

STATE OF WYOMING GENERAL SESSION 2011

Chapter 81

STATE FUNDED CONSTRUCTION PROJECTS/PREFERENCE PROVISIONS

Original Senate File No. 144

AN ACT relating to administration of government; modifying procurement requirements for expenditures for capital construction projects through the remainder of the fiscal biennium; modifying and specifying preference requirements; providing for waivers of the requirements; authorizing modifications by executive order; providing for further study; and providing for an effective date.

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

Section 1. W.S. 16-6-1001 is created to read:

ARTICLE 10

CAPITAL CONSTRUCTION PROJECTS TEMPORARY RESTRICTIONS

16-6-1001. Capital construction projects restrictions; preference requirements; waivers; sunset of section.

(a) Unless otherwise prohibited by federal law, any funds appropriated or authorized for expenditure during the fiscal biennium ending June 30, 2012, which have not been encumbered, obligated by contract or designed as of January 17, 2011, 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 to be performed for the project;

(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 value of the total subcontract work to be performed for the project;

(C) The requirement of subparagraph (B) of this paragraph may

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be waived in part upon 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;

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

(V) If the requirement of subparagraph (B) of this paragraph is waived in part, the remaining value of the total subcontract work to be performed for the project is subject to the requirement of subparagraph (B) of this paragraph.

(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 commission, 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 and the joint appropriations interim committee.

(ii) Unless exempted pursuant to subparagraph (D) of this paragraph, this paragraph shall apply to all construction delivery methods:

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(A) The procurement of furniture, fixtures and 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 subject to this paragraph;

(D) The requirements of subparagraph (A) or (B) of this paragraph may be waived for furniture, fixtures or equipment upon a written determination that the furniture, fixtures or equipment requirements of the project are so specialized or that an item or type of furniture, fixture or 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 in an office of the agency soliciting the bid;

(iv) Contractor progress payments shall be made only after the agency has been supplied with applicable lien waivers signed by the materialman, subcontractor or laborer, as applicable, or upon the contractor's affidavit that all materialmen, subcontractors and laborers have been paid for that portion of payment requested, less any contracted amounts held for retainage or for which there is a reasonable basis for dispute.

(b) No funds subject to this section shall be expended unless the contracting agency has submitted a plan to the governor and the joint appropriations interim committee 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

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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 agency 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 agency determines that there is reasonable suspicion that a contractor failed to comply with the resident preference laws, the agency shall report the matter to the department of employment and the attorney general. The department of employment and the attorney general shall take such enforcement action on behalf of the state of Wyoming and the agency against the contractor as they deem appropriate.

(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) This section is repealed effective June 30, 2012.

Section 2. The joint appropriations interim committee shall study the impacts of the statutory changes under this act and shall propose permanent changes to contractor preference laws consistent with this act. The committee shall further propose changes to the resident preference laws as it determines necessary to effectively enforce those laws and to deter violations of those provisions. The committee shall present its recommendations for consideration in the 2012 budget session.

Section 3. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

Approved March 2, 2011.