



Wyoming State Construction Department

Governor Mark Gordon • Delbert A. McOmie, P.E., Director

Agenda Item 9 – School Facilities Procurement Requirements

Request to Consider the Bidding Requirement per W.S. § 9-2-3006 and increasing the value from \$50,000 to \$150,000

As part of the reorganization of Wyoming state government, the State Construction Department was established pursuant to W.S. § 9-2-2020. This reorganization consolidated the construction management program and the school facilities department into one agency, centralizing oversight of capital construction and maintenance projects.

Procurement Thresholds and Requirements

Under Wyoming law, public construction and maintenance contracts are subject to the following procurement thresholds:

- Contracts of \$50,000 or Less
Pursuant to W.S. § 9-2-3006(a)(i), contracts under this amount may be awarded through competitive negotiation, requiring no fewer than three (3) independent cost estimates or proposals.
 - In accordance with W.S. § 16-6-102(a), preference must be given to Wyoming residents. If no qualified known resident is available to perform the work, a contract may be awarded to a nonresident.
- Contracts of \$50,000 or More
As required by W.S. § 9-2-3006(a)(ii), these contracts must be awarded through a competitive sealed bidding process.
 - Notice of bid must be publicly advertised on the state procurement website for at least two (2) consecutive weeks.
 - W.S. § 16-6-102(a) further mandates that, when applicable, contracts be awarded to a certified Wyoming resident if their bid is no more than five percent (5%) higher than that of the lowest responsible nonresident bidder.

Additional Statutory and Policy Considerations

To ensure compliance with Wyoming statutes and maintain public trust in the procurement process, the following requirements must be addressed in all bidding and contract documents:

- Wyoming Residency and Labor Requirements
 - Contractors, subcontractors, and laborers must comply with Wyoming's residency requirements.
 - Contracts exceeding \$100,000 must comply with the Wyoming Prevailing Wage Act, ensuring workers are paid prevailing wages for public projects.
- Bid Advertisement and Transparency
 - Competitive bids exceeding \$50,000 require public advertisement and must promote fair competition and transparency.
- Mandatory Contractual Provisions



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- Warranty provisions appropriate to project scope and Wyoming law.
- Performance and payment bonds to secure project completion and subcontractor payments.
- Compliance with all local, municipal, and state permitting requirements.
- Technical specifications aligned with Wyoming state and municipal building codes.
- Project specific design specifications and drawings.
- Registration and Agency Compliance
 - Contractors must be properly registered with the following agencies:
 - Wyoming Secretary of State;
 - Department of Workforce Services: Unemployment Tax Division, Workers' Safety and Compensation Division, Labor Standards Division; and
 - Wyoming Department of Revenue
- Insurance Requirements
 - Contractors must carry adequate insurance coverage, as required by Risk Management, such as:
 - Commercial general liability;
 - Workers' compensation;
 - Unemployment insurance;
 - Automobile liability; and
 - Professional liability or errors and omissions (as applicable)
- Legal Protections and Risk Management
 - Contractual language must address sovereign immunity and indemnification provisions, in accordance with state legal standards.

Request for Analysis on Increasing the Non-Competitive Bidding Threshold

The Committee has requested the School Facilities Division (SFD) provide information regarding the potential impact of increasing the threshold for non-competitive bidding—specifically, projects requiring only three quotes. Currently, any procurement over \$50,000 must follow a competitive bidding process with public advertisement.

Given the significant increase in construction and major maintenance costs, raising this threshold may benefit school districts by streamlining procurement processes and reducing project timelines. Obtaining three quotes rather than initiating a formal bid could lead to more efficient project delivery.

It is important to note that the Construction Management Division (CMD) of the State Construction Department (SCD), along with all other state agencies, currently follows the same procurement requirements as school districts for capital construction and major maintenance projects.



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While the proposed change may offer efficiencies, the SCD notes the following considerations:

- **Scope of Change:** Would the increased threshold (e.g., \$150,000) apply solely to school facilities projects, or would it extend to all capital construction and major maintenance solicitations under SCD's jurisdiction?
- **Impact on Local Contractors:** Increasing the threshold could disadvantage smaller Wyoming contractors who are well-suited for projects under \$50,000 but may lack capacity for larger jobs or may not be considered as they are not as well-known as larger contractors. Consider: who determines the appropriate firms to request three quotes from and how they are to do so? Inconsistencies between agencies potentially may cause a disparity in the detail of bid documents. There is concern that projects consistently falling near the new, higher threshold may inadvertently limit opportunities for smaller firms to participate.
- **Potential for Misinterpretation:** An increased threshold could create ambiguity around project structuring, potentially leading to unintentional segmentation of larger projects. This may result in inconsistent application of procurement policies and raise concerns about maintaining transparency and fairness in the bidding process.
- **Bonding and Change Orders:** Under current statute, performance and payment bonds are required for contracts exceeding \$150,000. If a project initially awarded under the three-quote process exceeds this amount through change orders, it would necessitate a Bid Exception Approval (BEA), as well as the delayed issuance of required bonds—creating compliance and project risk issues.
- **Prevailing Wage and Labor Compliance:** Prevailing wage requirements apply to contracts over \$100,000. Any adjustment to the bidding threshold must also address statutory compliance for projects between \$100,000 and \$150,000, including adherence to prevailing wage laws, bonding requirements, and the use of Wyoming labor (including subcontractors).
- **Lack of Project Related Specification:** A lack of project related specifications leading to poor clarity in the scope of work/bid. Incomplete bid documents may not outline processes adequately for resolution of issues.

In light of these factors, the State Construction Department recommends that a comprehensive analysis be undertaken to evaluate the broader statutory and practical implications of increasing the threshold for non-competitive bidding. This would ensure any policy changes are appropriately aligned with existing procurement laws, contractor capacity, and labor requirements across the state.

See related definitions and statutory references at the end of this document following the BOCES discussion.



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BOCES Contracts for School Capital Construction & Major Maintenance

The Committee has requested the SFD to provide an overview of potential advantages and disadvantages of using Board of Cooperative Educational Services (BOCES) contracts—commonly known as cooperative purchasing contracts—for capital construction and major maintenance for K-12 projects in Wyoming.

Background

Information provided is based on statute reference and understanding of Wyoming procurement policies and procedures. The SFD has no experience working with BOCES as statutory limitations have precluded its use for capital construction projects. BOCES contracts are established through cooperative purchasing agreements that allow public entities, including school districts, to access pre-bid contracts for services, construction, and materials. These contracts are widely used in states where BOCES plays an integral role in regional service delivery, including Wyoming.

The use of such contracts for capital construction projects (e.g., athletic fields and tracks, major renovation materials, HVAC system components, roof replacements) must be carefully considered within the context of Wyoming law, particularly:

- W.S. § 16-6-101 through § 16-6-121 (Public Works and Contracts);
- W.S. § 21-15-109 (Major Maintenance Program);
- W.S. §§ 9-2-3001, 9-2-3004, 9-2-3005, 9-2-3006, and 21-3-110(a)(viii); and
- State procurement rules requiring competitive bidding, use of local labor, and prevailing wage compliance.

While W.S. § 21-3-111(a)(iii) permits school boards to “Enter into agreements with any public or private agency, institution, person, or corporation for the performance of acts or furnishing of services or facilities by or for the school district,” school boards are subject to a number of statutory requirements with respect to competitive procurement.

Further, pursuant to W.S. § 21-3-110(a)(viii) they shall “[f]or any contract for a capital construction project with an estimated value in excess of fifty thousand dollars (\$50,000.00), . . . publish a call for bids in a newspaper of general circulation in the district at least once each week for two (2) consecutive weeks. All contracts for capital construction projects shall be let in accordance with W.S. §§ 9-2-3004 and 9-2-3006 except as provided in this paragraph. The district shall reserve the right to reject any and all bids and to waive irregularities and informalities in any bid, as defined in W.S. § 9-2-3001(b)(v). No contract shall be divided for the purpose of avoiding this paragraph. Items for which bids must be obtained may be described in the published call for bids by stating general requirements and making detailed specifications available to prospective bidders at the district's administrative headquarters. A district shall independently meet the



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requirements of this paragraph when procuring goods or services that are subject to this paragraph through a board of cooperative educational services[.]”

W.S. § 9-2-3006 specifies that capital construction projects be let through the use of competitive negotiation, noncompetitive negotiation or competitive sealed bidding with further requirements for advertising and letting to a resident of the state if that resident’s bid is not more than 5% higher than that of the lowest responsible nonresident bidder. The definition for “capital construction project” in W.S § 9-2-3001(b)(ii) includes major maintenance.

There are both advantages and disadvantages to utilizing BOCES contracts for capital construction and major maintenance projects.

Advantages of Using BOCES Contracts

Advantage	Explanation
Procurement Efficiency	BOCES contracts are pre-bid, which can reduce time and administrative burden associated with competitive bidding.
Access to Vetted Vendors	Contractors are often prequalified for insurance, safety, and compliance, potentially reducing procurement risk.
Potential Cost Predictability	Cooperative contracts may offer stable unit pricing, especially for standardized work like HVAC, lighting, or maintenance packages.
Administrative Support	In some states, BOCES organizations offer project management or coordination services to member districts.

Disadvantages and Limitations in Wyoming

Disadvantage	Explanation
Potential Conflict with State Law	Wyoming statutes require open, competitive bidding for public works projects. Using a BOCES or another cooperative contract may violate W.S. § 16-6-101 et seq.
Local Labor Requirements	W.S. § 16-6-102 requires preference for Wyoming resident laborers and contractors. BOCES contracts often involve out-of-state vendors.
Inapplicability to Capital Construction	BOCES contracts may not include project-specific design, permitting, or environmental compliance needed for new building construction.
Limited Customization	Pre-scoped BOCES contracts may not align with the specific engineering and architectural needs of a Wyoming school facility.
Transparency and Accountability Risks	Skipping a formal bidding process reduces transparency and may lead to higher costs or limited oversight and may restrict the opportunity for smaller Wyoming contractors to bid.
State Audit Exposure	Use of non-compliant procurement methods may subject districts or agencies to findings from the Wyoming State Auditor.
Owner's Protective Clauses in Contract	If BOCES contracts are used, it is unknown if they include all necessary owner protections.





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Summary

The statutes and rules/regulations that pertain to capital projects (specific legislative appropriation) convey the intent that all Wyoming contractors and subcontractors have the opportunity to propose on that scope of work. There may be Wyoming contractors and subcontractors that do not want to provide those services outside their service area, or propose on a scope of services not specifically tied to one project (the process may not be as competitive as intended). Additionally, specifications written by member states may not take into consideration building needs specific to Wyoming and the particular project. In theory, the cooperative contracts are timelier and can benefit from an economy of scale so savings may be passed on to the owner. SCD is not aware of how often the cooperative contracts are let, how additional federal requirements affect projects not using federal funds, or how in-state preference is applied and how local Wyoming contractors are made aware of the bidding opportunity.

For those reasons, the State Construction Department maintains that there be a specific procurement for each capital construction project (which BOCES vendors are welcome to propose on), and any deviation from that may be considered but must be approved by the School Facilities Commission. SCD does not have a blanket rule allowing or disallowing BOCES-negotiated contracts. Some may satisfy the state procurement requirements, and others may not, so it would be considered on a case-by-case analysis. Procuring entities (not SCD) are responsible for ensuring that the processes used are in accordance with the rules/regulations, and statutes, so they will have to make the decision on any given procurement. SCD is responsible to review and approve capital construction projects and major maintenance work orders.

While BOCES contracts may offer administrative efficiencies, their application in capital construction and major maintenance projects in Wyoming presents legal, operational, and policy challenges. Wyoming's legal framework favors local competitive bidding, transparency, and in-state labor utilization—values that may not align with the use of out-of-state (national) cooperative contracts for capital construction projects as defined in W.S. § 9-2-3001(ii).

Careful legal review and legislative action would be necessary before these contracts could be safely used for new construction, major renovations, or major maintenance without violating existing statutes.

Definitions

W.S. 9-2-3001(b)

- (i) "Agency" as any school district, state office, department...
- (ii) "Capital construction project" means new construction, demolition, renovation, capital renewal and major maintenance of or to property;



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(ix) "Major building and facility repair and replacement" and "major maintenance" mean the repair, replacement or upgrade of complete or major portions of any component, equipment or system of a property at irregular intervals that is required to continue the use of the property at its designed capacity for its designed intended use and is typically accomplished by contractors due to the personnel demand to accomplish the work in a timely manner, the level of sophistication of the work or the need for warranted work. The terms include, but are not limited to, the following categories as hereafter defined (includes code compliance, site improvements, system improvements)

(xii) "Routine maintenance" means activities necessary to keep a property and the components, equipment and systems of a property in safe and good working order so that the property may be used at its original or designed capacity for its original or designed intended use. "Routine maintenance" includes custodial, groundskeeping and maintenance tasks done on a routine basis by building personnel and specialized equipment and building system maintenance that is accomplished on a routine basis by contractors.

W.S. 16-6-101(a)

(viii) "Public entity" means the state of Wyoming, any state office, board, council, commission, separate operating agency, department, institution or other instrumentality or operating unit of the state, including the University of Wyoming, any political subdivision of the state, any county, city, town, school district, community college district or any public corporation of the state;

(ix) "Public work" includes alteration, construction, demolition, enlargement, improvement, major maintenance, reconstruction, renovation and repair of any highway, public building, public facility, public monument, public structure or public system;

W.S. 21-3-110(a)

(viii) Obtain competitive bids when any purchase of insurance, supplies or materials other than textbooks costing more than twenty-five thousand dollars (\$25,000.00) and less than fifty thousand dollars (\$50,000.00) is contemplated unless precluded by other regulation or statute. If the amount of the purchase of insurance, supplies or materials other than textbooks is equal to or exceeds fifty thousand dollars (\$50,000.00), a call for bids shall be published at least once in a newspaper of general circulation in the district and on the state procurement website, as defined in W.S. 9-2-3001(b)(vii).

For any contract for a capital construction project with an estimated value in excess of fifty thousand dollars (\$50,000.00), the board shall publish a call for bids in a newspaper of general circulation in the district at least once each week for two (2) consecutive weeks. **All contracts for**



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capital construction projects shall be let in accordance with W.S. 9-2-3004 and 9-2-3006 except as provided in this paragraph.

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