



WYOMING LEGISLATIVE SERVICE OFFICE

# Statewide Procurement and Contracting

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Re: Statewide Procurement and Contracting

## INTRODUCTION

This introductory brief provides a summary from the Legislative Service Office describing state procurement and contracting practices, primarily for state capital construction projects. By statute, the procurement and contracting process for state construction projects is under the primary administrative control of the State Construction Department (SCD), with oversight provided by the State Building Commission (SBC) and the School Facilities Commission (SFC). Additionally, the Department of Administration and Information's (A&I) Procurement Section, within the General Services Division (GSD), manages overall procurement assistance and compliance for most state agencies, including construction project contracting.

This topic is a component of the Joint Appropriations Committee's (JAC) 2019 Interim Topic, *Priority #2: Contract and Leasing Procedures*, as approved by the Management Council on May 22, 2019:

Conduct a review of multiple issues related to ***state contracting*** and leasing ***processes and procedures, primarily implemented by the Department of***

***Administration and Information (A&I) and the State Construction Department (SCD).*** The review will include, but not be limited to: definition of “resident” contractor and resident preference; review of contractor outreach and establishing bid specifications; modernization of public notice requirements/processes; ensuring alignment of statutes with agencies and professional disciplines; competitiveness of leasing processes; evaluation of final contracting payment procedures, retainage, and timeliness; UW’s Buy WYO program and potential metrics to be extended to other agencies or political subdivisions; and effectiveness of alternative construction delivery methods, including design-build.

## I. BACKGROUND

### State Construction Department

After a comprehensive state government reorganization in the early 1990s, state capital construction projects were primarily

managed by A&I.<sup>1</sup> With the establishment of the School Facilities Commission in 2002 (2002 House Bill 43, House Enrolled Act 45, 2002 Wyoming Session Laws, Chapter 99), and subsequently the School Facilities Department, the state relied on two separate entities to manage large portfolios of capital construction projects: A&I for general state construction and the School Facilities Commission for K-12 school districts.

To realize efficiencies and leverage expertise of these different agencies, in 2016 the Legislature passed Senate File 92 (Senate Enrolled Act 92, 2016 Wyoming Session Laws, Chapter 105) to merge these entities into one agency, the SCD. Since 2016, state-level capital construction projects have been administered through the SCD for both state agencies and state funded school facilities.

The SCD has three current divisions: Operations, Construction Management, and School Facilities. The Operations Division is authorized nineteen (19) full-time equivalent positions with a biennial budget of approximately \$5.8 million, funded about 1/3 by state general funds and 2/3 by school capital construction funds. The Construction Management Division is authorized seven (7) full-time equivalent positions with a biennial budget of approximately \$1.5 million, funded about 90% by state general funds. The School Facilities Division is authorized four (4) full-time equivalent positions with a

biennial budget of approximately \$2.5 million, funded from school capital construction funds.

The Construction Management Division currently staffs the SBC (W.S. 9-2-3004(a)), just as the former unit of the same name in A&I was tasked prior to 2016. The SBC has oversight of most state agencies' capital construction projects as well as community college capital construction projects. The separate School Facilities Division of SCD works with the School Facilities Commission to oversee state-funded school facility construction projects.

### **Department of Administration and Information**

The SCD, and most every other state agency, must comply with overall procurement statutes, rules, policies and procedures for the construction of state projects. The Procurement Section within (A&I) is tasked with working with state agencies to navigate this process. The Section is currently authorized six (6) full-time equivalent and one (1) part-time equivalent positions, with a General Fund biennial budget of approximately \$1.2 million. While the SCD has statutory authority to establish its own procurement processes and requirements, it has continued to partner with A&I since 2016 on most aspects of the oversight due to A&I's convenience of resources and staffing expertise.

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<sup>1</sup> Some agencies historically and currently manage their own capital construction projects, including the University of Wyoming, Wyoming Department of Transportation, Wyoming Water Development Commission, and the Department of Environmental Quality, for purposes of abandoned mine reclamation projects.

The Procurement Section's responsibilities include, but are not limited to, assisting with bid package preparation, managing the electronic bid posting website known as *Public Purchase*, and processing requisitions for purchases greater than \$2,500.<sup>2</sup> This requisition processing requirement is the primary method for the Section to ensure agencies' procurement requests and actions meet statute, rule, and policy requirements.

## II. GENERAL PROCUREMENT AND CONTRACTING

Wyoming Statute (W.S.) 9-2-1016 outlines the overall procurement process for the state through the GSD. The basic process and applicable legal considerations are shown in Figure A1 of **Attachment A**. Figure A1 indicates a straight-forward process. There are many instances in which agencies work and communicate with the A&I Procurement Section to fulfill each stage in the process. An example is when an agency must refine its bid documents multiple times or if it desires to make an information technology purchase related to a capital construction project. In the latter case, the agency must also obtain Department of Enterprise Technology Services approval before A&I Procurement Section may process the requisition request.

According to statute, the procurement process outlined in W.S. 9-2-1016 governs procurement of services and supplies by all

offices, departments, boards, commissions and operating units of the executive branch, except the University of Wyoming (UW), community college districts, and school districts. The procurement process requirements also do not apply to the Wyoming Department of Transportation (WYDOT), except the requirements to secure and maintain insurance for facilities and personnel. Each of these exempted agencies must comply with agency-specific, rather than general procurement process requirements.

Significant considerations, or questions to be answered by agencies throughout the procurement process include, but are not limited to:

- Is the procurement for a product or service?
- What is the estimated cost of the product or service being sought, e.g., is the cost above or below \$7,500?
- Is the product or service related to an information technology purchase?
- Will competitive bidding or use of a request for proposal be necessary and workable to secure the purchase?

With respect to this last question, agencies may determine that a competitive bidding process is not feasible and may pursue non-competitive negotiation, if the purchase meets one of the three criteria noted in Figure 1. This is also termed a "bid waiver" or "bid exception" request. The

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<sup>2</sup> Agencies are not required to competitively bid purchases below \$7,500, but A&I policy stipulates that the Procurement Section must review purchase requests (called "requisitions") for product purchases above \$2,500. Statute requires this same review for service purchase requests above \$1,500.

Procurement Section must review each individual waiver of competitive bidding processes based on the criteria and agencies' supporting information and documentation.

### **III. CONSTRUCTION PROCUREMENT AND CONTRACTING**

The procurement of construction projects generally follows the same procedural steps and processes as non-construction procurement. However, there are some unique elements for capital construction procurement. For example, individuals or companies bidding and contracting for construction projects may be required to obtain performance bonding or other surety guarantee. A performance bond helps ensure timely and satisfactory completion of the project by contractors.

The additional and central procedural steps for state-level construction contracting are shown in Figure A2 of **Attachment A**.

Additionally, procurement of professional services for design studies and construction projects is governed by W.S. 9-2-1027 through 9-2-1033, the "Professional Architectural, Engineering and Land Surveying Services Procurement Act."

### **IV. RECENT LEGISLATIVE CHANGES**

During the Wyoming Legislature's 2019 General Session, legislators introduced several bills to modify general and construction project procurement. Three of the bills were enacted, with the following implications:

**House Bill 65—Procurement amendments** (*House Enrolled Act 78*,

*Chapter 134*): Amends the Professional Architectural, Engineering and Land Surveying Services Procurement Act (W.S. 9-2-1027 through 1033). The act includes school districts within the definition of "agency," as well as increases and modifies professional services selection advertising and bid/no-bid value thresholds.

The bill also modified performance bonding value thresholds and requirements for both state construction and school facilities projects (W.S. 9-3-3004, 16-6-112 and 21-3-110).

**Senate File 74—Professional services procurement** (*Senate Enrolled Act 70, Chapter 185*): This act also amends the Professional Architectural, Engineering and Land Surveying Services Procurement Act (W.S. 9-2-1027 through 1033). It adds a definition of "resident firm" and criteria to ensure adequate professional service contract work is performed by resident firms.

The act also provides for exceptions to residency requirements for projects using federal or other funds for which residency cannot be considered when contracting for a project as well as requires firms to certify compliance with specified resident firm requirements.

**House Bill 52—Public works and contracts** (*House Enrolled Act 40, Chapter 129*): This act specifies procurement and moveable equipment shall be pursued through a competitive bid based upon specifications available from Wyoming resident supplies, if available. The act also limits waivers to the process.

One other bill revised procurement process: House Bill 41 (House Enrolled Act 44, Chapter 110). It clarifies waiver approval authority under W.S. 16-6-1001 for University of Wyoming projects by amending in “chairman” of the Board of Trustees to replace “president” of the Board of Trustees.

#### **V. 2019 PROCUREMENT AND CONTRACTING STAKEHOLDER INFORMAL WORKGROUP**

In April and May 2019, Representative Lloyd Larsen, a member of JAC, initiated a contracting workgroup. From April 1

through May 23, the workgroup held weekly meetings over eight weeks to discuss common issues and potential legislative solutions for procuring and contracting for public construction projects. Table 1 provides a summary of the workgroup participant organizations as well as the workgroup’s central goals. Based on the discussions, the following statutes were reviewed for potential revision:

- W.S. 9-2-1016 (general procurement policy, competitive bidding thresholds and required procedures/standards)

**Table 1. 2019 Procurement and Contracting Stakeholder Workgroup Participants and Goals.**

<b>Membership</b>	<b>Goals</b>
<ul style="list-style-type: none"> <li>• State agencies: SCD, A&amp;I, WYDOT, ETS, Department of Environmental Quality,</li> <li>• Higher Education: UW, Wyoming Community College Commission, and community colleges</li> <li>• Local Governments: Wyoming County Commissioners Association, Wyoming Association of Municipalities, individual counties/cities</li> <li>• School Districts</li> <li>• Contractors</li> <li>• Contractors Trade Groups</li> <li>• Bonding Company</li> <li>• Architectural and Engineering Design firms and associations</li> </ul>	<ol style="list-style-type: none"> <li>1. Provide consistency and conformity, to the extent practicable, for procurement requirements among owner agencies (public entities) at different levels of government.</li> <li>2. Focus on interactions and contracting relationships between owner entities and primary or general contractors, and where necessary, reasonable direction on associations between primary or general contractors and subcontractors, materialman, and laborers.</li> <li>3. Provide for consistent definitions and procedures of common actions or decision points in the design-bidding-contracting-final settlement process.</li> <li>4. Update and standardize competitive bidding thresholds for construction and non-construction procurement.</li> <li>5. Update and standardize performance bonding thresholds.</li> <li>6. Update public advertisement and notice requirements (e.g., type of notices, timeframes for posting notices, media used for posting, etc.) from initial bid through final settlement of contract payments.</li> <li>7. Clarify and clean-up conflicting or ambiguous statutory language, where applicable.</li> </ol>

**Source:** Legislative Service Office.

- W.S. 9-2-1027 through 1033 (retaining professional architectural, engineering and land surveyor services)
- W.S. 9-2-3001 through 3005 (State Construction Department authorizing statutes)
- W.S. 15-1-113 (cities and towns contracts for public improvements;
- W.S. 16-6-101 through 206 (state, city and county public property and public works contracting and labor preference);
- W.S. 16-6-701 through 708 (construction contracts with public entities);
- W.S. 16-6-1001 (capital construction projects restrictions, preference requirements and waivers);
- W.S. 18-6-201 through 202 (construction of local jails)
- W.S. 21-3-110 (general and construction procurement for K-12 schools)
- W.S. 21-15-113 through 123 (K-12 school facilities projects)
- W.S. 21-17-401 through 451 (UW capital construction projects)
- W.S. 21-18-202, 21-18-205, 21-18-225 and 21-18-303 and 304 (community college capital construction requirements under the Wyoming Community College Commission)
- W.S. 24-1-132 (construction of bridges by local governments)

- W.S. 24-2-108 (WYDOT road and bridge construction)
- W.S. 24-2-110 (WYDOT and county road construction cooperation)
- W.S. 24-2-111 (WYDOT and city road construction cooperation)

**Attachment B** provides more detail on the issues and proposed amendments brought forward by the workgroup to the JAC.

## VI. 2018 MANAGEMENT AUDIT EVALUATION

In September 2018 the Legislature's Management Audit Committee released its evaluation *State Procurement and Leasing*. While its findings and recommendations were based on non-construction procurement, the evaluation may provide background and context to relevant procurement issues for the JAC: <https://wyoleg.gov/progeval/REPORTS/2018/SPL-2018-final.pdf>.

## VII. ACRONYMS USED

A&I: Department of Administration and Information

GSD: General Services Division (of A&I)

SBC: State Building Commission

SCD: State Construction Department

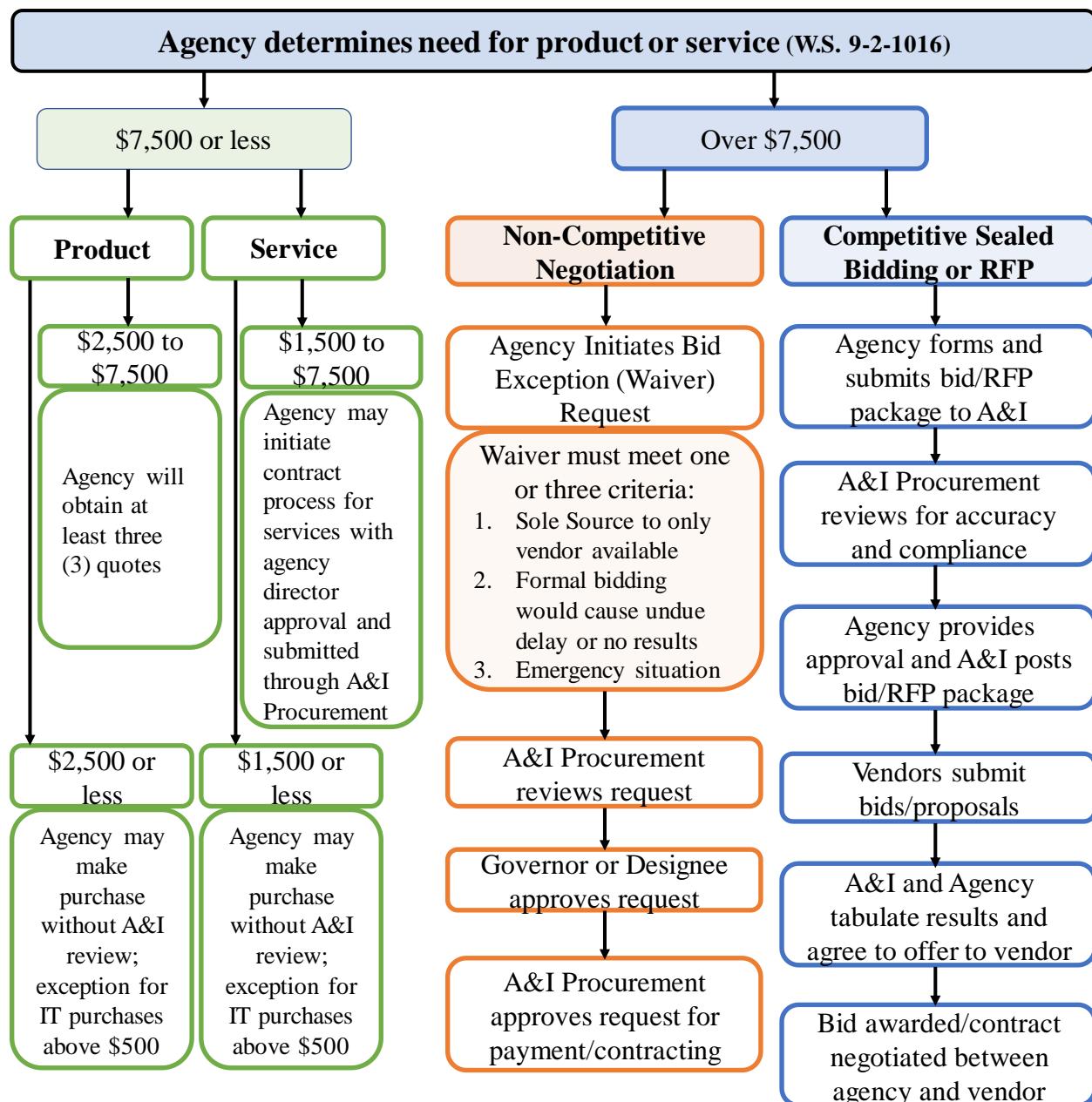
UW: University of Wyoming

WYDOT: Wyoming Department of Transportation

W.S.: Wyoming Statutes

# Attachment A

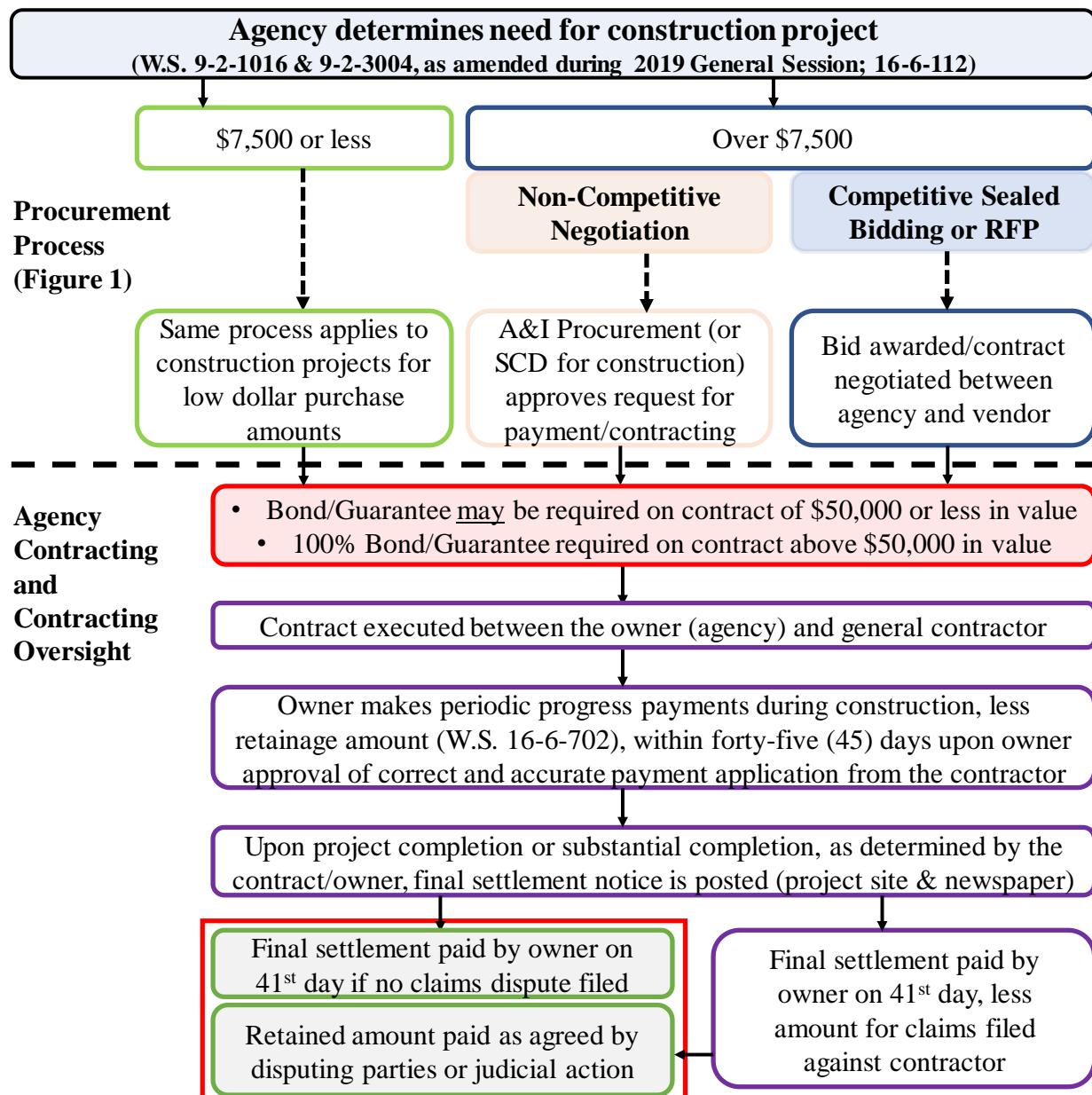
Figure A1. Wyoming General Procurement Process



Source: Legislative Service Office summary of diagrams from the Department of Administration and Information.

# Attachment A

Figure A2. State Public Construction Project Procurement and Contracting



**Source:** Legislative Service Office summary of information from the Department of Administration and Information.

Statute	Topic	Current Law Description	Workgroup Issue(s)	Proposed Amendment(s)
9-2-1016	General and Construction Procurement	<p>Provides statutory guidance on procurement of products and services by state agencies, managed by the Department of Administration and Information, General Services Division (GSD):</p> <ul style="list-style-type: none"> <li>Requires competitive bidding for products and services above \$7,500 (above \$20,000 for elected officials)</li> <li>Allows for non-competitive bidding above \$7,500 if determined appropriate by the GSD</li> <li>Requires Governor's approval of service purchases above \$1,500</li> <li>Allows for GSD to adopt rules and policies</li> <li>Allows agencies to use federal procurement processes if required</li> </ul>	<ul style="list-style-type: none"> <li>General procurement bid limit (\$7,500) has not been changed since 1988</li> <li>General procurement bid limit currently applies to construction projects and the bid limit is too small for most construction or major maintenance projects</li> <li>Non-competitive negotiation (bid waivers/bid exceptions) language is overly broad and has been interpreted as requiring separate approval of routine procurement actions, such as requirements for permits or processing of change orders on construction projects, etc.</li> </ul>	<ul style="list-style-type: none"> <li>Add definition of "principle representative" to designate agencies' responsibilities to comply with procurement processes, procedures and policies managed by A&amp;I</li> <li>Revise and increase the general procurement bidding threshold for products and services from \$7,500 to \$15,000</li> <li>Revise and increase the general procurement bidding threshold for elected officials from \$20,000 to \$25,000</li> <li>Move and separate construction procurement authority under the State Construction Department</li> <li>Amend statute related to bid waivers/exceptions for standard construction contracting issues (e.g. change orders, etc.)</li> </ul>
9-2-1027 through 1033	Professional Architectural, Engineering and Land Surveying Services Procurement Act	<p>Provides statutory guidance on procurement of professional architectural, engineering, and land surveying services:</p> <ul style="list-style-type: none"> <li>Outlines selection procedures for agencies to follow, including interviewing firms for projects valued at \$50,000 or more</li> <li>Outlines contracting procedures</li> <li>Prohibits gratuities/kickbacks and prohibits fees based on a percentage of the construction cost</li> <li>2019 Session amendments requires resident firms to be used for at least portions of projects based on three different project total cost thresholds</li> </ul>	<ul style="list-style-type: none"> <li>Requires clean-up of potential conflicting provisions related to the Wyoming Department of Transportation inclusion or exception to resident firm requirement</li> <li>Requires clean-up language to sufficiently or clearly protect agencies' use of federal funds that may be jeopardized if forced to comply with resident firm requirement</li> <li>Contract cost thresholds for determining resident firm compliance may be interpreted to include overall construction project costs, not just professional services contract costs</li> <li>Aggregate cost of professional design services may be a better way to identify resident firm contracting requirements</li> </ul>	<ul style="list-style-type: none"> <li>Clearly state the Wyoming Department of Transportation is excepted from the resident firm requirement for both the selection and contracting procedures when the project is funded from a source that prohibits resident preference requirements</li> <li>Clarify exceptions to resident firm requirement so that other funds (e.g. federal or other) will not be jeopardized for a project</li> <li>Clarify that the contracting thresholds for resident firm compliance only impact professional services contract costs, not overall construction project contract costs</li> <li>Add conforming provisions for professional architect, engineering, land surveyor design services in statutes governing the Wyoming Business Council, school districts, UW, community Colleges, and WYDOT</li> <li>Add other conforming and clean-up language, including emergency procurement provisions</li> </ul>

Statute	Topic	Current Law Description	Workgroup Issue(s)	Proposed Amendment(s)
9-2-3001 through 3005	State Construction Department	Outlines the duties and responsibilities of the State Construction Department in support of the State Building Commission (state facilities) and School Facilities Commission (K-12 school facilities)	<ul style="list-style-type: none"> <li>• Performance bonding should start at projects that cost \$150,000 or more; should make performance bonding requirements consistent among agencies that award construction contracts</li> <li>• State-level construction project procurement should be administered under the State Construction Department</li> <li>• Need for consistent definitions of what is included under "capital construction projects" and funding and which agencies fall under SCD oversight for capital construction projects</li> <li>• There is desire to have a one-stop-shop for construction project notices, bids, announcements, etc. so there is consistent and timely information provided by all owner entities</li> </ul>	<ul style="list-style-type: none"> <li>• Revise and increase the performance bonding requirement to \$150,000 (with conforming language in Title 16, Chapter 6)</li> <li>• Create a new section 9-2-3006 to outline construction project procurement authority, require procedures, adoption of rules, and bidding thresholds: <ul style="list-style-type: none"> <li>• Less than \$50,000 = No bid, no advertise, no quotes required (ability to sole source)</li> <li>• \$50,000 or greater = Competitive sealed bidding process with public advertisement/notice</li> </ul> </li> </ul>
15-1-113	Cities and Towns Contracts for Public Improvements	<p>Sets procurement standards for public improvement projects for cities and towns:</p> <ul style="list-style-type: none"> <li>• Competitive procurement must be used for purchases that exceed \$35,000, and must be publicly advertised, except for purchase or lease of automobiles</li> <li>• Competitive procurement does not apply to professional services or emergency/maintenance work</li> <li>• Contracts shall be awarded to the lowest "qualified and responsible" bidder</li> <li>• Requires bid bond, or other bid guarantee for bids of \$150,000 or less, of at least five percent (5%) of total bid amount</li> <li>• Contractors awarded contracts must submit a performance bond as required in the procurement advertisement, or for projects at or below \$150,000, any acceptable form of surety guarantee</li> <li>• Allows for not more than ten percent (10%) monthly retainage to be withheld from contractor payments</li> <li>• Progress payments may not be made until the project owner entity certifies work conforms to the contract requirements</li> <li>• The owner's governing body shall advertise in a newspaper of general circulation at least ten (10) days before final payment on the contract</li> </ul>	<p>Workgroup discussed consistency among owner entities, including local governments:</p> <ul style="list-style-type: none"> <li>• When, how long, and through what media bid advertisements should be posted</li> <li>• When and at what level is project bonding required</li> <li>• What is the appropriate level of retainage and when retainage should be collected and released</li> <li>• When does the clock start to begin final settlement processes</li> </ul>	<ul style="list-style-type: none"> <li>• Provide conforming language for retainage to eliminate use of "monthly" progress payments</li> <li>• Provide conforming language for performance bonding according to Title 16, Chapter 6 provisions</li> </ul>

Statute	Topic	Current Law Description	Workgroup Issue(s)	Proposed Amendment(s)
16-6-101 through 121	City, County, State, Public Property: Public Works Projects	<p>16-6-102 [resident contractors, preference limitation]:</p> <ul style="list-style-type: none"> <li>If advertisement for bids or request for proposal is required, the contract must be awarded to a resident of the state if the bid is not more than five percent (5%) above the lowest non-resident bidder</li> </ul> <p>16-6-103 [limitation on subcontracting...]:</p> <ul style="list-style-type: none"> <li>For a successful resident bidder, not more than thirty percent (30%) of work under an awarded contract may be subcontracted to non-resident subcontractors</li> </ul> <p>16-6-104 through 107 [preference for Wyoming materials...]:</p> <ul style="list-style-type: none"> <li>Wyoming materials, including agricultural products, must receive a five percent (5%) preference in public purchases</li> </ul> <p>16-6-112 through 115 [Contractor's bond...]:</p> <ul style="list-style-type: none"> <li>Bonds or other surety guarantee is required on projects between \$50,000 and \$150,000; bonds-only are required on projects above \$150,000</li> </ul> <p>16-6-116 and 117 [Final settlement...]:</p> <ul style="list-style-type: none"> <li>Forty (40) days prior to final payment on a contract, the owner entity must publish notice that the owner has accepted the contract work</li> <li>Final payment shall be paid on the 41st day after notice is first published, absent any claims against the general contractor</li> <li>Final settlement can only occur if the contractor certifies all labor and materials used for the project are paid in full</li> <li>Requires a sworn statement that all claims and subcontractors have been paid before the owner releases final payment on a contract</li> <li>Requires the owner entity to withhold amount of disputed claims from final contract payment</li> </ul>	Workgroup discussed consistency among owner entities, including local governments, related to: <ul style="list-style-type: none"> <li>Definition of substantial completion for starting the clock on final settlement requirements (e.g. 40 day notice, etc.)</li> <li>Request to clarify to which entities Title 16 applies with respect to construction procurement requirements</li> <li>Performance bonding thresholds should be consistent</li> </ul>	<ul style="list-style-type: none"> <li>Provide for new and amended definitions: materialman, laborer, substantial completion, public entity (inclusive of state and local governments), and public works (inclusive of both vertical and horizontal construction projects), and state procurement website</li> <li>Conform entity names and project types throughout Title 16 with "public entity" and "public works," respectively</li> <li>Conform performance bonding thresholds and language to project costs of \$150,000 or more</li> <li>Outline process for final settlement with requirement for public entities to issue certificates of substantial completion before final settlement notice can commence</li> <li>Provide provision to allow public entities to continue to retain amounts for unfinished work</li> <li>Require the owner entity to pay the general contractor without regard to pending claims against the general contractor</li> <li>Allow claimants to file disputes as claims against the general contractor's surety bond</li> <li>Add other conforming and clean-up language</li> </ul>
16-6-201 through 206	Wyoming Preference Act of 1971 (preference for state laborers)	<p>16-6-203 through 205 [required resident labor on public works projects...]:</p> <ul style="list-style-type: none"> <li>With limited exceptions, projects can only use Wyoming laborers and this requirement shall be specified in each contract</li> <li>Non-Wyoming laborers may be used if the Department of Workforce Services certifies that Wyoming laborers cannot fill the contractor's needs, with the contractor providing proper notice to the nearest workforce center before work begins</li> <li>Requires contractors to provide payroll reports for all contractors and subcontractors on a project, including residency status of laborers, consistent with federal certification requirements</li> </ul>	<ul style="list-style-type: none"> <li>Certification or verification reporting of contractor payroll reports should be clarified or eliminated</li> </ul>	<ul style="list-style-type: none"> <li>Conform entity names and project types throughout Title 16 with "public entity" and "public works," respectively</li> <li>Amend to allow public entity to access payroll reports, but do not make these reports mandatory to the public entity with each payment application</li> </ul>

Statute	Topic	Current Law Description	Workgroup Issue(s)	Proposed Amendment(s)
16-6-701 through 708	Construction Projects with Public Entities	<p>16-6-702 [...partial payments...]:</p> <ul style="list-style-type: none"> <li>• Owners may authorize partial payments on contracts as work is completed</li> <li>• Owners may retain or withhold up to ten percent (10%) of the contractor's payment (termed "retainage"); when fifty percent (50%) of the required contract work is completed, the owner may reduce or eliminate retainage amounts for the remainder of the project</li> <li>• Retained funds may be released before the end of the project if the owner entity determines substantial reasons exist to do so and the surety company approves</li> </ul> <p>16-6-707 [applicability...]:</p> <ul style="list-style-type: none"> <li>• This article (Article 7) does not apply if the contract is funded in whole or in part with federal or other funds that have inconsistent requirements for retention or payment of funds</li> </ul> <p>16-6-707 through 708 [alternate delivery methods...]:</p> <ul style="list-style-type: none"> <li>• Contracts procured by alternative delivery methods must follow residency and preference requirements, as well as comply with any reporting and administrative requirements as required by the owner entity</li> <li>• All bids for alternate delivery methods shall be opened in public "following reasonable public notice"</li> </ul>	<p>Workgroup discussed consistency among owner entities, including local governments, related to:</p> <ul style="list-style-type: none"> <li>• Request to clarify and refine final settlement processes (beginning with 2019 HB 108, as amended)</li> <li>• Request to clarify and refine progress payment process and percentage for retainage</li> </ul>	<ul style="list-style-type: none"> <li>• Conform entity names and project types throughout Title 16 with "public entity" and "public works," respectively</li> <li>• Amend retainage percentage to five percent (5%) for the duration of projects (to balance early and late subcontractor impacts) - <i>NOTE: There is no consensus on the retainage percentage from workgroup participants</i></li> <li>• Amend to provide for retainage release coinciding with substantial completion certification</li> </ul>
16-6-1001	Capital Construction Projects Restrictions, Preference Requirements and Waivers	<p>Provides for restrictions, preferences and waivers for certain requirements on capital construction projects at state and local levels:</p> <ul style="list-style-type: none"> <li>• States that if restrictions in section are inconsistent with other state statutes, section shall supersede all such inconsistent provisions</li> <li>• For alternate delivery methods, Wyoming contractor preference laws and open bid process shall be followed for subcontract work, but waivers may be approved in writing by the project owner entity if certain criteria are met</li> <li>• Procurement of furniture and movable equipment must be done by competitive bid</li> <li>• A five percent (5%) preference shall be granted to Wyoming resident suppliers, but may be waived under specific conditions</li> <li>• All bids shall be opened publicly</li> <li>• Progress payments may be made to the contractor upon verification that materialmen, subcontractors and laborers have been paid</li> <li>• If disputes arise against the contractor, progress payments amounts may be retained according to the final settlement process</li> <li>• If the entities suspect non-compliance on the part of the contractor, they must report these suspicions to the Department of Workforce Services and the Office of the Attorney General</li> </ul>	<p>Workgroup determined that this section needed to be reviewed to see how it interacts and "supersedes" other provisions to which it is inconsistent:</p> <ul style="list-style-type: none"> <li>• Section was originally time limited pending greater review and consideration of construction procurement processes in 2011-2012</li> <li>• Desire consistent definitions, including defining "capital construction project"</li> <li>• Review agency planning and reporting requirements that are no longer necessary</li> </ul>	<ul style="list-style-type: none"> <li>• Conform entity names throughout Title 16 with "public entity"</li> <li>• Add definition of "capital construction project" to include major maintenance, repairs, etc.</li> <li>• Amend to provide retainage release coinciding with substantial completion certification</li> </ul>

Statute	Topic	Current Law Description	Workgroup Issue(s)	Proposed Amendment(s)
18-6-201 through 202	Construction of County Jails	<p>Counties must follow steps and requirements for planning construction and procuring services <i>for county jails</i>:</p> <ul style="list-style-type: none"> <li>• Counties must have plans prepared by a "competent architect," and adopted by the county commissioners</li> <li>• County Commissioners must give notice of not less than 30 days on the county website</li> <li>• Requirements apply only if construction is paid for by county general funds, not bonds, or if using alternative construction method</li> <li>• Bids must be accompanied by a ten percent (10%) bid bond and bids must be opened in public</li> <li>• Selected contractor must provide a project bond or surety guarantee for one hundred percent (100%) of the contract price</li> </ul>	Workgroup did not identify any issues to amend these statutes	No amendments proposed
21-3-110	School Districts General Provisions	<p>Provides broad procurement requirements of school districts:</p> <ul style="list-style-type: none"> <li>• Requires competitive bidding for non-construction procurement (except textbooks) costing more than \$10,000 but less than \$25,000; at least one public notice is required for bids costing \$25,000 or more</li> <li>• Requires competitive bidding for construction projects that cost \$50,000 or more, including a public notice for at least two weeks in a newspaper of general circulation</li> </ul>	<ul style="list-style-type: none"> <li>• Consider revision to non-construction procurement bidding thresholds</li> <li>• Consider conforming language for new construction procurement amendments proposed for W.S. 9-2-3006 (see above)</li> </ul>	<ul style="list-style-type: none"> <li>• Provide conforming language to require school district capital construction processes follow SCD construction processes and requirements</li> <li>• Add conforming provisions for professional architect, engineering, land surveyor design services</li> </ul>
21-15-113 through 123	K-12 Capital Construction Projects	<p>Provides statutes controlling the duties, powers, and processes for the School Facilities Commission and State Construction Department to oversee school facilities construction, maintenance, etc. for public school districts</p> <p>These provisions cover construction project administration and processes, but do not cover procurement requirements and processes for bidding or contracting for school facility capital construction projects</p>	<ul style="list-style-type: none"> <li>• Consider conforming language for new construction procurement amendments proposed for W.S. 9-2-3006 (see above)</li> </ul>	<ul style="list-style-type: none"> <li>• Provide conforming language to require school district capital construction processes to follow SCD construction processes and requirements</li> </ul>
21-17-401 through 451	Capital Construction Projects, University Securities Law	<p>Statute article is called "Capital Construction Projects" but provides statutes related to the University's ability and conditions for borrowing money or bonding for capital projects</p> <p>These provisions do not reflect actual procurement requirements and processes for bidding or contracting capital construction projects at the University</p>	<ul style="list-style-type: none"> <li>• Request to clarify applicability of resident firm preference requirement for professional architect, engineering and land surveyor bidding process</li> </ul>	<ul style="list-style-type: none"> <li>• Add conforming provisions for resident firm preference requirement for professional architect, engineering, land surveyor design services</li> </ul>

Statute	Topic	Current Law Description	Workgroup Issue(s)	Proposed Amendment(s)
21-18-202; 21-18-205, 21-18-225 and 21-18-303 and 304	Community Colleges	<p>Community College Commission coordinates and provides oversight of some aspects of community colleges' capital construction, but these statutes do not specify procurement and contracting requirements of such projects:</p> <p>21-18-202 [powers and duties of the commission]:</p> <ul style="list-style-type: none"> <li>Commission must prepare budget requests for community college operations, capital construction and major maintenance</li> <li>Commission must approve all new capital construction projects in excess of \$100,000 for which state funds are or could be eventually applied</li> <li>Commission must re-approve, previously approved and uncompleted new capital construction projects which have increased in total cost by ten percent (10%) or more</li> </ul> <p>21-18-205 [appropriation and distribution of state funds...]:</p> <ul style="list-style-type: none"> <li>Requires that no state funds can be used for the maintaining, operating or equipping any capital construction project in excess of \$1,500,000 which are not approved by the commission and authorized by the legislature</li> </ul> <p>21-18-225 [college maintenance and capital construction funding]:</p> <ul style="list-style-type: none"> <li>Commission must develop a prioritized list of community college projects and provide this list to the State Construction Department, which is forwarded to the State Building Commission for review and recommendation to the Governor and Legislature</li> <li>Commission must submit a college major maintenance budget to the Legislature according to statutory and State Building Commission requirements</li> </ul> <p>21-18-303 and 304 [community college district, board duties...]:</p> <ul style="list-style-type: none"> <li>Authorizes community college districts' boards of trustees to determine the qualifications and responsibilities of bidders for which it controls the bidding process, through the use of standard forms and procedures</li> <li>Community college districts must maintain a comprehensive long term plan for district buildings and shall submit plans and capital construction requests to the Commission</li> </ul>	<ul style="list-style-type: none"> <li>Request to clarify applicability of resident firm preference requirement for professional architect, engineering and land surveyor bidding process</li> </ul>	<ul style="list-style-type: none"> <li>Add conforming provisions for resident firm preference requirement for professional architect, engineering, land surveyor design services</li> </ul>
24-1-132	Contracts for County Bridge Work	<p>Bridge design and construction procurement for local governments:</p> <ul style="list-style-type: none"> <li>Local governments must prepare comprehensive plans and specifications for bridge construction on any dedicated and maintained road in its jurisdiction</li> <li>Requires competitive bidding and contracting on bridge projects costing more than \$25,000, and no contract may be split to avoid bidding requirement</li> <li>Requires county commissioners to advertise at least two (2) consecutive weeks in newspaper of general jurisdiction and by other means for as wide a notice as possible, but no contract may be awarded within fifteen (15) days of the last published notice</li> <li>Contract must be awarded to the lowest bidder, but the county may reserve the right to reject all bids or to waive "irregularities and informalities" in bids</li> <li>Allows a county to contract without competitive bidding, regardless of bridge project cost, in emergency circumstances</li> </ul>	<p>Workgroup did not identify any issues to amend these statutes</p>	No amendments proposed

Statute	Topic	Current Law Description	Workgroup Issue(s)	Proposed Amendment(s)
24-2-108	Road and Bridge Construction	<p>Provides procurement and bidding requirements for road and bridge construction funded through the state highway fund, under the control of the Department of Transportation:</p> <ul style="list-style-type: none"> <li>Requires all road and bridge construction work, any part of the cost of which is paid from the state highway fund, to be performed by or under contracts awarded by the Transportation Commission</li> <li>All improvements costing more than \$200,000 must be constructed under contracts awarded after public notice to the lowest responsible bidder determined qualified by the Transportation Commission</li> <li>The commission may reject any or all bids and re-advertise for bids</li> <li>Improvements costing less than \$40,000 may be constructed by the Transportation Commission with its own forces or under contract; projects cannot be sectioned or parceled to meet this threshold</li> <li>In emergency situations the Transportation Commission may enter into contract without advertising for a contract not to exceed \$1,000,000, and that the Transportation Commission request proposals from at least two (2) capable contractors</li> <li>The Transportation Commission must adopt general rules and regulations for the publication of notice to bidders, the awarding of contracts, and for determining the qualifications and responsibilities of bidders</li> </ul>	<ul style="list-style-type: none"> <li>Request to clarify applicability of resident firm preference requirement for professional architect, engineering, land surveyor design services</li> <li>Revise and increase contracted project cost bidding and WYDOT-performed project thresholds</li> </ul>	<ul style="list-style-type: none"> <li>Add conforming provisions for resident firm preference requirement for professional architect, engineering, land surveyor design services</li> <li>Increase the project cost threshold for required bidding from \$200,000 to \$275,000</li> <li>Increase the project cost threshold for work conducted by WYDOT from \$40,000 to \$60,000</li> </ul>
24-2-110	Cooperation with Counties in Construction and Maintenance of County Roads	<p>Provides procurement and bidding requirements for projects involving county roads:</p> <ul style="list-style-type: none"> <li>Work undertaken with county road construction and maintenance funds must be performed under contracts awarded after competitive bidding if the estimated cost of the work exceeds \$50,000</li> <li>In emergency situations the county commissioners may contract without advertising because the road has become unsafe or impassable due to events which are beyond the control of the county</li> </ul>	Workgroup did not identify any issues to amend these statutes	No amendments proposed
24-2-111	Cooperation with Cities in Construction of Streets...	<p>Provides contracting requirements with coordination and notice to cities:</p> <ul style="list-style-type: none"> <li>Commission may cooperate with incorporated cities and towns in the construction of public streets and highways, including bridges and culverts, but no contract shall be procured nor work commenced until sixty (60) days after the plans have been submitted and approved (by action or inaction) by the city or town</li> </ul>	Workgroup did not identify any issues to amend these statutes	No amendments proposed