dollars (\$50,000.00). The
14 services shall include the safekeeping of the obligations and
15 the rendering of all services required to effectuate the
16 purposes of this act.

17

18 **16-6-708. Responsibilities under alternative delivery**
19 **contracts.**

20

21 (a) Any construction manager agent, construction
22 manager at risk or design-builder contract awarded shall
23 comply with any reporting and administrative requirements as

1 required by the public entity of the recipient of a design,
2 bid and build contract, including ~~retainage~~retained
3 payments, payment and performance bonding and default of
4 contract.

5

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

8

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

19

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

23

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

3
4 (II) If specified products are not
5 available from any Wyoming resident supplier, specifications
6 addressing performance standards and functional requirements
7 determined by the ~~agency~~public entity. The ~~agency~~public
8 entity may specify suggested individual brands or
9 manufacturers, provided that similar products that meet or
10 exceed specifications shall be accepted as substitute
11 products. Specified products that are not available to any
12 responsible Wyoming resident suppliers shall not be used in
13 any group or package within the bid documents which would
14 exclude responsible Wyoming resident suppliers from
15 submitting a bid on the final bid package. ~~As used in this~~
16 ~~subdivision, "agency" means any department, agency or other~~
17 ~~instrumentality of the state or of a political subdivision of~~
18 ~~the state to which funds are appropriated or authorized for~~
19 ~~expenditure for capital construction projects and includes~~
20 ~~any entity that the agency contracts with to administer or~~
21 ~~award any bid.~~

22

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

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

11
12 (iv) Contractor progress payments shall be made
13 only in accordance with this paragraph. If a contracting
14 public entity determines that a general contractor in good
15 standing on a project requires a progress payment due for
16 work completed in a workmanlike manner in order to pay a
17 materialman, subcontractor or laborer for their work
18 performed to date, the entity may issue the progress payment
19 upon verification that all materialmen, subcontractors and
20 laborers have been paid for completed work through the date
21 of the most recent previous progress payment, less any
22 contracted amounts lawfully held for retainage. If a progress
23 payment has been withheld by a general contractor due to a

1 reasonable dispute between a general contractor and a
2 materialman, subcontractor or laborer, ~~further progress~~
3 ~~payments shall not be paid to the general contractor but shall~~
4 ~~be retained in accordance with the guidelines addressing~~
5 ~~disputed final payments~~ the claimant may present a claim in
6 the disputed amount against the prime contractor's surety
7 bond under the provisions of W.S. 16-6-117. A person
8 submitting false information regarding a progress payment
9 subject to this paragraph shall be subject to the provisions
10 of W.S. 16-6-120.

11

12 (f) As used in this section:

13

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

21

22 (ii) "Public entity" means as defined in W.S.
23 16-6-101(a)(viii).

1

2 **Section 2.** W.S. 16-6-105(a)(i)(A) through (C),
3 16-6-701(a)(iv) and 16-6-1001(b) through (d) are repealed.

4

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

8

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

10

11

(END)