

# What is CMAR?

CMAR, or Construction Manager at Risk, is a specialized construction delivery method that creates a "Team Approach" intended to manage risk by allowing collaboration and addressing costs throughout the design and construction phases.

## Contractor

Acts as consultant to Owner in development and design phases; provides pre-construction services, constructability expertise, cost estimating, schedule development and construction management

Works with Architect and Design Team throughout design phase to resolve construction questions and ensure project is constructible within budget

May issue "Early Work" packages, i.e. early procurement of materials and supplies, site development and related activities, and advance work for critical components

Commits to construct project within a Guaranteed Maximum Price (GMP) based on the agreed-upon scope at an agreed-upon time; CMAR assumes risk of cost overruns that are within the scope of the project

## Owner

Develops Owner's Project Requirements

Provides design and construction management oversight with in-house design and construction professionals

Establishes budgets, schedules, contingencies and project requirements, and works with CMAR and Architect to ensure all aspects of project are considered and proper scope is developed

## Architect

Produces design that reflects Owner's Project Requirements

Works with the CMAR throughout the design phase to resolve design questions

## Attorney General/Michael O'Donnell

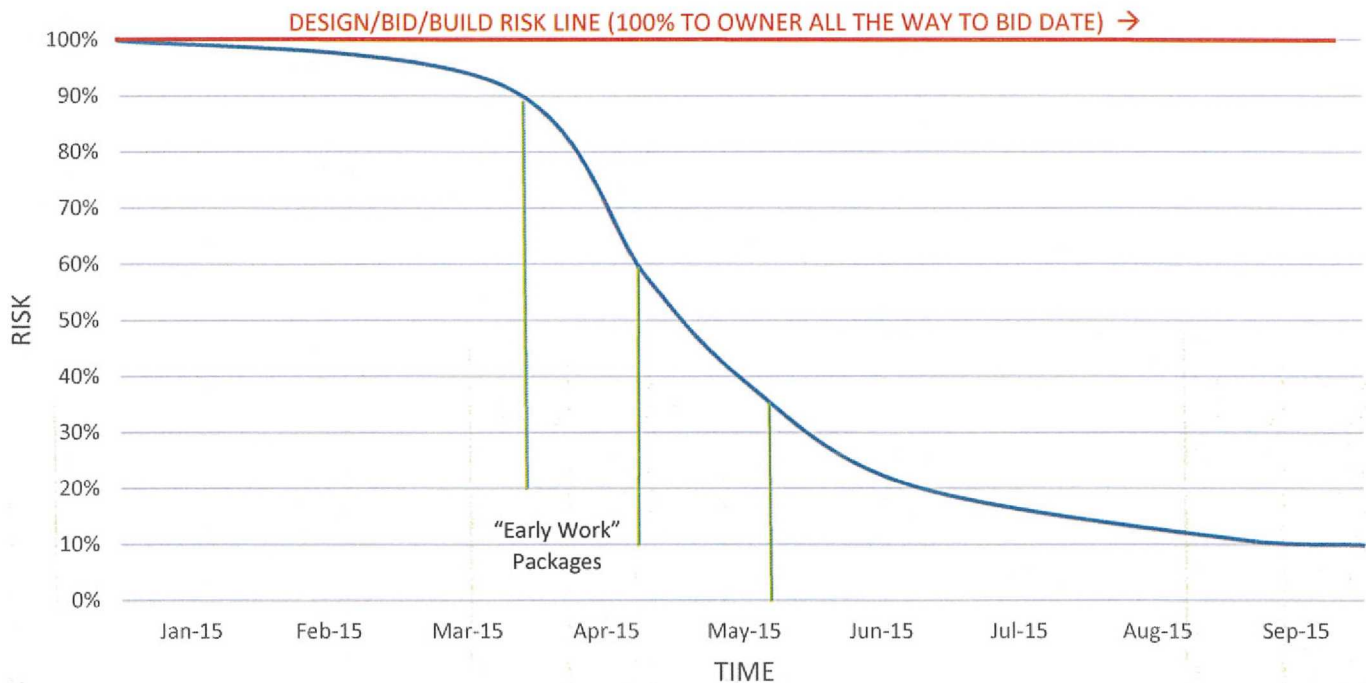
Responsible for Project Coordination; liaising with policy makers; monitoring budgets, costs and timelines.

## Commissioning Agent (Iconergy)

Provides "Quality Assurance" process for building systems. Works throughout design, construction, occupancy and operations to ensure building systems operate as intended and staff are trained to operate systems and equipment. Commissioned systems include: HVAC, plumbing, electrical, life safety, envelope, roof, elevator, technology and doors.

## Owner's Risk Reduced Over Time, Moving Toward GMP

(Construction Costs Only. Costs compared to Budget.)



### Guaranteed Maximum Price (GMP) – Established by bids and estimates – Must be under Construction Cost Limitation

- Generally provided prior to bidding. HOWEVER, in Wyoming:
  - CMAR must conduct open bid process before awarding subcontracts. W.S. § 16-6-1001
  - Designed to protect Wyoming's subcontractor community.
  - GMP is then provided prior to commencing construction. W.S. § 16-6-701(a)(vii)
- GMP can be given prior to 100% Construction Documents, but without all bids, a percentage of the project would be estimated and CMAR would increase the GMP.
  - Ex: GMP at 80% CDs means that the Construction Documents are 80% complete, so portions of the GMP are based on estimates and portions are based on Sub bids. CMAR would add to the GMP to cover risk.
  - Alternative: GMP can be given in Phases.
    - Part of the CDs are brought to 100% completion; that portion of the project is bid and a GMP issued.
    - Portions of the GMP are estimated then bid out when CDs are issued.
- GMP includes contingencies (separate from and in addition to Owner's Contingency):
  - 5% Construction Contingency (entire Project)
  - 3% Design Contingency (Capitol only)
  - 7.5% Price Escalation Contingency (entire Project)
- Final Price (FP) is developed after GMP based upon actual costs (bids) for all work, and is at or below GMP.



# CMAR Appendix

## I. DIFFERENCES BETWEEN CMAR AND OTHER DELIVERY METHODS:

**A. Design-Bid-Build** – A traditional method that involves three sequential phases: design, procurement, and construction.

- i. Pros: Design is completed prior to bid; construction cost is fixed at time of bid award; promotes competition.
- ii. Cons: Promotes “low bid” mentality; requires significant owner resources; owner at risk for design errors through change orders; typically longer schedules; cost unknown until contract award; bidders are not engaged in the project until bid time, which causes difficulty for renovation of existing buildings; changes in scope can be expensive and contractor is incentivized to use lowest cost methods and materials to complete the work.

**B. Design-Build** – A method that combines architectural and engineering design services with construction performance under a single contract.

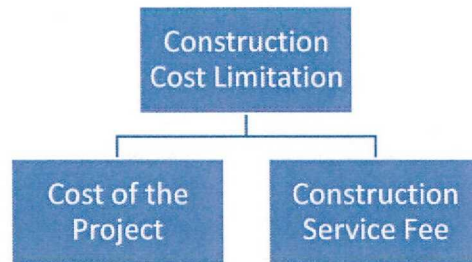
- i. Pros: Potential time savings by using one party; single entity responsible for design and construction so builder will inherently understand project requirements; single source of responsibility for finished product; emphasis on cost control.
- ii. Cons: Less owner control over construction quality; documents require details up front, including scope, size, type, and desired character of project, and type and quality of materials and workmanship; designer and builder come as a single package, which does not allow owner to pair best designer with best builder for the project; design changes after construction begins are costly; no party responsible to represent owner’s interests.

**C. Construction Manager at Risk (CMAR)** – A method that allows for contractor involvement from the beginning of design with regard to cost, constructability and logistics.

- i. Pros: Allows owner to leverage contractor’s expertise regarding cost, constructability, etc. during design phase; reduces cost overruns; allows adjustments to be integrated as design develops; open and transparent costs and fees.
- ii. Cons: Can cost more than other methods because focus is not always on “low bid;” requires sophisticated owner involvement.

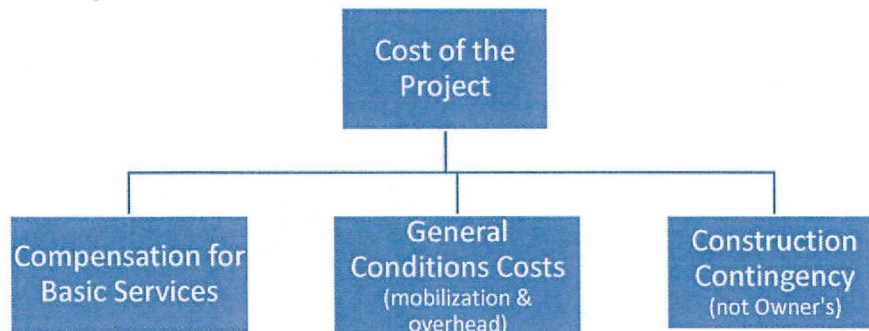
## II. KEY TERMS FROM CMAR CONTRACT:

### Construction Cost Limitation (CCL) – “The Ceiling” – Established by budget and appropriations



A Construction Cost Limitation (CCL) of one hundred ninety-nine million dollars (\$199,000,000)<sup>1</sup> is the maximum monetary amount payable to the CMAR for all Construction Phase (Service) services, materials, labor and other work required for completion of the Work in accordance with the Contract Documents. The CCL includes, without limitation, the Cost of the Project and the Construction Phase (Service) Fee. By Amendment the CCL may be adjusted by the parties for changes in the Scope of the Project before or after acceptance of each Guaranteed Maximum Price Proposal. The CCL does not include the CMAR's Pre-Construction Phase Fee, or Owner's construction contingency. (Contract, p. 2 of 59).

### Cost of the Project

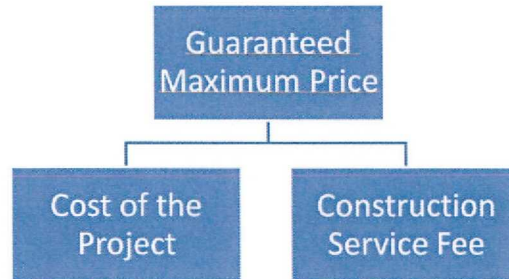


**COST OF THE PROJECT:** For purposes of this Agreement, "Cost of the Project" shall mean the total cost of CMAR's Compensation for Basic Services, General Conditions Costs as defined in Article 5 to this Agreement, and Construction Contingency, for the Construction Phase of the Project. "Cost of the Project" shall not include the cost of any insurance and surety contracts purchased or controlled by the Owner, or any other contracts or agreements that are not part of or described by the Contract Documents, or Architect/Engineering or other professional fees and expenses. (Contract, p. 5 of 59).

<sup>1</sup> To be adjusted by Amendment to CMAR Contract based on 2015 appropriation.

## Guaranteed Maximum Price (GMP)

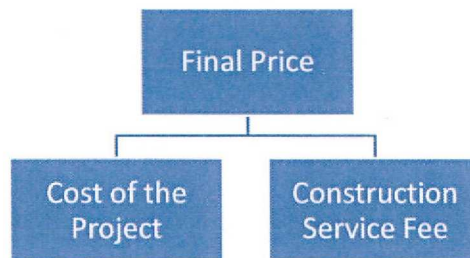
Established by bids and estimates – Must be under Construction Cost Limitation



*GUARANTEED MAXIMUM PRICE: For purposes of this Agreement the term Guaranteed Maximum Price (GMP) shall mean the total of the sum of the Cost of the Project, and CS Fee. For purposes of this Agreement, a GMP shall be provided in two stages, the Guaranteed Maximum Price (GMP) and the Final Price as those terms are defined in this Agreement. (Contract, p. 6 of 59).*

## Final Price (FP)

Established by actual cost – Must be at or under Guaranteed Maximum Price



*FINAL PRICE: For purposes of this Agreement, "Final Price" or "FP" shall mean the sum of the final Cost of the Project and CS Fee (hereinafter the "Final Price" or "FP"). The FP must be issued by the CMAR to the Owner within forty-five (45) days of the receipt of bids on the last bid package scheduled to be issued for the Project. The Final Price may include a construction contingency not to exceed five percent (5%) and the FP must be within the Owner's Construction Budget. The Owner shall have the right to inspect the records of the CMAR and conduct an audit to confirm the CMAR's calculation of the Final Price. (Contract, p. 7 of 59).*

### III. STATUTES

- A. W.S. § 9-5-110. State Capitol Building Rehabilitation and Restoration Project; - Definitions
- B. W.S. § 9-5-111. State Capitol Building Rehabilitation and Restoration Project Oversight Group; Creation; Duties
- C. W.S. § 9-5-112. Capitol Building Rehabilitation and Restoration Project; Components; Oversight
- D. W.S. § 9-5-113. Capitol Building Rehabilitation and Restoration Project; Design and Construction Execution
- E. W.S. § 16-6-203. Required Resident Labor on Public Works Projects; Exception
- F. W.S. § 16-6-701. Definitions
- G. W.S. § 16-6-702. Public Entity; Contracts; Partial Payments; Alternate Delivery Methods Authorized
- H. W.S. § 16-6-707. Construction Management Alternate Delivery Method
- I. W.S. § 16-6-708. Responsibilities Under Alternative Delivery Contracts
- J. W.S. § 16-6-1001. Capital Construction Projects Restrictions; Preference Requirements; Waivers

West's Wyoming Statutes Annotated

Title 9. Administration of the Government

Chapter 5. Property and Buildings (Refs & Annos)

Article 1. Capitol and State Building Commission

W.S.1977 § 9-5-110

§ 9-5-110. State capitol building rehabilitation and restoration project; definitions

Currentness

(a) As used in W.S. 9-5-109 through 9-5-113:

(i) "Advisory task force" means the joint legislative and executive advisory task force on capitol building rehabilitation and restoration created by W.S. 9-5-109(k);

(ii) "Department" means the department of administration and information;

(iii) "Oversight group" means the oversight group created by W.S. 9-5-111;

(iv) "Project" means the state capitol building and Herschler state office rehabilitation, restoration and renovation project described in W.S. 9-5-112, including all components of the project.

#### Credits

Laws 2014, ch. 40, § 1, eff. March 6, 2014.

W. S. 1977 § 9-5-110, WY ST § 9-5-110

Current though the 2014 Budget Session

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Title 9. Administration of the Government

Chapter 5. Property and Buildings (Refs & Annos)

Article 1. Capitol and State Building Commission

W.S.1977 § 9-5-111

§ 9-5-111. State capitol building rehabilitation and restoration project oversight group; creation; duties

Currentness

(a) There is created a state capitol building rehabilitation and restoration oversight group comprised of:

(i) The governor;

(ii) The president of the senate and majority and minority floor leaders of the senate;

(iii) The speaker of the house of representatives and majority and minority floor leaders of the house;

(iv) A member of the senate selected by the president of the senate and a member of the house selected by the speaker of the house not later than March 31, 2014 and by March 31 of each odd numbered year thereafter.

(b) A quorum of the oversight group shall consist of the governor and a majority of the legislative members of the oversight group. Except for approvals under W.S. 9-5-112(e) and (f), actions of the oversight group may be taken by vote of a majority of the legislative members in attendance or by their proxy vote and the governor.

(c) The oversight group shall have the powers and duties as provided by law.

(d) Staff and support for the oversight group shall be provided by the legislative service office. The construction management program of the department shall assist the staffing of the oversight group as directed by the governor.

(e) The oversight group shall continue in existence until December 31, 2019.

#### Credits

Laws 2014, ch. 40, § 1, eff. March 6, 2014.

W. S. 1977 § 9-5-111, WY ST § 9-5-111

Current though the 2014 Budget Session



West's Wyoming Statutes Annotated  
Title 9. Administration of the Government  
Chapter 5. Property and Buildings (Refs & Annos)  
Article 1. Capitol and State Building Commission

W.S.1977 § 9-5-112

§ 9-5-112. Capitol building rehabilitation and restoration project; components; oversight

Currentness

(a) The department shall proceed with level III design and construction for renovation, rehabilitation, restoration and addition to the state capitol building, the Herschler state office building and the connection between the two (2) buildings in accordance with presentations to the management council of the legislature on November 18, 2013 and January 9, 2014, and the provisions of W.S. 9-5-109 through 9-5-113. The project shall proceed as a single funded project with the following components:

(i) Capitol building restoration and rehabilitation;

(ii) Herschler state office building renovation, rehabilitation and additional construction including a structure connecting the Herschler building and the capitol building and addition to the Herschler building;

(iii) Temporary space accommodations within the Herschler building and in other state owned buildings, or in other leased buildings if determined by the governor necessary or advisable for the project, for current occupants of the Herschler building and capitol building;

(iv) Restoration, rehabilitation and renovation of the Herschler building after temporary space accommodations are no longer needed;

(v) Furniture, fixtures and equipment for the project;

(vi) Contingency costs, costs of fees and other costs associated with the project.

(b) The level III design shall allocate space within the capitol building to meet legislative needs, needs of the governor's office and security needs in the capitol building as determined by the oversight group and the governor. In determining space allocations under this subsection the oversight group and the governor shall be guided by level II studies for the capitol building restoration and rehabilitation conducted in 2013. To the extent the oversight group and the governor determine that all such needs cannot be accommodated within the capitol building, legislative committee rooms and offices for committee chairmen and associated legislative session staff may be within the structure connecting the capitol building and Herschler state office building. If the governor and the oversight group determine that space will exist in the capitol building in excess of the needs of the legislature, the governor's office and capitol building security needs, then the department, in consultation with the advisory task force, shall provide one (1) or more design alternatives to the oversight group and governor for review and approval, allocating available remaining space to the statewide elected officials with offices within the capitol building as of April 1, 2014.

(c) The Herschler state office building rehabilitation, renovation and addition shall be designed to accommodate offices for elected state officials for which insufficient space is provided within the capitol building restoration, renovation and rehabilitation design.

(d) The department, in consultation with the advisory task force, shall provide alternatives for temporary location of elected officials and legislative functions during project construction. The alternatives shall be submitted to the governor and the oversight group for review and approval.

(e) No funds shall be expended for the purposes of construction until final design plans for the project have been submitted to the advisory task force for review and comment and to the governor and the oversight group for review and a majority of the legislative members of the oversight group has recommended approval and the governor has approved the plans.

(f) The department may expend funds appropriated by the legislature for the project to implement the design, renovation, restoration, rehabilitation, construction and other project components which have been included in the final design plans approved under subsection (e) of this section. Any change order to the approved final design plans in excess of one hundred thousand dollars (\$100,000.00) or in a cumulative amount in excess of one million dollars (\$1,000,000.00) shall require the approval of a majority of the legislative members of the oversight group and the governor.

#### **Credits**

Laws 2014, ch. 40, § 1, eff. March 6, 2014.

W. S. 1977 § 9-5-112, WY ST § 9-5-112

Current through the 2014 Budget Session

West's Wyoming Statutes Annotated  
Title 9. Administration of the Government  
Chapter 5. Property and Buildings (Refs & Annos)  
Article 1. Capitol and State Building Commission

W.S.1977 § 9-5-113

§ 9-5-113. Capitol building rehabilitation and restoration project; design and construction execution

Currentness

(a) Notwithstanding W.S. 9-5-101 through 9-5-108, for all components of the project:

(i) The construction management program within the general services division of the department shall be the primary fiscal and contracting agent;

(ii) Level III design and construction shall proceed under the immediate direction and control of the governor in accordance with the provisions of W.S. 9-5-110 through 9-5-113;

(iii) In addition to those items required by law to be presented to the advisory task force for advice, as recommended by the oversight group and directed by the governor, the department shall consult with the advisory task force on other project items as the project progresses.

#### Credits

Laws 2014, ch. 40, § 1, eff. March 6, 2014.

W. S. 1977 § 9-5-113, WY ST § 9-5-113

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West's Wyoming Statutes Annotated  
Title 16. City, County, State and Local Powers (Refs & Annos)  
Chapter 6. Public Property  
Article 2. Preference for State Laborers

W.S.1977 § 16-6-203

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

Currentness

(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, shall employ only Wyoming laborers on the project or improvement. Every contract 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:

(i) That person informs the nearest state workforce center of his employment needs at least eleven (11) days before work is commenced; and

(ii) The state workforce center certifies that the person's need for laborers cannot be filled from those Wyoming laborers listed with the Wyoming department of workforce services. The department shall respond to a person's request for certification within ten (10) days of the date the information is filed.

(b) Upon request by the workforce center, the general contractor shall provide the most recent construction schedule for the project.

#### Credits

Laws 1971, ch. 207, § 3; Laws 1982, ch. 62, § 3; Laws 1988, ch. 14, § 1; Laws 2012, ch. 106, § 1, eff. March 21, 2012.

**Codifications:** W.S. 1957, § 9-680.3; W.S. 1977, § 9-8-403.

Notes of Decisions (1)

W. S. 1977 § 16-6-203, WY ST § 16-6-203

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West's Wyoming Statutes Annotated

Title 16. City, County, State and Local Powers (Refs & Annos)

Chapter 6. Public Property

Article 7. Construction Contracts with Public Entities (Refs & Annos)

W.S.1977 § 16-6-701

§ 16-6-701. Definitions

Currentness

(a) As used in this act:

(i) "Acceptable depository" means a state or national bank or a savings and loan association or credit union in which deposits are insured;

(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;

(iii) "Public entity" means this state or a county, city, town or any political subdivision thereof;

(iv) "Substantial completion" means the date when the construction is sufficiently complete, in accordance with the contract documents, as modified by any change orders agreed to by the parties, so that the work or designated portion thereof is available for use by the owner;

(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 consultant providing administrative and management services to the public entity throughout the design and construction phases of a project. 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, 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 work. Under this delivery method, the construction manager at-risk is responsible for providing a guaranteed maximum price for the project to the public entity prior to commencing the

construction project 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;

(viii) "This act" means W.S. 16-6-701 through 16-6-708;

(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, as well as labor, materials and other construction services necessary to construct the project. 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:

(A) A design-builder may be selected based solely on a response to a request for qualification for projects 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 with an estimated construction cost of more than five hundred thousand dollars (\$500,000.00);

(C) Interested parties shall first respond to a request for qualification. Based on responses to the request for qualification a minimum of two (2) and maximum of five (5) respondents may be selected to respond to a fixed scope request for proposal or a fixed price request for proposal;

(D) The respondent chosen by evaluation to provide the best overall value for the project 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 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 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.

(x) "Design-builder" means an entity that provides design-build services as described under paragraph (ix) of this subsection whether by itself or through subcontractual arrangements with other entities;

(xi) "Fixed price request for proposal" means a request for an oral and written presentation of all qualifications deemed pertinent to the project by the public entity in addition to a schematic design and 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 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 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 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 prepared by the public entity and provided in the fixed scope request for proposal. The final guaranteed maximum price and scope for the project 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 by the public entity. The request for qualification shall include not less than all the provisions contained in W.S. 16-6-707(b).

#### Credits

Laws 1989, ch. 158, § 1; Laws 2006, ch. 98, § 2, eff. July 1, 2006; Laws 2007, ch. 128, § 1, eff. July 1, 2007; Laws 2012, ch. 106, § 1, eff. March 21, 2012; Laws 2013, ch. 134, § 1, eff. July 1, 2014.

W. S. 1977 § 16-6-701, WY ST § 16-6-701

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Title 16. City, County, State and Local Powers (Refs & Annos)

Chapter 6. Public Property

Article 7. Construction Contracts with Public Entities (Refs & Annos)

W.S.1977 § 16-6-702

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

Currentness

(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, 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. No more than ten percent (10%) 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. The withheld percentage of the contract price of the work, major maintenance, renovation or construction shall be retained in an account in the name of the contractor which 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.

(b) 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.

#### Credits

Laws 1989, ch. 158, § 1; Laws 2006, ch. 98, § 2, eff. July 1, 2006; Laws 2013, ch. 134, § 1, eff. July 1, 2014.

W. S. 1977 § 16-6-702, WY ST § 16-6-702

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Chapter 6. Public Property

Article 7. Construction Contracts with Public Entities (Refs & Annos)

W.S.1977 § 16-6-707

§ 16-6-707. Construction management alternate delivery method

Currentness

(a) Excluding contracts for professional services, construction management and design-build delivery negotiations by public entities and construction managers shall be in accordance with residency and preference requirements imposed under W.S. 16-6-101 through 16-6-107.

(b) Formal requests for proposal for preconstruction or construction services by a construction manager or a design-builder submitted by a public entity shall require at least the following information:

(i) The location of the primary place of business;

(ii) The name and identification of individuals to be assigned to the project;

(iii) Experience with similar projects;

(iv) Qualifications;

(v) Ability to protect the interests of the public entity during the project;

(vi) Ability to meet project budget and time schedule requirements;

(vii) Excluding contracts for professional services, compliance with W.S. 16-6-101 through 16-6-107; and

(viii) For design-build alternative construction delivery methods, the names of the prime consultants used for architectural and engineering design services.

(c) Negotiations between a public entity and a construction manager at-risk shall require that the construction manager at-risk comply with the residency and preference requirements imposed under W.S. 16-6-101 through 16-6-107 in the procurement of subcontractors and materials.



**Credits**

Laws 2006, ch. 98, § 1, eff. July 1, 2006; Laws 2007, ch. 128, § 1, eff. July 1, 2007; Laws 2007, ch. 185, § 1, eff. March 4, 2007.

W. S. 1977 § 16-6-707, WY ST § 16-6-707

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Chapter 6. Public Property

Article 7. Construction Contracts with Public Entities (Refs & Annos)

W.S.1977 § 16-6-708

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

Currentness

(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, payment and performance bonding and default of contract.

(b) All bids received under this section including subcontractor bids, shall be opened in public following reasonable public notice.

#### Credits

Laws 2006, ch. 98, § 1, eff. July 1, 2006; Laws 2007, ch. 128, § 1, eff. July 1, 2007; Laws 2010, ch. 111, § 1, eff. March 11, 2010; Laws 2011, ch. 176, § 1, eff. March 3, 2011.

W. S. 1977 § 16-6-708, WY ST § 16-6-708

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West's Wyoming Statutes Annotated  
Title 16. City, County, State and Local Powers (Refs & Annos)  
Chapter 6. Public Property  
Article 10. Capital Construction Projects

W.S.1977 § 16-6-1001

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

Currentness

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

(i) This paragraph shall apply to any alternate design and construction delivery method as defined in W.S. 16-6-701(a)(v):

(A) All contracts shall require the construction manager at risk or design builder to conduct an open bid process in compliance with Wyoming contractor preference laws before awarding any subcontracts for work covered under the contract;

(B) Unless exempted pursuant to subparagraph (C) of this paragraph the construction manager at risk or design builder shall award to responsible Wyoming resident contractors not less than seventy percent (70%) of the work covered by the manager's or builder's contract. As used in this subparagraph "work covered" shall be calculated using the total contract price and the total of payments made to all subcontractors under the contract, including materials but excluding from both amounts the price for any part of the contract for which a waiver is provided under subparagraph (C) of this paragraph;

(C) The requirement of subparagraph (B) of this paragraph may be waived for any part of the subcontract work to be performed under the contract. If waived in part, the remaining value of the total subcontract work to be performed under the contract is subject to and shall be used to calculate compliance with the requirement of subparagraph (B) of this paragraph. A waiver shall require a written determination that:

(I) The work to be performed is specialized or of such a scale that it can be more suitably performed by out-of-state contractors;

(II) The bid amounts submitted by responsible Wyoming subcontractors exceed one hundred five percent (105%) of the costs of out-of-state providers for equivalent quality of work or services;

(III) The enforcement of the requirement would unreasonably delay completion of construction; or



(IV) There were insufficient responsible Wyoming contractors submitting bids to make the seventy percent (70%) requirement.

(V) Repealed by Laws 2012, ch. 106, § 2, eff. March 21, 2012.

(D) Any waiver shall be approved in writing by the following persons:

(I) For projects to be completed by the state of Wyoming, by the director of the department of administration and information;

(II) For projects to be completed by the University of Wyoming, by the president of the university and the president of the board of trustees;

(III) For projects subject to review by the school facilities department, by the director of the school facilities commission and the chairman of the board of the school facilities commission;

(IV) For projects completed by a community college, by the community college president and its chairman of the board of trustees;

(V) For all other projects, by the respective governing body.

(E) Any approved waiver shall be documented in writing and provided to the governor. Notice of all approved waivers shall also be published on a website maintained by the construction management division of the department of administration and information, including a statement of the grounds for the waiver.

(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 either:

(I) Generic specifications; or

(II) Specifications addressing performance standards and functional requirements determined by the agency, but without specification of individual brands or manufacturers.

(B) No person who was employed by the agency 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;

(D) The requirements of subparagraph (A) or (B) of this paragraph may be waived for furniture or movable equipment upon a written determination that the furniture or movable equipment requirements of the project are so specialized or that an item or type of furniture or movable equipment is so unique or uncommon that failure to waive the requirements would materially impair the functionality of the project. Waivers under this subparagraph shall be approved by the persons listed in subparagraph (a)(i)(D) of this section and are subject to subparagraph (a)(i)(E) of this section.

(iii) All bids shall be opened in public at a location designated by the public entity soliciting the bid. This paragraph shall apply to all construction delivery methods;

(iv) Contractor progress payments shall be made only in accordance with this paragraph. If a contracting 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 laborers have been paid for completed work through the date of the most recent previous progress payment. If a progress payment has been withheld by a general contractor due to a reasonable dispute between a general contractor and a materialman, 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 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.

(b) No funds subject to this section shall be expended unless the contracting agency has submitted a plan to the governor which promotes the employment of responsible Wyoming resident design firms, including professional architectural and engineering services as defined by W.S. 9-2-1028(a)(v), in the planning and design phases of facilities funded with monies subject to this section. The plans shall allow for partnerships between responsible Wyoming design firms, including professional architectural and engineering services, and nonresident firms when necessary to secure specialized services required for a project. The contracting agency shall evaluate and consider overall qualifications, residency, fee proposal, past performance and level of services in the final decisions.

(c) Any entity which has received an appropriation of state funds on or after July 1, 2008, for any capital construction project shall conduct a review of each project funded with state funds to assess whether contractors that were awarded contracts using a resident preference complied in all respects to applicable resident preference laws. If the entity determines that there is reasonable suspicion that a contractor failed to comply with the resident preference laws, the entity shall report the matter to the department of workforce services and the attorney general. The department of workforce services and the attorney general shall take such enforcement action on behalf of the state of Wyoming and the entity against the contractor as they deem appropriate. An entity shall be required to conduct only one (1) review under this subsection after March 1, 2011.

(d) The governor may modify any requirement of this section by executive order if he determines it to be necessary to promote effective competitive bidding. Any order shall be effective only until June 30, 2012 or until superseded by law.

(e) Repealed by Laws 2013, ch. 134, § 2.

**Credits**

Laws 2011, ch. 81, § 1, eff. March 2, 2011; Laws 2012, ch. 1, § 1, eff. July 1, 2012; Laws 2012, ch. 106, §§ 1, 2, eff. March 21, 2012; Laws 2013, ch. 134, §§ 1, 2, eff. July 1, 2014.

**Editors' Notes**

**REPEAL OF REPEALER**

<Subsec. (e), which was to repeal this section eff. June 30, 2014, was repealed by Laws 2013, ch. 134, § 2, eff. July 1, 2014.>

W. S. 1977 § 16-6-1001, WY ST § 16-6-1001

Current through the 2014 Budget Session

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End of Document

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