

HOUSE BILL NO. HB0033

Interference with public contracting.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to crimes and offenses; providing
2 legislative findings; creating criminal offenses related to
3 interference with public contracts; defining terms;
4 specifying penalties; and providing for an effective date.

5

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

7

8 **Section 1.** The legislature finds that the cost to the
9 public is increased and the quality of goods, services and
10 construction paid with public funds is decreased when
11 contracts for those goods, services and construction are
12 obtained by any means other than through the independent
13 and non-collusive submission of bids or offers by
14 individual contractors or suppliers, and the evaluation of
15 those bids or offers by the governmental entity is pursuant
16 only to criteria publicly announced in advance.

1

2 **Section 2.** W.S. 6-5-401 through 6-5-408 are created
3 to read:

4

5

ARTICLE 5

6

INTERFERENCE WITH PUBLIC CONTRACTING

7

8

6-5-401. Definitions.

9

10 (a) As used in this article:

11

12 (i) "Governmental entity" means any unit of
13 state or local government or any branch, subdivision or
14 agency thereof or any school district or special district;

15

16 (ii) "Kickback" means any money, fee,
17 commission, credit, gift, gratuity, thing of value or
18 compensation of any kind that is provided, directly or
19 indirectly, to any public official, public servant, prime
20 contractor, prime contractor employee, subcontractor or
21 subcontractor employee for the purpose of improperly
22 obtaining or rewarding favorable treatment in connection

1 with a prime contract or in connection with a subcontract
2 relating to a prime contract;

3

4 (iii) "Prime contractor" means any person who
5 has entered into a public contract;

6

7 (iv) "Prime contractor employee" means any
8 officer, partner, employee or agent of a prime contractor;

9

10 (v) "Public contract" means any contract for
11 goods, services or construction awarded to any person with
12 or without bid by any governmental entity, regardless of
13 any procedures for the bid or contract process that are
14 required by law;

15

16 (vi) "Public officer" means as defined by W.S.
17 6-5-101(a)(v);

18

19 (vii) "Public servant" means as defined by W.S.
20 6-5-101(a)(vi);

21

22 (viii) "Subcontract" means a contract or
23 contractual action entered into by a prime contractor or

1 subcontractor for the purpose of obtaining goods, services
2 or construction of any kind under a public contract;

3

4 (ix) "Subcontractor" means any person, except
5 for the prime contractor, who offers to furnish or
6 furnishes any goods, services or construction of any kind
7 under a public contract or a subcontract entered into in
8 connection with a public contract. "Subcontractor" shall
9 include any person who offers to furnish or furnishes
10 goods, services or construction to the prime contractor or
11 a higher-tier subcontractor;

12

13 (x) "Subcontractor employee" means any officer,
14 partner, employee or agent of a subcontractor.

15

16 **6-5-402. Bid rigging; penalties; prohibitions.**

17

18 (a) A person commits bid rigging when he knowingly
19 conspires with any other person who is or would be a
20 competitor to any submitted or not submitted bid to a
21 governmental entity with the intent that the bid submitted
22 or not submitted will result in the award of a public
23 contract to the person or to another person and the person:

1

2 (i) Provides the other person or receives from
3 the other person or another person information concerning
4 the price or a material term of any bid that would
5 otherwise not be disclosed to a competitor in an
6 independent, non-collusive submission of bids; or

7

8 (ii) Submits a bid that is of such price or
9 other material term that he does not intend the bid to be
10 accepted.

11

12 (b) Bid rigging is a felony punishable by
13 imprisonment for not more than five (5) years, a fine of
14 not more than ten thousand dollars (\$10,000.00), or both.

15

16 **6-5-403. Bid rotating; penalties; prohibitions.**

17

18 (a) A person commits bid rotating when, pursuant to
19 any collusive scheme, plan or agreement with another, he
20 engages in a pattern of submitting sealed bids to
21 governmental entities with the intent that the award of
22 those bids rotates or is distributed among persons that
23 submit bids on a substantial number of the same or similar

1 public contracts. For purposes of this subsection, a
2 pattern of submitting sealed bids shall include not less
3 than three (3) contract bids within a period of ten (10)
4 years.

5

6 (b) Bid rotating is a felony punishable by
7 imprisonment for not more than five (5) years, a fine of
8 not more than ten thousand dollars (\$10,000.00), or both.

9

10 **6-5-404. Acquisition or disclosure of bidding**
11 **information by a public servant.**

12

13 (a) A public servant who knowingly opens a sealed bid
14 at a time or place other than that designated in the
15 invitation to bid or as otherwise provided for by state law
16 or local ordinance, or who knowingly opens a bid outside of
17 the presence of witnesses if required by state law or local
18 ordinance, is guilty of a felony punishable by imprisonment
19 for not more than five (5) years, a fine of not more than
20 ten thousand dollars (\$10,000.00), or both.

21

22 (b) Any public servant who knowingly discloses to any
23 interested person any information related to the terms of a

1 sealed bid, except when the information is obtained as
2 provided by law or if the disclosure is necessary to the
3 public servant's responsibilities relating to the bid, is
4 guilty of a felony punishable by imprisonment for not more
5 than five (5) years, a fine of not more than ten thousand
6 dollars (\$10,000.00), or both. This subsection shall not
7 apply to any public servant who makes any disclosure of
8 information related to a sealed bid when that disclosure is
9 also made generally available to the public.

10

11 (c) This section shall apply only to public contracts
12 for which sealed bids are submitted.

13

14 **6-5-405. Interference with contract submission and**
15 **award by a public servant.**

16

17 (a) A public servant who knowingly conveys, either
18 directly or indirectly and outside of the publicly
19 available official invitation to bid or pre-qualify to bid
20 or solicitation for contracts, any information concerning
21 the specifications for a contract or the identity of any
22 specific potential prime contractors or subcontractors,
23 when disclosure of that information would influence the

1 likelihood of acceptance of a bid or offer, is guilty of a
2 misdemeanor punishable by imprisonment for not more than
3 one (1) year, a fine of not more than one thousand dollars
4 (\$1,000.00), or both. This subsection shall not apply to a
5 public servant who conveys information intended to clarify
6 plans or specifications regarding a public contract where
7 disclosure of that information is also made generally
8 available to the public.

9

10 (b) A public servant who, either directly or
11 indirectly, knowingly informs a bidder or offeror that the
12 bid or offer will be accepted or executed only if specified
13 individuals are included as subcontractors is guilty of a
14 felony punishable by imprisonment for not more than five
15 (5) years, a fine of not more than ten thousand dollars
16 (\$10,000.00), or both.

17

18 (c) Any public servant who knowingly awards a public
19 contract based on criteria that were not publicly
20 disseminated via an invitation to bid that is published
21 pursuant to law, a pre-bid or pre-qualification conference
22 or any other lawful procedure for soliciting contracts is
23 guilty of a felony punishable by imprisonment for not more

1 than five (5) years, a fine of not more than ten thousand
2 dollars (\$10,000.00), or both. This subsection shall not
3 apply to any public servant who provides a person a copy of
4 the transcript or other summary of any pre-bid or
5 pre-qualification conference where the transcript or
6 summary is also made generally available to the public.

7

8 **6-5-406. Kickbacks; penalties; civil action.**

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10 (a) A person is guilty of providing or accepting
11 kickbacks when he knowingly:

12

13 (i) Provides, attempts to provide or offers to
14 provide any kickback;

15

16 (ii) Solicits, accepts or attempts to accept any
17 kickback; or

18

19 (iii) Includes, either directly or indirectly,
20 the amount of any kickback in the contract price charged by
21 a subcontractor to a prime contractor or a higher-tier
22 subcontractor or includes, either directly or indirectly,
23 in the contract price the amount of any kickback in the

1 contract price charged by a prime contractor to a
2 governmental entity for a public contract.

3

4 (b) Providing or accepting kickbacks is a misdemeanor
5 punishable by a fine of not more than one thousand dollars
6 (\$1,000.00), imprisonment for not more than one (1) year,
7 or both.

8

9 (c) A governmental entity may file a civil action to
10 recover a civil penalty of two (2) times the amount of each
11 kickback from any person who knowingly engages in conduct
12 prohibited by paragraph (a)(iii) of this section. This
13 subsection shall not be construed to limit any governmental
14 entity from seeking to recover damages as authorized by any
15 other law. A civil action shall not be commenced under this
16 subsection after six (6) years of the later of the date on
17 which:

18

19 (i) The conduct establishing the civil action
20 occurred; or

21

1 (ii) The governmental entity knew or should have
2 known that the conduct establishing the civil action
3 occurred.

4

5 **6-5-407. Bribery of an inspector employed by a**
6 **contractor.**

7

8 (a) A person commits bribery of an inspector when:

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10 (i) He offers to any person employed by a prime
11 contractor or subcontractor working on any project pursuant
12 to a public contract any property or other thing of value
13 with the intent to obtain a wrongful certification or
14 approval of the quality or completion of any goods,
15 services or construction supplied or performed in the
16 course of performing the obligations of the public
17 contract; or

18

19 (ii) He is employed by a prime contractor or
20 subcontractor to work pursuant to a public contract and he
21 accepts any property or other thing of value knowing that
22 the property or thing of value was intentionally offered
23 for the purpose of influencing the certification or

1 approval of the quality or completion of any goods,
2 services or construction supplied or performed under a
3 subcontract and he issues a wrongful certification.

4

5 (b) Bribery of an inspector is a felony punishable by
6 imprisonment for not more than ten (10) years, a fine of
7 not more than five thousand dollars (\$5,000.00), or both.

8

9 **6-5-408. Prohibitions for bidding.**

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11 (a) Any person convicted of any offense under this
12 article or of any substantially similar offense under
13 federal law or the laws of another state shall be barred
14 for three (3) years from the date of conviction from
15 contracting with any governmental entity.

16

17 (b) No partnership or corporation shall be barred
18 under this section if an employee of the partnership or
19 corporation is convicted under this section if the employee
20 is no longer employed by the partnership or corporation and
21 the partnership or corporation:

22

1 (i) Has been found not guilty or the case
2 against the partnership or corporation has been dismissed
3 if charged under this section; or

4

5 (ii) Demonstrates to the satisfaction of the
6 governmental entity with which it seeks to contract that
7 the employee's offense was not authorized, requested,
8 commanded or performed by a director or officer of the
9 partnership or corporation.

10

11 **Section 3.** This act is effective July 1, 2021.

12

13

(END)