

ENROLLED ACT NO. 29, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

AN ACT relating to professional services procurement; renumbering and amending provisions related to the procurement of professional architectural, engineering and land surveying services; modifying applicability of resident firm selection requirements; specifying duties of the state construction department; making conforming amendments; requiring rulemaking; and providing for effective dates.

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

Section 1. W.S. 9-2-1016(b)(iv)(F), 9-2-3004(c) by creating a new paragraph (ix), 9-12-104(a)(xii), 16-6-1001(b), 21-3-110(a) by creating a new paragraph (xxxvii), 21-17-204 by creating a new subsection (b), 21-18-303 by creating a new subsection (c) and 24-2-108 are amended to read:

9-2-1016. General services division.

(b) For the purpose of this subsection the term "agencies" does not include the University of Wyoming, community college districts, or school districts. It does not include the department of transportation except as to paragraphs (xi), (xii) and (xiii) of this subsection. The department through the general services division shall:

(iv) Adopt standard forms and procedures providing that bids or contracts for supplies or services shall be awarded through the use of competitive sealed bidding, competitive negotiation, noncompetitive negotiation or small purchase procedures as hereafter provided:

(F) This paragraph shall not apply to the procurement by the department of corrections of raw materials

ENROLLED ACT NO. 29, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

used in a correctional industries program to manufacture goods or to provide services under W.S. 7-16-206(a)(i), the procurement of goods or services from the department of corrections under W.S. 7-16-206(a)(i) when the goods or services produced are not available from other Wyoming manufacturers or service providers, the procurement of professional services under W.S. ~~9-2-1027 through 9-2-1033~~ 9-23-101 through 9-23-107, nor to purchases of feed by the game and fish department for winter elk ranges. Subparagraph (E) of this paragraph shall not apply to the procurement of services or supplies by the offices of state elected officials. Subparagraph (D) of this paragraph shall not apply to the procurement of services by the offices of state elected officials if the contract is for twenty thousand dollars (\$20,000.00) or less;

9-2-3004. Duties of the department.

(c) The department shall:

(ix) Administer the Professional Architectural, Engineering and Land Surveying Services Procurement Act.

9-12-104. General powers and duties of the council.

(a) Except as otherwise limited by this act, the council may:

(xii) Engage the services of consultants on a contract basis for rendering professional, financial and technical assistance and advice, including for studies and investigation likely to lead to business development. The procurement of the professional services of architects, engineers and surveyors shall be in accordance with W.S. 9-23-105(f) through (h) and 9-23-106(g);

ENROLLED ACT NO. 29, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

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

(b) No funds subject to this section shall be expended unless the contracting agency has submitted a plan to the governor 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)~~ 9-23-102(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 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.

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

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

(xxxvii) Procure the professional services of architects, engineers and surveyors in accordance with W.S. 9-23-101 through 9-23-107.

21-17-204. Additional powers and duties; sectarian or partisan instruction or test prohibited; professional services procurement.

(b) The board of trustees shall procure the professional services of architects, engineers and surveyors

ENROLLED ACT NO. 29, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

in accordance with W.S. 9-23-105(f) through (h) and 9-23-106(g).

21-18-303. District board generally; powers; board approved additional mill levy.

(c) The community college district board shall procure the professional services of architects, engineers and surveyors in accordance with W.S. 9-23-105(f) through (h) and 9-23-106(g).

24-2-108. Road and bridge construction; professional services procurement.

(a) All road and bridge construction work, any part of the cost of which is paid from the state highway fund, shall be performed in accordance with the plans and specifications prepared by the director of the department of transportation or the chief engineer and approved by the commission, and shall be performed by or under contracts awarded by the commission. The director with the assistance of the chief engineer shall have complete charge, including expenditures for roads now in existence, or in the future to be constructed, which are part of state highway systems which are located within or partially within the national forests' boundaries. All improvements costing more than two hundred thousand dollars (\$200,000.00) shall be constructed under contracts awarded after public notice to the lowest responsible bidder determined qualified by the transportation commission of Wyoming which is given the power to determine the qualifications and responsibilities of bidders. The commission may reject any or all bids and readvertise for bids. Improvements costing less than forty thousand dollars (\$40,000.00) may be constructed by the commission upon force account, with its own forces or under contract, as the

ENROLLED ACT NO. 29, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

commission shall determine. A state highway construction job to be completed within any calendar year period and to cost more than forty thousand dollars (\$40,000.00) shall not be constructed by department of transportation forces in sections or parcels so as to come within the forty thousand dollars (\$40,000.00) limitation. Contracts may be entered into with railroad companies for the construction of grade separation structures at actual cost under terms and conditions approved by the commission. Whenever an emergency arises requiring immediate expenditure of funds for the repair or rebuilding of bridges, approaches to bridges and any roadway, when the bridges, approaches to bridges or roadway are required to be rebuilt immediately and in such short time that in the judgment of the commission the people would be seriously inconvenienced in waiting the regular period for advertising for bids, the commission may enter into contract for any building or rebuilding of bridges, approaches or roadway without advertising for the letting of any contract, provided the amount of the contract shall not exceed one million dollars (\$1,000,000.00) and provided the commission requests proposals from at least two (2) contractors capable of performing the emergency construction or repair. The commission shall 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.

(b) The commission shall procure the professional services of architects, engineers and surveyors in accordance with W.S. 9-23-105(f) through (h) and 9-23-106(g).

Section 2. W.S. 9-2-1027 through 9-2-1033 as 9-23-101 through 9-23-107 are amended and renumbered to read:

CHAPTER 23

ENROLLED ACT NO. 29, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

PROFESSIONAL ARCHITECTURAL, ENGINEERING AND LAND SURVEYING
SERVICES PROCUREMENT ACT

~~9-2-1027~~ 9-23-101. **Short title.**

This act is known and may be cited as the "Professional Architectural, Engineering and Land Surveying Services Procurement Act".

~~9-2-1028~~ 9-23-102. **Definitions.**

(a) As used in this act:

(i) "Agency" means any school district, state office, department, board, council, commission, separate operating agency, institution or other ~~operating entity instrumentality or operating unit~~ of the state excluding, ~~except as otherwise provided in W.S. 9-2-1031(f) and 9-2-1032(g)~~, the University of Wyoming, community college districts, the Wyoming business council and the Wyoming department of transportation;

(ii) "Department" means the state ~~department of administration and information~~ construction department;

(iii) "Firm" means an individual, corporation, partnership, business trust, association, firm or any other legal entity permitted by law to practice in a specified profession;

(iv) "Principal representative" means the governing board of ~~a school district, department, institution~~

ENROLLED ACT NO. 29, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

~~or an~~ agency or its designated representative, or, if there is no governing board, the executive head of ~~a department, institution or an~~ agency;

(v) "Professional services" means:

(A) The practice of architecture pursuant to W.S. 33-4-101 through 33-4-117;

(B) The practice of professional engineering or professional land surveying pursuant to W.S. 33-29-201 through 33-29-801.

(vi) "Resident firm" means a firm that:

(A) Possesses a physical office within the state that is staffed by individuals with professional and technical expertise who are employed in the state; and

(B) Certifies in the firm's current statement of qualifications or application that if selected for the project the percentage of ~~the contract costs for~~ professional services specified in this subparagraph shall be performed by individuals or consultants employed in the state who will perform their labor or professional services provided under the contract within the boundaries of the state. The individuals who will perform the professional services shall possess the professional and technical qualifications necessary to perform the work required by the contract. The following percentages shall apply to this subparagraph:

(I) For any projects with ~~project contract costs~~ negotiated fees for professional services in an amount equal to ~~twenty million dollars (\$20,000,000.00)~~ one million five hundred thousand dollars (\$1,500,000.00) or

ENROLLED ACT NO. 29, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

less - fifty percent (50%) of the ~~contract costs~~ professional services provided under the firm's contract;

(II) For ~~capital construction~~ any projects with ~~construction contract costs~~ negotiated fees for professional services in an amount greater than ~~twenty million dollars (\$20,000,000.00)~~ one million five hundred thousand dollars (\$1,500,000.00) but less than ~~forty million dollars (\$40,000,000.00)~~ three million dollars (\$3,000,000.00) - forty percent (40%) of the ~~contract costs~~ professional services provided under the firm's contract;

(III) For ~~capital construction~~ any projects with ~~construction contract costs~~ negotiated fees for professional services in an amount equal to ~~forty million dollars (\$40,000,000.00)~~ three million dollars (\$3,000,000.00) or more - thirty percent (30%) of the ~~contract costs~~ professional services provided under the firm's contract.

(vii) "Negotiated fee" means the fee specified in a written contract for professional services entered into in accordance with W.S. 9-23-106;

(viii) "State procurement website" means a website that the department designates to host information and notices related to procurement under this act;

(vii)(ix) "This act" means W.S. ~~9-2-1027 through 9-2-1033~~ 9-23-101 through 9-23-107.

~~9-2-1029~~ 9-23-103. **General duties.**

(a) The department shall:

ENROLLED ACT NO. 29, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

(i) Develop and maintain approved lists of qualified architects, engineers and land surveyors for selection under this act; and

(ii) Develop and administer notification procedures for obtaining professional services under this act.

~~9-2-1030~~ 9-23-104. **Qualification procedures; notice.**

(a) Any firm desiring to provide professional services to an agency, shall ~~annually~~ submit to the department ~~and or~~ the agency a detailed statement of qualifications and performance data, and any other information required by the department or the agency. Each firm shall submit the statement not less than every two (2) years. The department or the agency may request the firm to update its statement before submission in order to reflect changed conditions in the status of the firm.

(b) ~~If professional services in an amount exceeding twenty five thousand dollars (\$25,000.00) are required, the department or the agency shall notify all qualified architects, engineers and land surveyors of record who have submitted an annual statement of qualifications and performance data. In addition if professional services in an amount exceeding fifty thousand dollars (\$50,000.00) are required~~ For any professional services fee estimated by the agency to exceed fifty thousand dollars (\$50,000.00), the agency or the department shall give notice of the need for professional services in a newspaper of general circulation in the state at least once each week for two (2) consecutive weeks and on the state procurement website for not less than two (2) consecutive weeks prior to initiation of selection procedures in accordance with W.S. ~~9-2-1031~~ 9-23-105. All

ENROLLED ACT NO. 29, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

notifications under this subsection shall contain a general description of the proposed project, and shall indicate the procedures by which interested firms may apply for consideration for a contract to provide professional services for the proposed project.

~~9-2-1031~~ 9-23-105. **Selection procedures; emergency waiver.**

(a) For each proposed project, the principal representative of the agency for which the project is proposed shall evaluate current statements of qualifications and performance data of firms on file with the department or the agency, together with any applications submitted by other qualified firms, and shall select in accordance with subsection (f) of this section not less than three (3) firms considered qualified to perform the required professional services. The agency shall provide a complete description of the work to the firms selected. These firms shall submit an unpriced proposal to do the work.

(b) In addition to the requirements of subsection (a) of this section, for any professional services fee estimated by the agency to exceed fifty thousand dollars (\$50,000.00), the principal representative shall interview not less than three (3) firms selected from those which have submitted proposals to do the work. The interview ~~shall be recorded and~~ may include discussion of each firm's projections of project costs, qualifications, approaches to the project, ability to furnish required professional services, use of alternative methods for furnishing required professional services and an estimated fee based on the agency's description of the work. The agency shall keep a record of the interview. The estimated fee, if requested by the agency, may be used as a basis, along with the ~~qualifications listed in subsection (a)~~

ENROLLED ACT NO. 29, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

considerations and requirements of subsection (f) of this section, for selection by the principal representative of the most qualified firm for contract negotiations. If unsatisfied with the results of such interviews, the principal representative may select not less than three (3) additional firms for interviews as provided by subsection (a) of this section.

(c) In addition to the requirements of subsection (a) of this section, for any professional services fee estimated by the agency to be fifty thousand dollars (\$50,000.00) or less, the principal representative shall select three (3) firms from which a project specific submittal shall be requested. The information provided by the firm ~~shall~~ may include an estimated fee and preliminary scope of services based on the agency's description of the work. The estimated fee, if requested by the agency, may be used as a basis along with ~~the qualifications listed in subsection (a)~~ considerations and requirements of subsection (f) of this section, for selection by the principal representative of the most qualified firm for contract negotiations.

(d) Nothing in this section prohibits a principal representative from determining that fewer than three (3) firms with current statements on file or which have submitted applications before selection are qualified to perform the required professional services. If a principal representative makes that determination, subsections (b) and (c) of this section apply with respect to the firms the principal representative considers qualified.

(e) The department, in conjunction with the agencies, shall adopt rules and regulations necessary to implement the selection process provided by this section.

ENROLLED ACT NO. 29, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

(f) Every agency, the University of Wyoming, each community college district, the Wyoming business council and the Wyoming department of transportation shall base selection of a firm for professional services in accordance with the following:

(i) Except as provided in paragraph (ii) of this subsection and subsection (g) of this section, the agency, the University of Wyoming, each community college district, the Wyoming business council and the Wyoming department of transportation shall select firms that are resident firms as defined by this act. Consideration between ~~these~~ firms shall be based upon:

- (A) The ability of professional personnel;
- (B) Past performance;
- (C) Ability to meet time requirements;
- (D) Location;
- (E) Current and projected work loads;
- (F) The volume of work previously awarded to the firm by the agency;
- (G) The equitable distribution of contracts among the firms considered qualified.

(ii) Nonresident firms may be selected if less than three ~~(3)~~ no firms on file, together with any applications submitted for the project, are resident firms as defined by this act or if the resident firms are determined not qualified by the agency, the University of Wyoming, the

ENROLLED ACT NO. 29, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

community college district, the Wyoming business council or the Wyoming department of transportation. Consideration of qualified nonresident firms shall be based upon the considerations listed in subparagraphs (i)(A) through (G) of this subsection.†

~~(iii) For purposes of this subsection, agency as defined in this act shall include the University of Wyoming, community college districts, the Wyoming business council and the Wyoming department of transportation when the proposed project is funded in whole or in part with state funds.~~

(g) The provisions of this ~~section giving preference to~~ act requiring selection of resident firms shall not apply ~~to the extent any proposed project will utilize funds, the receipt of which is conditioned to prohibit a residency preference if:~~

(i) Any part of the proposed project is to be paid or has the potential to be paid with funds from the federal government or other nonstate source; and

(ii) The federal government or the other nonstate source has applicable requirements concerning residency preferences that are inconsistent with this act.

(h) Whenever an emergency arises requiring professional services, the principal representative of an agency, the University of Wyoming, the community college district, the Wyoming business council and the Wyoming department of transportation may waive any applicable requirement of W.S. 9-23-104 and this section if the requirement endangers the health, welfare or safety of the public.

~~9-2-1032~~ 9-23-106. Contract procedure.

ENROLLED ACT NO. 29, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

(a) After completing the selection process, the principal representative shall negotiate a written contract with the selected firm as determined by W.S. ~~9-2-1031~~9-23-105 for the provision of services. The principal representative shall consider the estimated value, scope, complexity and professional nature of the services to be rendered when determining a reasonable compensation.

(b) If the principal representative is unable to negotiate a satisfactory contract with the selected firm at a price he determines fair and reasonable, negotiations with that firm shall be terminated. The principal representative shall then begin negotiations with the firm ranked second in order of preference pursuant to W.S. ~~9-2-1031~~9-23-105. If the principal representative fails to negotiate a contract with the second ranked firm, he shall terminate negotiations. The principal representative shall then begin negotiations with the firm ranked third in order of preference.

(c) If the principal representative is unable to negotiate a satisfactory contract with any of the selected firms, he shall:

(i) Select additional firms in order of their competence and qualifications and continue negotiations in accordance with this section and W.S. ~~9-2-1031~~9-23-105, until a contract is reached; or

(ii) Review the contract under negotiation to determine the possible cause for failure to achieve a negotiated contract.

(d) Each contract for professional services entered into by the principal representative shall contain a

ENROLLED ACT NO. 29, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

prohibition against gratuities, kickbacks and contingent fees. The ~~architect, registered land surveyor or professional engineer~~ person providing professional services shall certify ~~under oath~~ that he has not in any way been involved in any gratuities, kickbacks, or contingent fees in connection with his selection or ultimate performance of ~~this~~ the contract.

(e) Each contract for professional services entered into by the principal representative shall contain a prohibition against payment based upon a percentage of the construction cost.

(f) This act shall not prohibit continuing contracts between any person providing professional services and any agency.

(g) ~~Each~~ If selection of a resident firm is required under this act, the contract for professional services entered into by an agency, the University of Wyoming, a community college district, the Wyoming business council or the Wyoming department of transportation shall contain a certification by the resident firm providing professional services that the firm will comply with W.S. ~~9-2-1028(a)(vi)(B)~~ 9-23-102(a)(vi)(B). ~~For purposes of this subsection, agency as defined in this act shall include the University of Wyoming, community college districts, the Wyoming business council and the Wyoming department of transportation when the proposed project is funded in whole or in part with state funds.~~ This subsection shall not be construed to require a firm to comply with W.S. 9-23-102(a)(vi)(B) if the proposed project is exempt from residence firm selection by W.S. 9-23-105(g) or if selection of a resident firm is waived in accordance with W.S. 9-23-105(h).

ENROLLED ACT NO. 29, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

~~9-2-1033~~ 9-23-107. **Prohibited acts; civil penalty; initiation of action.**

(a) No person, including any agency official or employee, shall:

(i) In any way be involved in any gratuities, kickbacks, or contingent fees in connection with the selection procedure set forth in this act;

(ii) If providing professional services, pay any fee, commission, gift or other consideration contingent upon the award of a contract for professional services pursuant to this act.

(b) Any person violating subsection (a) of this section or ~~subsection (d) of W.S. 9-2-1032~~ W.S. 9-2-1032(d) is liable for a penalty not to exceed five thousand dollars (\$5,000.00). The penalty may be recovered in a civil action and damages shall be assessed by the court.

(c) Any action pursuant to this section shall be initiated in Laramie county by the attorney general.

Section 3. W.S. 9-2-1031(f)(iii) renumbered as 9-23-105(f)(iii) by this act is repealed.

Section 4. The state construction department shall adopt emergency rules necessary to implement this act on or before October 1, 2020 and final rules to implement this act on or before March 1, 2021.

Section 5. This act shall apply only to procurement initiated on or after the effective date of this section.

ORIGINAL HOUSE
BILL NO. HB0051

ENGROSSED

ENROLLED ACT NO. 29, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

Section 6.

(a) Except as provided in subsection (b) of this section, this act is effective October 1, 2020.

(b) Sections 4 and 6 of this act are 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.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk