

HOUSE BILL NO. HB0158

Bid rejection or denial for public works contracting.

Sponsored by: Representative(s) Larsen, L

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 the qualifications or responsibilities that
21 the public entity determined differentiated the successful
22 bidder or respondent from the bidders or respondents
23 receiving the written response under this subsection.

1

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

13

14 (d) A written response provided to a bidder or
15 respondent under subsection (b) or (c) of this section
16 shall not constitute an action by an agency that is subject
17 to contested case proceedings under the Wyoming
18 Administrative Procedure Act.

19

20 **21-3-110. Duties of boards of trustees.**

21

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

1
2 (viii) Obtain competitive bids when any purchase
3 of insurance, supplies or materials other than textbooks
4 costing more than twenty-five thousand dollars (\$25,000.00)
5 and less than fifty thousand dollars (\$50,000.00) is
6 contemplated unless precluded by other regulation or
7 statute. If the amount of the purchase of insurance,
8 supplies or materials other than textbooks is equal to or
9 exceeds fifty thousand dollars (\$50,000.00), a call for
10 bids shall be published at least once in a newspaper of
11 general circulation in the district and on the state
12 procurement website, as defined in W.S. 9-2-3001(b)(vii).
13 For any contract for a capital construction project with an
14 estimated value in excess of fifty thousand dollars
15 (\$50,000.00), the board shall publish a call for bids in a
16 newspaper of general circulation in the district at least
17 once each week for two (2) consecutive weeks. All
18 contracts for capital construction projects shall be let
19 in accordance with W.S. 9-2-3004 and 9-2-3006 except as
20 provided in this paragraph. The district shall reserve the
21 right to reject any and all bids, subject to W.S.
22 16-6-119(b) through (d), and to waive irregularities and
23 informalities in any bid, as defined in W.S.

1 9-2-3001(b)(v). No contract shall be divided for the
2 purpose of avoiding this paragraph. Items for which bids
3 must be obtained may be described in the published call for
4 bids by stating general requirements and making detailed
5 specifications available to prospective bidders at the
6 district's administrative headquarters. A district shall
7 independently meet the requirements of this paragraph when
8 procuring goods or services that are subject to this
9 paragraph through a board of cooperative educational
10 services.

11

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

14

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

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

9

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

12

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

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

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

16

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

19

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

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

5

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

8

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

17

18 **35-3-107. Contracts.**

19

20 All contracts for work to be done, the expense of which is
21 more than five hundred dollars (\$500.00), may employ
22 alternate design and construction delivery methods as
23 defined in W.S. 16-6-701 and shall be let to the lowest

1 responsible bidder, upon notice of not less than twenty
2 (20) days of the terms and conditions of the contract to be
3 let. The board of trustees shall have power to reject any
4 and all responses or bids, subject to W.S. 16-6-119(b)
5 through (d), and readvertise for the letting of such work.

6

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

10

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

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

6 This section shall not be construed to apply to the
7 employment of superintendent, engineer, attorney or other
8 employee engaged in the general work of the district.

9

10 **41-7-412. Advertisement for bids on work exceeding**
11 **\$7,500.00.**

12

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

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

11

12 **41-9-260. Bidding procedure when cost over \$500.00.**

13

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

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

8

9 **41-10-113. Powers of district board.**

10

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

13

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

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

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

17

18 **Section 2.** This act is effective July 1, 2023.

19

20

(END)