

## **Instructions for Waiver under W.S. § 16-6-1001**

### **1. Authority**

- a. W.S. § 16-6-1001(a): "Unless otherwise prohibited by federal law, any funds appropriated to or authorized for expenditure by a public entity for capital construction projects shall be subject to the restrictions of this section."
- b. Please consult W.S. § 16-6-1001(a)(i) for the preference requirements. These instructions cover only the waiver process and do not provide guidance for complying with the preference requirements. These instructions are intended only for convenience and do not constitute legal advice. Consult all relevant statutes to ensure full compliance with Wyoming law.

### **2. Written Determination**

- a. The the preference requirements in W.S. § 16-6-1001(a)(i)(B) may be waived for any part of the subcontract work to be performed under the contract, provided certain conditions are met. If waived in part, the remaining value of the total subcontract work to be performed under the contract is still subject to the preference requirement. Such waiver requires a written determination of at least one of the following:
  - 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; **or**
  - iv. There were insufficient responsible Wyoming contractors submitting bids to make the seventy percent (70%) requirement.
- b. The bid requirements for procurement of furniture or movable equipment located in W.S. § 16-6-1001(a)(ii)(A) may be waived by political subdivisions pursuant to W.S. § 16-6-1001(a)(ii)(D). Such waiver requires a written determination that the furniture or movable equipment requirements of the project are so specialized or that an item or type of furniture or movable equipment is so unique or uncommon that failure to waive the requirements would materially impair the functionality of the project.

### **3. Written Approval**

- a. Any waiver of preference requirements for alternate design and construction delivery methods located in W.S. § 16-6-1001(a)(i)(B) 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 State Construction Department;
  - 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 State Construction Department under title 21 of Wyoming statutes, by the director of the State Construction Department 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; and
  - v. For all other projects, by the respective governing body.
- b. Any waiver of bid requirements for procurement of furniture or movable equipment located in W.S. § 16-6-1001(a)(ii)(A) shall be approved in writing by the governing body of the political subdivision pursuant to W.S. § 16-6-1001(a)(ii)(D).

### **4. Notice**

- a. Any approved waiver shall be provided to the Governor.
- b. Notice of all approved waivers shall also be published on a website maintained by the state construction department, including a statement of the grounds for the waiver.

**Certification Statement**  
**W.S. §§ 16-6-101, et seq., 16-6-201, et seq., & 16-6-1001**

**W.S. § 16-6-101, et seq. PUBLIC WORKS AND CONTRACTS**

Contracts for construction, major maintenance, or renovation of any public structure or for any public work or improvements, if advertisement for bids is not required, shall be let to a resident of the state of Wyoming. If advertisement for bids is required, the contract shall be let to the responsible certified resident making the lowest bid, if the certified resident's bid is not more than five percent (5%) higher than that of the lowest responsible nonresident bidder. "Resident" means as defined in W.S. § 16-1-101(a)(i). A successful resident bidder shall not subcontract more than thirty percent (30%) of the work covered by his contract to nonresident contractors. A resident bidder shall submit a copy of his certificate of residency with his bid.

**W.S. § 16-6-201, et seq. PREFERENCE FOR STATE LABORERS**

Wyoming labor shall be used on public works projects. Every contract let by any person shall contain a provision requiring that Wyoming labor be used except other laborers may be used when Wyoming laborers are not available for employment from within the state or are not qualified to perform the work involved. The contract shall also contain a provision requiring specific acknowledgement of the requirements of W.S. § 16-6-203.

**W.S. § 16-6-1001 CAPITAL CONSTRUCTION PROJECTS**

Applicants must comply with all applicable provisions of W.S. § 16-6-1001. Certain provisions may be waived pursuant to that section.

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Successful applicants for funds from the Office of State Lands and Investments for public works or capital construction projects must provide the signed statement below to the Office prior to reimbursement of expenditures.

I certify to the best of my knowledge and belief that the applicant has complied with W.S. §§ 16-6-101, et seq., 16-6-201, et seq., and 16-6-1001 unless otherwise noted below.

1. W.S. § 16-6-1001

- Complied with W.S. § 16-6-1001(a)
- Waiver approved; attach copy of written waiver provided to Governor
- N/A

2. W.S. § 16-6-101, et seq.

- Complied with W.S. § 16-6-101, et seq.

3. W.S. § 16-6-201, et seq.

- Complied with W.S. § 16-6-201, et seq.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title