

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

HOUSE BILL NO.

Public works contracting requirements-amendments.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to public works; requiring the adoption of  
2 prequalification requirements; allowing the use of  
3 equivalent materials or equipment as specified; amending  
4 qualification requirements; prohibiting unbalanced unit bid  
5 prices; requiring rulemaking; making conforming amendments;  
6 and providing for effective dates.

7

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

9

10 \*\*\*\*\*  
11 \*\*\*\*\*  
12 **STAFF COMMENT**  
13 **This draft is based on the recommendations made in appendix**  
14 **5-01 the Subcommittee Final Report of Bid Rigging presented**  
15 **at the August 20<sup>th</sup>, 2020 Judiciary Committee meeting. The**

1 Committee requested LSO to draft a bill based on items A,B,  
2 and C in section I and B in section III.

3

4 Some items the Committee may wish to consider in its review  
5 of this draft are:

6

7 • The assignment of the rulemaking authority. This draft  
8 requires the state construction department to  
9 promulgate rules for the prequalification of any  
10 bidder on any public work except those specifically  
11 under the jurisdiction of the state transportation  
12 commission.

13 • The entity approving the surety company. This draft  
14 prohibits the disqualification of a bidder based on  
15 their financial strength so long as they obtain  
16 sufficient sureties through a company approved by the  
17 public entity.

18 • Whether the term "prequalified/prequalification"  
19 should be defined.

20 • Whether what constitutes an unbalanced bid should be  
21 more clearly defined.

22 • The enforcing entity. This draft grants enforcement  
23 authority of all the new provisions in Title 16,  
24 except for the prequalification provisions, to the  
25 department of workforce services.

26 • The amount of time for promulgating rules. This draft  
27 requires the state transportation commission and the  
28 state construction department to promulgate rules on  
29 or before July 1, 2021.

30 \*\*\*\*\*  
31 \*\*\*\*\*  
32

33 Section 1. W.S. 9-2-3004(c) by creating a new  
34 paragraph (x), 9-2-3006(e)(intro), 15-1-113 by creating a  
35 new subsection (t), 16-6-107, 16-6-119, 16-6-120(a), 21-3-  
36 110(a)(viii), 24-1-132(f) and 41-10-113(a)(xi) are amended  
37 to read:

38

1           **9-2-3004. Duties of the department.**

2

3           (c) The department shall:

4

5                   (x) Adopt rules for the prequalification of  
6 bidders on contracts for public works as provided in W.S.  
7 16-6-119(b), excluding those public works under the  
8 jurisdiction of the state transportation commission  
9 pursuant to W.S. 24-2-108(a).

10

11           **9-2-3006. Procurement for capital construction**  
12 **projects.**

13

14           (e) Except as otherwise provided in W.S. 16-6-119,  
15 each agency and the University of Wyoming are authorized to  
16 determine the qualifications and responsibilities of  
17 bidders or respondents for capital construction projects  
18 but shall reject any bid with improper or missing  
19 signatures or bids that lack legible numerical values.  
20 Except as otherwise provided in W.S. 16-6-119, each agency  
21 and the university may:

22

23           **15-1-113. Contracts for public improvements.**

1

2 (t) The provisions of W.S. 16-6-119 that are  
3 applicable to this section that conflict with the  
4 provisions of this section shall control over this section.

5

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

8

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

17

18 (b) Each public entity shall specify reasonable  
19 performance standards for materials and equipment used in  
20 the construction of a public work. The public entity may  
21 specify suggested individual brands or manufacturers,  
22 provided that similar materials or equipment that meet or

1 exceed specifications shall be accepted as a substitute

2 unless:

3

4 (i) The contracted project is for an existing public  
5 work;

6

7 (ii) Substitution of materials or equipment is  
8 impractical; and

9

10 (iii) The specified materials and equipment to be  
11 procured are not furniture or movable equipment not  
12 available from a Wyoming resident supplier as provided in  
13 W.S. 16-6-1001(a)(ii)(A)(II).

14

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

18

19 (a) Except as otherwise specified in this section,  
20 every public entity shall be authorized to determine the  
21 qualifications and responsibilities of bidders or  
22 respondents on contracts for public works and may reject  
23 any or all bids or responses based on the qualifications

1 and responsibilities of bidders and respondents and  
2 readvertise for bids or responses.

3

4 (b) Except for specialty project requirements as  
5 determined by rule of the state transportation commission  
6 or the state construction department, each public entity  
7 shall accept a bidder or respondent as prequalified for a  
8 contract for a public work if the bidder or respondent has  
9 been determined to be prequalified pursuant to rules  
10 promulgated by the state transportation commission pursuant  
11 to W.S. 24-2-108(a) or the state construction department  
12 pursuant to W.S. 9-2-3004(c)(x), whichever is applicable to  
13 the public work.

14

15 (c) No public entity shall reject a bidder or  
16 respondent based solely on the financial strength of the  
17 bidder or respondent so long as the bidder or respondent  
18 provides sufficient bid, payment or performance bonds  
19 through a surety company approved by the public entity.

20

21 (d) No public entity shall accept a bid if it  
22 determines that any of the unit bid prices are

1 significantly unbalanced to the potential detriment of the  
2 public entity.

3

4 **16-6-120. Rulemaking; penalties; enforcement.**

5

6 (a) The department of workforce services shall  
7 promulgate rules and regulations as the department  
8 determines necessary or convenient to enforce this act  
9 except no rules shall be promulgated under this section for  
10 the prequalification requirements in W.S. 16-6-119(b).

11

12 **21-3-110. Duties of boards of trustees.**

13

14 (a) The board of trustees in each school district  
15 shall:

16

17 (viii) Obtain competitive bids when any purchase  
18 of insurance, supplies or materials other than textbooks  
19 costing more than twenty-five thousand dollars (\$25,000.00)  
20 and less than fifty thousand dollars (\$50,000.00) is  
21 contemplated unless precluded by other regulation or  
22 statute. If the amount of the purchase of insurance,  
23 supplies or materials other than textbooks is equal to or

1 exceeds fifty thousand dollars (\$50,000.00), a call for  
2 bids shall be published at least once in a newspaper of  
3 general circulation in the district and on the state  
4 procurement website, as defined in W.S. 9-2-3001(b)(vii).  
5 For any contract for a capital construction project with an  
6 estimated value in excess of fifty thousand dollars  
7 (\$50,000.00), the board shall publish a call for bids in a  
8 newspaper of general circulation in the state at least once  
9 each week for two (2) consecutive weeks. All contract for  
10 capital construction projects shall be let in accordance  
11 with W.S. 9-2-3004 and 9-2-3006 except as provided in this  
12 paragraph. Except as otherwise provided in W.S. 16-6-119,  
13 the district shall reserve the right to reject any and all  
14 bids and to waive irregularities and informalities in any  
15 bid, as defined in W.S. 9-2-3001(b)(v). No contract shall  
16 be divided for the purpose of avoiding this paragraph.  
17 Items for which bids must be obtained may be described in  
18 the published call for bids by stating general requirements  
19 and making detailed specifications available to prospective  
20 bidders at the district's administrative headquarters;

21

22 **24-1-132. Contracts for county, city and town bridge**  
23 **work; bids; exception.**



1

2 (f) The board of county commissioners, or governing  
3 body of the city or town shall award any contract to the  
4 lowest responsible bidder. Except as otherwise provided in  
5 W.S. 16-6-119, the county commissioners or governing body  
6 reserves the right to reject any bid and to waive  
7 irregularities and informalities in the bidding. No final  
8 payment upon any contract shall be made until the bridge is  
9 examined and approved by the professional engineer  
10 supervising the construction of the bridge and the payment  
11 is approved by the county commissioners or governing body  
12 of the city or town or their designees. Within ninety (90)  
13 days of the bridge being opened to traffic the board of  
14 county commissioners or governing body of the city or town  
15 shall notify and provide the design, plans, specifications  
16 and load rating for the bridge to the chief engineer of the  
17 department of transportation so that the department may  
18 comply with national bridge inspection standards.

19

20 **41-10-113. Powers of district board.**

21

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

1  
2           (xi) Except as otherwise provided in this act,  
3 to enter into contracts and agreements affecting the  
4 affairs of the district, including but not limited to  
5 contracts with the United States of America and any of its  
6 agencies or instrumentalities, and contracts with any  
7 municipality or district for the operation of a common or  
8 jointly owned project. Any improvement or improvements of  
9 any nature made in any district where the entire cost,  
10 value or amount of such work including labor and materials  
11 shall exceed thirty thousand dollars (\$30,000.00), except  
12 such work done by employees of the district with supplies  
13 and materials purchased by it as hereinafter provided or  
14 except by labor or supplies and materials, or all of such,  
15 supplied under agreement with the United States of America,  
16 the state of Wyoming, or any federal or state agency,  
17 instrumentality or corporation, or other political  
18 subdivision, shall be done only under independent contract  
19 to be entered into by the district with the lowest  
20 responsible bidder submitting the lowest and best bid upon  
21 proper terms after due public notice by publication has  
22 been given asking for competitive bids. The district shall  
23 have the right to reject any and all bids and to waive any

1 irregularity in any bid. Any contract may be let on a lump  
2 sum or unit basis. No contract shall be entered into for  
3 such work unless the contractor shall give an undertaking  
4 with a sufficient surety or sureties approved by the board  
5 and in an amount fixed by the board for the faithful  
6 performance of the contract. Upon default in the  
7 performance of any contract, the proper official may  
8 advertise and relet the remainder of the work without  
9 further resolution and deduct the cost from the original  
10 contract price and recover any excess cost by suit on the  
11 original bond, or otherwise. The district shall have the  
12 power to make any improvement, or portion thereof, in any  
13 district, directly by the officers, agents and employees of  
14 the district, with supplies and materials purchased or  
15 otherwise acquired therefor. All supplies, materials,  
16 equipment, machinery and apparatus purchased by the board  
17 for any district (but not by a contractor) costing thirty  
18 thousand dollars (\$30,000.00) or more shall be purchased  
19 only after notice by publication for competitive bids. The  
20 district shall accept the lowest bid, kind, quality and  
21 material being equal, but the district shall have the right  
22 to reject any and all bids, to waive any irregularity in  
23 any bid, and to select a single item from any bid. The

1 provision as to bidding shall not apply to the purchase of  
2 patented and manufactured products offered for sale in a  
3 noncompetitive market or solely by a manufacturer's  
4 authorized dealer. The provisions of W.S. 16-6-119 that  
5 apply to this paragraph and that conflict with the  
6 provisions of this paragraph shall control;

7

8       **Section 2.** The state transportation commission and  
9 the state construction department shall adopt rules  
10 necessary to implement this act on or before July 1, 2021.

11

12       **Section 3.**

13

14       (a) Except as provided in subsection (b) of this  
15 section, this act is effective July 1, 2021.

16

17       (b) Sections 2 and 3 of this act are effective  
18 immediately upon completion of all acts necessary for a  
19 bill to become law as provided by Article 4, Section 8 of  
20 the Wyoming Constitution.

21

22

(END)