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| **Wyo. Stat. § 9-2-1016**(Copy w/ Cite) |

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*Wyo. Stat. § 9-2-1016*

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\*\*\* THIS DOCUMENT IS CURRENT THROUGH THE 2013 REGULAR SESSION OF THE LEGISLATURE \*\*\*
\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 15, 2013 \*\*\*

Title 9  Administration of the Government
Chapter 2  Agencies, Boards, Commissions and Departments Generally
Article 10.  Department of Administration and Information

Wyo. Stat. § 9-2-1016  (2013)

**§ 9-2-1016.  General services division.**

**(a)**As used in this section:

     **(i)**"Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration;

     **(ii)**"Services" means the furnishing of labor, time or effort by a contractor to an agency. The term does not include employment agreements;

     **(iii)**"Supplies" means:

         **(A)**All property, including but not limited to, furniture, fixtures, stationery, printing, paper, fuel and equipment of every kind required for use in the offices, service and functions performed by agencies, and for repairing, heating and lighting the state buildings; and

         **(B)**Insurance and bonds from licensed Wyoming agents as required.

**(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:

     **(i)**Adopt rules governing the procurement, management, control and disposal of all supplies and services required by agencies. The rules shall establish standards and procedures which promote fair and open competition. No agency shall procure supplies or services except in compliance with the rules adopted by the department;

     **(ii)**Adopt standard forms and procedures for regulating the procurement of supplies or services required by agencies;

     **(iii)**Adopt a uniform commodity classification system designating the quality, material and brand of supplies or services required by agencies;

     **(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:

         **(A)**Bids or contracts for supplies or services in excess of seven thousand five hundred dollars ($ 7,500.00) shall be made by competitive sealed bidding when the configuration or performance specifications, or both, are sufficiently designed to permit award on the basis of the lowest evaluated price as determined in accordance with objective, measurable criteria set forth in the invitation for bids, and when available sources, the time and place of performance, and other conditions are appropriate for the use of competitive sealed bidding;

         **(B)**Whenever the administrator determines in writing that the use of competitive sealed bidding is not feasible or practical, contracts for supplies or services may be made by competitive negotiation. An elected state official may also contract for supplies or services for his office by competitive negotiation if the contract is for twenty thousand dollars ($ 20,000.00) or less and he determines that the use of competitive sealed bidding is not feasible or practical;

         **(C)**Contracts may be made by noncompetitive negotiation only when competition is not feasible, as determined in writing prior to award by the administrator and approved by the governor or his designee. An elected state official may also contract for supplies or services for his office by noncompetitive negotiation if the contract is for twenty thousand dollars ($ 20,000.00) or less and he determines that competition is not feasible;

         **(D)**Bids or contracts for contractual services, consulting services, and special projects and services, for the purpose of hiring professionals, consultants or contracted services in an amount exceeding one thousand five hundred dollars ($ 1,500.00) by an agency require the approval of the governor or his designee prior to state commitment;

         **(E)**Agencies shall be authorized to make small purchases in accordance with rules adopted by the department. The rules shall include small purchase procedures which authorize agencies to procure supplies or services not exceeding one thousand five hundred dollars ($ 1,500.00), or such higher amount established by the department, but not to exceed seven thousand five hundred dollars ($ 7,500.00), without compliance with this paragraph and without prior approval of the department;

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

         **(G)**If competitive sealed bidding is required the contract shall be let to the responsible private sector bidder making the lowest bid if the private sector bidder's bid is not more than five percent (5%) higher than that of the lowest responsible nonprivate sector bidder;

         **(H)**The director of the department of administration and information or his designee, upon a written finding that it would be more efficient to use federal procurement procedures for contracts let by the Wyoming military department concerning state owned properties under the control of the adjutant general, may authorize federal procurement procedures instead of the procedures required by this paragraph.

     **(v)**Establish and maintain an inventory of all agencies' property purchased in total or in part with state funds or otherwise held in the name of the state. The inventory shall contain the following information: acquisition cost, property description, present value, property location and other information as required;

     **(vi)**Classify all agencies' property into uniform categories as determined by type of property, using agency, location or other factors. Systematically arrange under a uniform classification a list of all personal property belonging to the state. The inventory shall be arranged to show separately the property pertaining to each state office, institution, department and board. The inventoried property shall be inspected annually, checked and its value fixed. The inventory shall be revised at the same date each year, bringing all newly acquired property into the inventory under its proper classification. All officers and employees in each agency shall assist the department in securing and compiling the information pertaining to their respective agencies;

     **(vii)**Develop a system of numbers by which all tangible personal state property can be identified. Identification numbers shall be affixed to all property unless otherwise provided by the department;

     **(viii)**Supervise and approve disposition by sale or trade-in of all agencies' property which has been deemed to be no longer cost effective to the state. Real property in excess of forty (40) acres in one (1) tract or valued at fifteen thousand dollars ($ 15,000.00) or more shall not be disposed of at less than current appraised value as authorized in accordance with rules of the state building commission. No other property shall be disposed of at less than fair market value either for cash or in exchange for credit upon purchase of new property. All sales shall be public and based upon adequate notice except that state owned motor vehicles may be sold at public or dealer auction and except that for the first thirty (30) days after acquisition, any personal property may be made available to those entities qualifying under federal surplus property guidelines through the state surplus property warehouse. The proceeds of sale, less costs of sale, shall be remitted to the treasurer for the benefit of the fund from which the property was purchased. This paragraph shall not apply to, nor shall the department or the state building commission approve or supervise the disposition of land by the state transportation commission;

     **(ix)**Repealed by Laws 1997, ch. 178, § 2.

     **(x)**Require each agency to report in a manner prescribed by the department the acquisition, disposition, transfer, loss or theft of all personal property. No state agency shall dispose of or transfer any personal property without the prior approval of the department;

     **(xi)**Secure and maintain insurance or otherwise protect against fire and other perils on all buildings and structures and the contents thereof, and other properties owned by the state of Wyoming or any of its agencies. The insurance shall be in an amount which is adequate to protect the interest of the state of Wyoming and, where appropriate, the interest of the United States;

     **(xii)**Secure and maintain insurance against the risks of fire and theft and other insurance deemed necessary or required by law on all motor vehicles, trailer attachments and aircraft owned by the state of Wyoming or any of its agencies. The insurance secured and maintained shall be in an amount which is adequate to protect the interest of the state but not less than the amounts required by W.S. 1-39-101 through 1-39-120. In securing insurance the department shall take full advantage of experience ratings and groupings or master policies to the end that the insurance may be secured at the lowest possible beneficial rates and for the best interest of the state;

     **(xiii)**Secure personal liability and surety bonds for Wyoming peace officers, employees and state officials as required by statute, secure professional liability insurance for Wyoming doctors and nurses employed by the state, and secure liability insurance for all property owned by the state or any of its agencies as required by W.S. 1-39-101 through 1-39-120;

     **(xiv)**Provide assistance requested by the legislature or the judiciary in the procurement of supplies and services;

     **(xv)**Provide central reproduction and other duplication services to agencies;

     **(xvi)**Provide central mail and allied services to agencies;

     **(xvii)**For the procurement of construction of public projects, facilities or structures, be authorized to accept the recommendations of agencies on the award or rejection and readvertisement of bids based upon the qualifications and responsibilities of bidders;

     **(xviii)**In the procurement of construction, bidders shall provide a bond or other form of guarantee satisfactory to the state of Wyoming as hereafter provided:

         **(A)**A bid bond or other form of bid guarantee satisfactory to the state may be required in an amount equal to ten percent (10%) of the aggregate amount of the bid or contract when a contract to be awarded under the solicitation is expected to exceed one thousand five hundred dollars ($ 1,500.00). The bond may be provided by a surety company authorized to do business in the state of Wyoming;

         **(B)**A bid bond or other form of bid guarantee satisfactory to the state may be retained by the state as surety throughout the term of the awarded contract provided the amount of the contract is less than twenty-five thousand dollars ($ 25,000.00);

         **(C)**Before any contract exceeding twenty-five thousand dollars ($ 25,000.00) in amount, for the construction, alteration or repair of any public building or public work or improvement of the state is awarded to any person, the person shall furnish to the state a performance and payment bond executed by a surety company authorized to do business in the state of Wyoming or other form of surety satisfactory to the state, in an amount equal to one hundred percent (100%) of the contract price;

         **(D)**This paragraph does not limit the authority of the state to require a performance bond or other security in addition to bonds, or in circumstances other than the circumstances specified by this subsection;

         **(E)**The department may accept bids submitted by persons who combine their bonding capacity in any way so as to meet the bonding requirements of this paragraph.

     **(xix)**Lease all property for the state in accordance with rules of the state building commission. Leasing of property by the state shall be conducted on a bid and proposal basis with advertising of space needs and square footage in community or local newspapers. Leasing contracts may be entered into by noncompetitive negotiation only if:

         **(A)**The administrator determines in writing that competitive bidding is not feasible; or

         **(B)**The lessor is a governmental agency.

     **(xx)**Maintain, repair and replace all state property in accordance with rules of the state building commission;

     **(xxi)**Designate the manager of the construction management program within the division to function as secretary to the state building commission who will administratively implement the commission's rules;

     **(xxii)**Provide the appropriate program staff of the division to serve as staff of the state building commission in carrying out the duties of the division under this section and W.S. 9-5-101 through 9-5-109;

     **(xxiii)**Plan for all agency office and other space needs and construction projects required for those space needs in accordance with the provisions of W.S. 9-5-107, 9-5-108 and rules, procedures and criteria adopted pursuant to that section.

**(c)**The surplus property section within the division of general services is created, which shall be the state's surplus property agency pursuant to the terms of 40 U.S.C. § 549. The surplus property section may:

     **(i)**Acquire from the United States of America under and in conformance with the Federal Property and Administrative Services Act of 1949, as amended, hereinafter referred to as the "act", property, including equipment, materials, books or other supplies under the control of any department or agency of the United States of America which are usable and necessary for purposes of education, public health or civil defense, including research for any purpose authorized by federal law; to warehouse the property; and to distribute the property within the state to tax-supported medical institutions, hospitals, clinics, health centers, school systems, schools, colleges and universities within the state, to other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges and universities which have been held exempt from taxation under 26 U.S.C. § 501(c)(3), to civil defense organizations of the state, or political subdivisions and instrumentalities which are established pursuant to state law, and to other types of institutions or activities which are eligible under federal law to acquire the property;

     **(ii)**Receive applications from eligible health and educational institutions for the acquisition of federal surplus real property, investigate the same, obtain expression of views respecting the applications from the appropriate health or educational authorities of the state, make recommendations regarding the need of the applicant for the property, the merits of its proposed program of utilization, the suitability of the property for the purposes, and otherwise assist in the processing of applications for acquisition of real and related personal property of the United States under 40 U.S.C. § 550;

     **(iii)**Make certifications, take action, make expenditures and enter into contracts, agreements and undertakings for and in the name of the state (including cooperative agreements with any federal agencies providing for utilization by and exchange between them of the property, facilities, personnel and services of each by the other), require reports and make investigations as required by law or regulation of the United States of America in connection with the disposal of real property and the receipt, warehousing, utilization and distribution of federal surplus personal property received by the department from the United States of America;

     **(iv)**Act as clearinghouse of information for the public and private nonprofit institutions, organizations and agencies referred to in paragraph (i) of this subsection and other institutions eligible to acquire federal surplus real property, to locate both real and personal property available for acquisition from the United States of America, to ascertain the terms and conditions under which the property may be obtained, to receive requests from the above-mentioned institutions, organizations and agencies and to transmit to them all available information in reference to the property, and to aid and assist the institutions, organizations and agencies in every way possible in the consummation of acquisitions or transactions hereunder;

     **(v)**Cooperate to the fullest extent consistent with the act with the departments or agencies of the United States of America, file a state plan of operation, operate in accordance therewith, and take necessary action to meet the minimum standards prescribed in accordance with the act, make reports in the form and containing the information which the United States of America or any of its departments or agencies requires, and comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use of, or accounting for, property donable or donated to the state.

**(d)**Any charges made or fees assessed for the acquisition, warehousing, distribution or transfer of any property of the United States of America for educational, public health or civil defense purposes, including research, shall be limited to those reasonably related to the costs of care and handling in respect to its acquisition, receipt, warehousing, distribution or transfer by the department and, in the case of real property, the charges and fees shall be limited to the reasonable administrative costs of the department incurred in effecting transfer. Revenue resulting from payments of charges and fees shall be paid into the trust and agency fund and shall be utilized for payment of all costs to the department of acquiring, warehousing, distributing and transferring property under the federal surplus property utilization program and be disbursed in accordance with applicable federal regulations.

**(e)**Any provision of law to the contrary notwithstanding, the governing board, or if none, the executive head, of any agency or of any city, county, school district or other political subdivision may by order or resolution confer upon any officer or employee thereof continuing authority to secure the transfer to it of surplus property under this act, and to obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of the transfers. This authority conferred upon any officer or employee by any order or resolution shall remain in effect unless and until the order or resolution is duly revoked and written notice of revocation is received by the department.

**(f)**The section may engage in activities relative to federal excess property in connection with the use of the property by other state agencies, institutions or organizations engaging in or receiving assistance under federal programs. The section may enter into contracts and other agreements for and on behalf of the state, including the cooperative agreements within the purview of section 203(n) of the federal act (40 U.S.C. § 484(j)) with federal agencies, as well as agreements with other groups or associations which will in any way procure the administration of the section's functions but this act relating to the procurement of property shall not apply to the section in the acquisition of federal surplus property.

**(g)**All meat used or purchased for use in any state institution shall be produced and processed within the United States, and neither the general services division of the department nor anyone else shall negotiate, execute or approve any contract for the purchase of meat to be used in any state institution if the meat has been produced or processed outside the United States. The department shall adopt appropriate rules to carry out the purpose of this subsection.

**(h)**The general services division shall:

     **(i)**Manage and control all state motor vehicles and equipment including their identification, purchase, lease, replacement, repair and permanent assignment, except for state owned or leased vehicles personally used by or assigned to the governor, secretary of state, state auditor, state treasurer or superintendent of public instruction;

     **(ii)**Establish, update and comply with uniform standards and criteria promoting the economic and effective maintenance and use of motor vehicles consistent with the needs and locations of agencies;

     **(iii)**Procure motor vehicles which operate on compressed natural gas as specified in W.S. 9-18-101;

**(j)**Any state or county employee or officer using a state vehicle without authorization or for purposes other than official business is guilty of a misdemeanor punishable by a fine of not less than fifty dollars ($ 50.00) or more than two hundred dollars ($ 200.00).

**(k)**Each elected state official shall report annually by October 31, to the joint appropriations interim committee a list of all contracts entered into by the elected state official during the previous fiscal year for supplies or services, if the contract was not awarded by competitive sealed bidding and the administrator did not determine in writing that the use of competitive sealed bidding was not feasible or practical. The report shall also include a list of all contracts entered into by the elected state official for contractual services, consulting services or special projects and services if the contract was not approved by the governor or his designee.

**HISTORY:** Laws 1971, ch. 203, § 21; W.S. 1957, §§ 9-276.18:69, 9-276.18:89; Laws 1974, ch. 16, § 2; 1975, ch. 140, § 2; ch. 197, § 2; 1977, ch. 64, § 1; ch. 180, §§ 2, 3; W.S. 1977, §§ 9-3-2021, 9-3-2031; Laws 1978, ch. 29, § 1; 1979, ch. 10, § 2; ch. 157, § 2; 1981, ch. 115, § 1; ch. 120, § 1; 1982, ch. 44, § 1; ch. 62, § 3; 1983, ch. 78, § 1; ch. 139, § 1; ch. 191, § 2; 1987, ch. 88, § 2; 1988, ch. 15, § 1; 1991, ch. 29, § 3; ch. 54, § 1; ch. 241, § 3; 1994, ch. 57, § 1; 1996, ch. 100, § 2; 1997, ch. 99, § 1; 1997, ch. 178, § 1; 2004, ch. 130, § 1; 2005, ch. 181, § 1; 2006, ch. 114, § 1; 2007, ch. 64, § 1; 2009, ch. 168, § 302; 2013, ch. 9, § 1; 2013, ch. 97, § 2; 2013, ch. 157, § 1.

**NOTES:**
 **Cross references. --**

As to duties of state treasurer, see § 9-1-409.

For meaning of "department," see § 9-2-1002(a)(ii).

As to peace officers' liability insurance, see § 9-2-1017.

As to capitol building commission, see §§ 9-5-101 to 9-5-105.

As to applicability of this section to interstate banking and bank merger transactions, see § 13-2-807.

As to qualifications of bidders on contracts for construction of public projects, facilities or structures, see § 16-6-119.

**The 2004 amendment,** in (c)(i), substituted "26 U.S.C. § 501(c)(3)" for "section 501(c)(3) of the United States Internal Revenue Code of 1954"; and in (c)(v) inserted "of" following "governing the allocation, transfer, use."

Laws 2004, ch. 130, § 4, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 19, 2004.

**The 2005 amendment** added the last sentence in (b)(iv)(B) and (b)(iv)(C); in (b)(iv)(F) substituted "nor" for "or" in the first sentence and added the last sentence; and added subsection (k).

Laws 2005, ch. 181, § 2, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 2, 2005.

**The 2006 amendment** substituted "(40 U.S.C. § 484(j)" for "(40 U.S.C. § 484(n)" in (f).

Laws 2006, ch. 114, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 24, 2006.

**The 2007 amendment,** effective July 1, 2007, added (b)(iv)(H).

**The 2009 amendment,** effective July 1, 2009, in (c), substituted "40 U.S.C. § 549" for "section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended"; and in (c)(ii), substituted "40 U.S.C. § 550" for "section 203(k) of the act."

**The 2013 amendments. --**

The first 2013 amendment, by ch. 9, §1, effective July 1, 2013, added "the procurement by the department of corrections of raw materials 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," in (b)(iv)(F).

The second 2013 amendment, by ch. 9, §1, added (h)(iii).

Laws 2013, ch. 97, § 3, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo Const. Approved February 27, 2013.

The third 2013 amendment, by ch. 157, §1, in (b), substituted "manager of the construction management program within the division" for "administrator of the division" in (xxi); and added (xxii), redesignating existing (xxii) as (xxiii).

Laws 2013, ch. 157, § 2, makes the act 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 13, 2013.

While none of the amendments gave effect to the others, all have been given effect in the section as set out above.

**Editor's notes. --**

There is no subsection (i) in this section as it appears in the printed acts.

**Federal Property and Administrative Services Act. --**

The Federal Property and Administrative Services Act of 1949, referred to throughout, appears as various sections throughout 40, 41, 44 and 50 appx. U.S.C.

**Federal surplus property utilization program. --**

The reference to the "federal surplus property utilization program" in subsection (d) is apparently a reference to the Federal Property and Administrative Services Act of 1949. See note above.

**Meaning of "this act." --**

For the definition of "this act," referred to in this section, see § 9-2-1002(a)(x).

**Conflicting legislation. --**

Laws 2004, ch. 130, § 3, provides: "[A]ny other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

Laws 2006, ch. 114, § 3, provides: "[A]ny other act adopted by the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

**LexisNexis 50 State Surveys, Legislation & Regulations**

   Public Works Contracts

**Authority of University of Wyoming to purchase liability insurance** may exist, but only through the purchasing and property control division of the department of administration and fiscal control. Awe v. University of Wyo., 534 P.2d 97, 1975 Wyo. LEXIS 139 (Wyo. 1975).

**Applicability. --**

Wyo. Stat. Ann. § 9-2-1016(b) was not applicable to unsuccessful bidder's challenge to the Wyoming Department of Transportation's award of a contract to sell dump truck chassis and tractors to an out-of-state bidder. Lariat Diesel Corp. v. Wyo. DOT, 2004 WY 25, 86 P.3d 266, 2004 Wyo. LEXIS 31 (Wyo. 2004).

**Insurance to be bought for individual police officers. --**

Section 9-2-1017 and subsection (b)(xii) of this section seem to indicate that the insurance was to be bought not for the state or municipality but for the individual police officers, perhaps as a fringe benefit to encourage the acquisition of persons willing to become law enforcement officers. Town of Jackson v. Shaw, 569 P.2d 1246, 1977 Wyo. LEXIS 288 (Wyo. 1977).

**Prospective low bidder must substantially comply with statutory requirements. --**

The fact that the low bidder could establish itself as qualified to do the work on a state project in the judgment of the trial court on the basis of post-award court proceedings was immaterial, given its lack of response or noncompliance with the prescribed requirements of the proposal forms. Bids for public contracts must substantially comply with the requirements of the specifications for bidding and the directions to prospective bidders. The determination as to whether these requirements are satisfied and the awarding of a contract are acts of discretion which will be enjoined only if done illegally, arbitrarily, capriciously or unreasonably. State v. Weisz & Sons, 713 P.2d 176, 1986 Wyo. LEXIS 458 (Wyo. 1986).

**Law reviews. --**

For article, "Governmental Immunity from Damage Actions in Wyoming -- Part II," see 7 Land & Water L. Rev. 617 (1972).

**Am. Jur. 2d, ALR and C.J.S. references. --**

Standing of disappointed bidder on public contract to seek damages under 42 USC § 1983 for public authorities' alleged violation of bidding procedures, 86 ALR Fed 904.