

HOUSE BILL NO. HB0078

Bid rejection or denial for public works contracting.

Sponsored by: Joint Appropriations Committee

A BILL

for

1 AN ACT relating to public works; amending requirements for
2 letting contracts for public works; requiring a written
3 response for procurement decisions as specified; making
4 conforming amendments; and providing for an effective date.

5

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

7

8 **Section 1.** W.S. 9-2-3006(e)(intro), 15-1-113(c) and
9 (f), 15-6-302(b), 16-6-119, 21-3-110(a)(viii), 24-1-132(f),
10 24-2-108(a), 35-2-429(a), 35-2-715(a), 35-3-107, 37-7-128,
11 41-7-412, 41-9-260 and 41-10-113(a)(xi) are amended to
12 read:

13

14 **9-2-3006. Procurement for capital construction**
15 **projects.**

16

1 (e) Each agency and the University of Wyoming are
2 authorized to determine the qualifications and
3 responsibilities of bidders or respondents for capital
4 construction projects, ~~but~~subject to W.S. 16-6-119(b)
5 through (d). Each agency and the university shall reject
6 any bid with improper or missing signatures or bids that
7 lack legible numerical values. Each agency and the
8 university may:

9

10 **15-1-113. Contracts for public improvements.**

11

12 (c) If the contract is let for bid, the contract
13 shall be let to the lowest bidder who shall be determined
14 qualified and responsible in the sole discretion of the
15 governing body. The governing body may use alternate design
16 and construction delivery methods as defined under W.S.
17 16-6-701 if deemed appropriate. The governing body may
18 reject all bids or responses submitted if it finds that
19 none of them would serve the public interest, subject to
20 W.S. 16-6-119(b) through (d). For contracts in excess of
21 five hundred thousand dollars (\$500,000.00), cities, towns
22 and joint powers boards may prequalify contractors who wish
23 to submit bids or responses based on such criteria as the

1 project type and experience, expertise, professional
2 qualifications, past performance, staff proposed, schedule
3 proposed, financial strength, qualification of supervisors
4 proposed to be used, technical solutions proposed or
5 references.

6

7 (f) In advertising for any bid, the forms of
8 guarantee required under this section and approved by the
9 city, town or joint powers board shall be specified. In
10 addition, bidders shall be required to accompany each bid
11 with a bid bond or if the bid is one hundred fifty thousand
12 dollars (\$150,000.00) or less, any other form of bid
13 guarantee approved by the city, town or joint powers board,
14 equal to at least five percent (5%) of the total bid
15 amount, with sufficient surety and payable to the city,
16 town or joint powers board. The bid guarantee shall be
17 forfeited as liquidated damages if the bidder, upon the
18 letting of the contract to him, fails to enter into the
19 contract within thirty (30) days after it is presented to
20 him for that purpose or fails to proceed with the
21 performance of the contract. The bid guarantee shall be
22 retained by the city, town or joint powers board until
23 proper bond or other form of security satisfactory to the

1 city, town or joint powers board to secure performance of
2 the contract has been filed and approved. The right to
3 reject any bid is reserved in all bid advertisements,
4 subject to W.S. 16-6-119(b) through (d). All bids shall be
5 numbered consecutively before they are opened and no
6 further bids may be received after the advertised time of
7 opening bids and any bid is publicly opened. The city,
8 town or joint powers board shall give all persons who
9 desire an opportunity to inspect all bids when they are
10 opened. No bid may be considered unless accompanied by a
11 bid guarantee in the required amount.

12

13 **15-6-302. Call for bids; contents; procedure for**
14 **awarding and executing contracts.**

15

16 (b) The bids shall be opened by the governing body
17 and the contract or contracts shall be awarded to the
18 bidder or bidders who in its opinion are the lowest and
19 best responsible bidders. The governing body may reject any
20 and all bids, subject to W.S. 16-6-119(b) through (d).

21

1 **16-6-119. Contracts for public works; right to reject**
2 **bids or responses; qualifications of bidders and**
3 **respondents; written response required.**

4
5 (a) Every public entity shall be authorized to
6 determine the qualifications and responsibilities of
7 bidders or respondents on contracts for public works and
8 may reject any or all bids or responses for which it
9 solicits based on the qualifications and responsibilities
10 of bidders and respondents and readvertise for bids or
11 responses.

12
13 (b) A public entity that rejects a bid or response
14 for a public works contract or denies a bidder or
15 respondent the opportunity to submit a bid or respond to a
16 solicitation for a public works contract shall within ten
17 (10) business days of the rejection or denial provide the
18 bidder or respondent a written response describing the
19 reasons for the rejection or denial. The written response
20 shall describe any qualifications or responsibilities of
21 the bidder or respondent the public entity determines to be
22 deficient.

23

1 (c) A public entity that lets a public works contract
2 to a bidder or respondent that is not the lowest
3 responsible bidder or a responsible certified resident
4 making a bid not more than five percent (5%) higher than
5 that of the lowest responsible nonresident bidder pursuant
6 to W.S. 16-6-102(a) shall within ten (10) business days of
7 letting the contract provide the lowest responsible bidder
8 or respondent a written response describing the reasons for
9 the decision.

10
11 (d) A written response provided to a bidder or
12 respondent under subsections (b) and (c) of this section
13 shall not constitute an action by an agency that is subject
14 to contested case proceedings under the Wyoming
15 Administrative Procedure Act, W.S. 16-3-101 through
16 16-3-115.

17
18 **21-3-110. Duties of boards of trustees.**

19
20 (a) The board of trustees in each school district
21 shall:

22

1 (viii) Obtain competitive bids when any purchase
2 of insurance, supplies or materials other than textbooks
3 costing more than twenty-five thousand dollars (\$25,000.00)
4 and less than fifty thousand dollars (\$50,000.00) is
5 contemplated unless precluded by other regulation or
6 statute. If the amount of the purchase of insurance,
7 supplies or materials other than textbooks is equal to or
8 exceeds fifty thousand dollars (\$50,000.00), a call for
9 bids shall be published at least once in a newspaper of
10 general circulation in the district and on the state
11 procurement website, as defined in W.S. 9-2-3001(b)(vii).
12 For any contract for a capital construction project with an
13 estimated value in excess of fifty thousand dollars
14 (\$50,000.00), the board shall publish a call for bids in a
15 newspaper of general circulation in the district at least
16 once each week for two (2) consecutive weeks. All
17 contracts for capital construction projects shall be let in
18 accordance with W.S. 9-2-3004 and 9-2-3006 except as
19 provided in this paragraph. The district shall reserve the
20 right to reject any and all bids, subject to W.S.
21 16-6-119(b) through (d), and to waive irregularities and
22 informalities in any bid, as defined in W.S.
23 9-2-3001(b)(v). No contract shall be divided for the

1 purpose of avoiding this paragraph. Items for which bids
2 must be obtained may be described in the published call for
3 bids by stating general requirements and making detailed
4 specifications available to prospective bidders at the
5 district's administrative headquarters. A district shall
6 independently meet the requirements of this paragraph when
7 procuring goods or services that are subject to this
8 paragraph through a board of cooperative educational
9 services.

10

11 **24-1-132. Contracts for county, city and town bridge**
12 **work; bids; exception.**

13

14 (f) The board of county commissioners, or governing
15 body of the city or town shall award any contract to the
16 lowest responsible bidder. The county commissioners or
17 governing body reserves the right to reject any bid,
18 subject to W.S. 16-6-119(b) through (d), and to waive
19 irregularities and informalities in the bidding. No final
20 payment upon any contract shall be made until the bridge is
21 examined and approved by the professional engineer
22 supervising the construction of the bridge and the payment
23 is approved by the county commissioners or governing body

1 of the city or town or their designees. Within ninety (90)
2 days of the bridge being opened to traffic the board of
3 county commissioners or governing body of the city or town
4 shall notify and provide the design, plans, specifications
5 and load rating for the bridge to the chief engineer of the
6 department of transportation so that the department may
7 comply with national bridge inspection standards.

8

9 **24-2-108. Road and bridge construction; professional**
10 **services procurement.**

11

12 (a) All road and bridge construction work, any part
13 of the cost of which is paid from the state highway fund,
14 shall be performed in accordance with the plans and
15 specifications prepared by the director of the department
16 of transportation or the chief engineer and approved by the
17 commission, and shall be performed by or under contracts
18 awarded by the commission. The director with the assistance
19 of the chief engineer shall have complete charge, including
20 expenditures for roads now in existence, or in the future
21 to be constructed, which are part of state highway systems
22 which are located within or partially within the national
23 forests' boundaries. All improvements costing more than two

1 hundred seventy-five thousand dollars (\$275,000.00) shall
2 be constructed under contracts awarded after public notice
3 to the lowest responsible bidder determined qualified by
4 the transportation commission of Wyoming which is given the
5 power to determine the qualifications and responsibilities
6 of bidders. The commission may reject any or all bids and
7 readvertise for bids, subject to W.S. 16-6-119(b) through
8 (d). Improvements costing sixty thousand dollars
9 (\$60,000.00) or less may be constructed by the commission
10 upon force account, with its own forces or under contract,
11 as the commission shall determine. A state highway
12 construction job to be completed within any calendar year
13 period and to cost more than sixty thousand dollars
14 (\$60,000.00) shall not be constructed by department of
15 transportation forces in sections or parcels so as to come
16 within the sixty thousand dollars (\$60,000.00) limitation.
17 Contracts may be entered into with railroad companies for
18 the construction of grade separation structures at actual
19 cost under terms and conditions approved by the commission.
20 Whenever an emergency arises requiring immediate
21 expenditure of funds for the repair or rebuilding of
22 bridges, approaches to bridges and any roadway, when the
23 bridges, approaches to bridges or roadway are required to

1 be rebuilt immediately and in such short time that in the
2 judgment of the commission the people would be seriously
3 inconvenienced in waiting the regular period for
4 advertising for bids, the commission may enter into
5 contract for any building or rebuilding of bridges,
6 approaches or roadway without advertising for the letting
7 of any contract, provided the amount of the contract shall
8 not exceed one million dollars (\$1,000,000.00) and provided
9 the commission requests proposals from at least two (2)
10 contractors capable of performing the emergency
11 construction or repair. The commission shall adopt general
12 rules and regulations for the publication of notice to
13 bidders, the awarding of contracts, and for determining the
14 qualifications and responsibilities of bidders.

15

16 **35-2-429. Construction to be done by contract based**
17 **on competitive bidding; alternate delivery methods.**

18

19 (a) Except as provided under subsection (b) of this
20 section and otherwise, the work of constructing the various
21 buildings shall be done by contract based on competitive
22 bidding. Notice of call for bids shall be for such period
23 of time and in such manner as the trustees may determine,

1 and the trustees shall have the power to reject any and all
2 bids, subject to W.S. 16-6-119(b) through (d), and
3 readvertise for bids as they consider proper.

4

5 **35-2-715. Construction to be done by contract based**
6 **on competitive bidding; alternate delivery methods.**

7

8 (a) Except as provided under subsection (b) of this
9 section and otherwise, the work of constructing the various
10 buildings shall be done by contract based on competitive
11 bidding. Notice of call for bids shall be for the period
12 of time and in a manner as the trustees may determine. The
13 trustees shall have the power to reject any and all bids
14 and readvertise for bids as they consider proper, subject
15 to W.S. 16-6-119(b) through (d).

16

17 **35-3-107. Contracts.**

18

19 All contracts for work to be done, the expense of which is
20 more than five hundred dollars (\$500.00), may employ
21 alternate design and construction delivery methods as
22 defined in W.S. 16-6-701 and shall be let to the lowest
23 responsible bidder, upon notice of not less than twenty

1 (20) days of the terms and conditions of the contract to be
2 let. The board of trustees shall have power to reject any
3 and all responses or bids, subject to W.S. 16-6-119(b)
4 through (d), and readvertise for the letting of such work.

5

6 **37-7-128. Construction to be done by lowest**
7 **responsible bidder; advertisement for bids; applicability**
8 **of section.**

9

10 In all cases where the work to be done at any one time
11 under the directions of the commissioners will, in their
12 opinion, cost to exceed ~~twenty five~~ two thousand five
13 hundred dollars (\$2,500.00), the same shall be let to the
14 lowest responsible bidder, and the commissioners shall
15 advertise for sealed bids, by notice published in some
16 newspaper published in the county in which the petition is
17 filed, and may advertise in one (1) or more newspapers
18 published elsewhere. If there be no newspaper published in
19 the county in which the petition is filed, they shall
20 advertise in some newspaper published in an adjoining
21 county, which said notice shall particularly set forth the
22 time and place when and where the bids advertised will be
23 opened, the kind of work to be let and the terms of

1 payment. Said commissioners may continue the letting from
2 time to time, if in their judgment the same shall be
3 necessary, and shall reserve the right to reject any and
4 all bids, subject to W.S. 16-6-119(b) through (d). This
5 section shall not be construed to apply to the employment
6 of superintendent, engineer, attorney or other employee
7 engaged in the general work of the district.

8

9 **41-7-412. Advertisement for bids on work exceeding**
10 **\$7,500.00.**

11

12 In all cases where the work to be done at any one (1) time
13 under the direction of the commissioners will, in their
14 opinion, cost to exceed seven thousand five hundred dollars
15 (\$7,500.00), the same shall be let to the lowest
16 responsible bidder, and the commissioner shall advertise
17 for sealed bids, by notice published in some newspaper
18 published in the county in which the petition is filed, and
19 may advertise in one (1) or more newspapers published
20 elsewhere. If there be no newspaper published in the county
21 in which the petition is filed, they shall advertise in
22 some newspaper published in an adjoining county, which said
23 notice shall particularly set forth the time and place when

1 and where the bids advertised will be opened, the kind of
2 work to be let and the terms of payment. Said commissioners
3 may continue the letting from time to time, if in their
4 judgment the same shall be necessary, and shall reserve the
5 right to reject any and all bids, subject to W.S.
6 16-6-119(b) through (d). This section shall not be
7 construed to apply to the employment of superintendent,
8 engineer, attorney or other employee engaged in the general
9 work of the district.

10

11 **41-9-260. Bidding procedure when cost over \$500.00.**

12

13 In all cases where the work to be done at any one time
14 under the direction of the commissioners shall, in their
15 opinion, cost to exceed five hundred dollars (\$500.00), the
16 same shall be let to the lowest responsible bidder, and the
17 commissioner shall advertise for sealed bids, by notice
18 published in some newspaper published in the county in
19 which the petition is filed, and may advertise in one (1)
20 or more newspapers published elsewhere. If there be no
21 newspaper published in the county in which the petition is
22 filed, they shall advertise in some newspaper published in
23 an adjoining county, which said notice shall particularly

1 set forth the time and place when and where the bids
2 advertised will be opened, the kind of work to be let and
3 the terms of payment. Said commissioners may continue the
4 letting from time to time, if in their judgment the same
5 shall be necessary, and shall reserve the right to reject
6 any and all bids, subject to W.S. 16-6-119(b) through (d).

7

8 **41-10-113. Powers of district board.**

9

10 (a) For and on behalf of the district the board of
11 any district shall have the following powers:

12

13 (xi) Except as otherwise provided in this act,
14 to enter into contracts and agreements affecting the
15 affairs of the district, including but not limited to
16 contracts with the United States of America and any of its
17 agencies or instrumentalities, and contracts with any
18 municipality or district for the operation of a common or
19 jointly owned project. Any improvement or improvements of
20 any nature made in any district where the entire cost,
21 value or amount of such work including labor and materials
22 shall exceed thirty thousand dollars (\$30,000.00), except
23 such work done by employees of the district with supplies

1 and materials purchased by it as hereinafter provided or
2 except by labor or supplies and materials, or all of such,
3 supplied under agreement with the United States of America,
4 the state of Wyoming, or any federal or state agency,
5 instrumentality or corporation, or other political
6 subdivision, shall be done only under independent contract
7 to be entered into by the district with the lowest
8 responsible bidder submitting the lowest and best bid upon
9 proper terms after due public notice by publication has
10 been given asking for competitive bids. The district shall
11 have the right to reject any and all bids, subject to W.S.
12 16-6-119(b) through (d), and to waive any irregularity in
13 any bid. Any contract may be let on a lump sum or unit
14 basis. No contract shall be entered into for such work
15 unless the contractor shall give an undertaking with a
16 sufficient surety or sureties approved by the board and in
17 an amount fixed by the board for the faithful performance
18 of the contract. Upon default in the performance of any
19 contract, the proper official may advertise and relet the
20 remainder of the work without further resolution and deduct
21 the cost from the original contract price and recover any
22 excess cost by suit on the original bond, or otherwise. The
23 district shall have the power to make any improvement, or

1 portion thereof, in any district, directly by the officers,
2 agents and employees of the district, with supplies and
3 materials purchased or otherwise acquired therefor. All
4 supplies, materials, equipment, machinery and apparatus
5 purchased by the board for any district (but not by a
6 contractor) costing thirty thousand dollars (\$30,000.00) or
7 more shall be purchased only after notice by publication
8 for competitive bids. The district shall accept the lowest
9 bid, kind, quality and material being equal, but the
10 district shall have the right to reject any and all bids,
11 to waive any irregularity in any bid, and to select a
12 single item from any bid. The provision as to bidding shall
13 not apply to the purchase of patented and manufactured
14 products offered for sale in a noncompetitive market or
15 solely by a manufacturer's authorized dealer;

16

17 **Section 2.** This act is effective July 1, 2022.

18

19

(END)