Wyoming Public Works Statutes
Prior to 2005

- Resident contractors defined – UW relies on Wyoming Department of Employment Certification
- Bids awarded to lowest responsible and responsive bidder
- Certified responsible resident contractor awarded bid if not more than 5% higher than lowest responsible nonresident
- A successful resident bidder shall not subcontract more than 20% to nonresident bidders
- Preference for Wyoming materials and laborers
  - 5% preference for Wyoming materials of equal quality
  - Laborers must be paid overtime in excess of 40 hours per week
  - Prevailing wage rates paid on contracts in excess of $25K – wage records retained

Preference statutes do not apply to federal funded projects.
Wyoming Public Works Statutes Prior to 2005 (Continued)

• Projects publicly advertised for three consecutive weeks prior to bid
• Performance and Labor and Material Payment Bonds required on contracts exceeding $100K
• Joint retainage accounts – no more than 10% withheld until work is 50% complete, if satisfactory work no additional retainage withheld. Retainage placed in joint interest bearing deposit agreement with contractor
• Public Advertisement for final payment
• Life cycle cost analysis required on at least two building systems – available to public
• Accessibility required in all state funded buildings
• Qualification based selection system required for professional services – price may be considered. No preference for resident professionals.
UW Capital Projects
Prior to 2005

UW Projects
• Typically design-bid-build delivery method
• Advantages:
  – Most common public construction method – well understood
  – Contractor selected based upon open competitive bidding
  – Transparent - less probability of conflict of interest
  – Apples to Apples comparison due to complete documents and specifications
  – Contract direct with Architect/Engineer
  – Contract direct with General Contractor
  – Well established and understood contract roles
  – Well crafted and understood, legally tested guidelines
UW Capital Projects
Prior to 2005 (Continued)

• Design-Bid-Build disadvantages:
  – Project is sequential – design complete prior to bid, bid complete prior to contracting
  – Project delivery **time** longer than other methods
  – Funds at greater risk in times of budget reductions
  – Vulnerable to contractor initiated **change orders** and claims due to incomplete or erroneous construction documents
  – Best practices in construction, construction technology, or economical construction not always the goal of architect/engineer designing project
  – Estimates performed during design are not complete/accurate
  – Construction periods often established by designer
  – **University at risk** for error free and complete construction documents
Wyoming Public Works Statutes
Post 2005 – 2010

Changes to statutes included:

• A successful bidder shall not subcontract more than 30% to nonresident contractors
• Prevailing wages paid on contracts in excess of $100K
• Public advertisement for two consecutive weeks prior to bid
• Construction contracts material preferences only apply to projects less than $5M
• Construction payments made in 45 days or subject to 1-1/2% interest per month
• **Alternative Delivery Methods established:**
  – Construction Manager-at-Risk
  – Construction Manager Agency
  – Design- Build
  – Above contractors *selected on basis of qualifications*, price considered
  – Unclear if residency rules applied to professional services contracts for construction management and design-build services
  – No requirement for Construction Managers or Design-Builders to bid subcontracts.
UW Projects
Post 2005 – 2010

Construction Manager-at-Risk Delivery Method

• Advantages
  – *Early cost estimating* and constructability provided by CMAR as early as schematic design
  – *Integrated process* including architect, contractor and UW; chances of misunderstanding are minimized
  – CMAR fees and contingencies can be established at RFP/RFQ process. Construction schedules may be established as well
  – Construction costs minimized using latest construction methods and technologies
  – Process can be parallel with construction starting prior to completion of construction documents = *reduction in overall project delivery time*
  – Adversarial atmosphere reduced if not eliminated because all parties are invested in success of project
  – CMAR can better determine qualifications of subcontractors and suppliers due to past experiences
  – Clear quality and performance standards established
  – *CMAR can provide a Guaranteed Maximum Price (GMP)* early in the process
  – *GMP cannot be exceeded* without a change in scope or an unforeseen condition such as an underground anomaly or adverse weather
  – Subcontracts and material suppliers can be competitively bid
  – CMAR can be required to bid on work to be self-performed similar to subcontracts
  – *High probability of on-time delivery of project; price guaranteed to be within budget*
UW Projects
Post 2005 – 2010

Construction Manager-at-Risk Delivery Method (Continued)

• Disadvantages
  – UW at risk for additional preconstruction fees of CMAR
  – Earlier in design GMP is delivered, higher risk to UW for incomplete construction documents and higher built-in contingencies
  – Subcontractors may not bid those sections they suspect the CMAR will self-perform
  – Pre-qualifying and pre-selecting subcontractors limits bidding of those portions of the work
  – Bids and subcontract costs can be manipulated by the CMAR through competitive bidding if the owner is not cognizant of costs
  – Project scope can be sacrificed due to expected contingencies in the GMP dependent upon how early the GMP is established
  – If subcontractors are used for design assistance there may be expectation of bidding preferences
  – Subject to dispute over qualifications of contractors
UW Criteria for Successful Completion of Capital Project

• Address programmatic requirements that initiated the capital project (i.e., meet Level 1 program requirements)
• Complete project within the budgeted resources for the project (in some cases, UW has returned appropriated $s)
• Complete project on schedule
• UW facilities designed to achieve Leadership in Energy and Environmental Design (LEED) standards
  – Design and construct facilities using environmentally responsible methods
  – Design facilities that will be energy efficient once in operation
• Utilize WY contractors whenever possible
Development of Discussions

• After COB was bid in 2007, local contractors began to express concern about lack of participation
• 2010 legislative session – statutes were amended to require that subcontract bids be publicly opened
• Fall 2010 – discussions with contractors/sub-contractors about bidding procedures and advertisements
• 2011 legislative session – statutes further amended to clarify application of preferences in ACMs
Issues/Conditions that have Impacted Use of WY Firms

• In middle part of prior decade, State of WY initiated a major school construction effort (i.e., on the order of $1 billion) that WY contractors were heavily engaged in statewide (limited resident firms’ ability to participate in UW projects)
• UW experienced a few projects with no bids
• With declining state construction in neighboring states, outside firms came to WY and established residency (as determined by WY Department of Employment)
• Recently, level of prior construction is not continuing and there are greater numbers of in-state firms to participate in UW projects (i.e., significantly enhanced competitive environment)
• Bonding capacity of firms to participate on larger projects
  – Statutory requirement that firms have sufficient bonding capacity
• There are some types of work that are not provided by WY firms (e.g., elevators, architectural pre-cast concrete)
# UW Projects
## Post 2005 – 2010

<table>
<thead>
<tr>
<th>Project (Chronology as completed)</th>
<th>Method</th>
<th>% In-State</th>
<th>% Out-State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information Library and Learning Center</td>
<td>CMAR</td>
<td>43</td>
<td>57</td>
</tr>
<tr>
<td>Indoor Practice Facility</td>
<td>DB</td>
<td>53</td>
<td>47</td>
</tr>
<tr>
<td>Information Technology Facility</td>
<td>CMAR</td>
<td>56</td>
<td>44</td>
</tr>
<tr>
<td>Classroom Renovations Phase 1</td>
<td>CMAR</td>
<td>65</td>
<td>35</td>
</tr>
<tr>
<td>Law Moot Court</td>
<td>CMAR</td>
<td>30</td>
<td>70</td>
</tr>
<tr>
<td>Sustainable Agriculture R &amp; E Center Lab &amp; Residence</td>
<td>DBB</td>
<td>100</td>
<td>0</td>
</tr>
<tr>
<td>Police Facility</td>
<td>DBB</td>
<td>92</td>
<td>8</td>
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<tr>
<td>Cheney International Center</td>
<td>CMAR</td>
<td>90</td>
<td>10</td>
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<tr>
<td>Classroom Renovations Phase II</td>
<td>CMAR</td>
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<td>35</td>
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<tr>
<td>College of Business</td>
<td>CMAR</td>
<td>13</td>
<td>87</td>
</tr>
<tr>
<td>East Stadium Club &amp; Suites</td>
<td>CMAR</td>
<td>55</td>
<td>45</td>
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<tr>
<td>Kendall House</td>
<td>CMAR</td>
<td>38</td>
<td>62</td>
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<tr>
<td>Sullivan Education Center</td>
<td>DBB</td>
<td>77</td>
<td>23</td>
</tr>
<tr>
<td>Robert &amp; Carol Berry Biodiversity Conservation Center</td>
<td>CMAR</td>
<td>72</td>
<td>28</td>
</tr>
<tr>
<td>Downey Hall Renovation</td>
<td>DBB</td>
<td>88</td>
<td>12</td>
</tr>
<tr>
<td>Visual Arts</td>
<td>CMAR</td>
<td>70</td>
<td>30</td>
</tr>
<tr>
<td>Energy Resource Center</td>
<td>CMAR</td>
<td>Pending</td>
<td>Pending</td>
</tr>
</tbody>
</table>
Statutes 2010 & 2011

Statutory Change Adopted:
• Construction Management Agency, Construction Management-at-Risk and Design-Builders are required to **publicly open subcontract bids** *(2010)*.

Recent Statutory Changes:
• Resident Contractor Definition refined requiring principle place of business, resident ownership, resident employees, payment of workers comp, debarment, etc.
• Residency is added as a consideration of professional services procurement
• Construction Management Agency, Construction Management-at-Risk and Design-Builders are **required to meet the preference rules**:
  – Conduct open bid process including public advertisement
  – Responsible resident Wyoming contractors shall be awarded at least 70% of contract unless specialized and not available in Wyoming
  – Responsible resident Wyoming contractor awarded 105% for equivalent quality out of state providers
  – Enforcement shall not unreasonably delay the project
  – 70% not enforced if insufficient number of responsible Wyoming bidders
  – If 70% is waived, **UW President and BOT President must approve waiver in writing and submit to Governor and Chairs of JAC.**
• Furniture Fixtures and Equipment must be bid with general specification and residency preference rules as above. Waivers must be submitted also as above.
• Any Agency receiving funds on or after July 1, 2008 must conduct a review and report to Department of Employment and Attorney General any non-compliance with preference laws
UW Actions to Promote Use of WY Contractors

- UW promotes compliance on part of contractors re: preferences for materials and labor on projects (i.e., buy materials locally as much as possible and employ local workers)
  - UW project manager conducts periodic review of contractors’ labor records
- With recent changes in statutes, UW has revised methods to meet statutory requirements re: employment of in-state contractors
- UW holds public informational meetings in Fall (and perhaps the Spring in 2011) for contractors to make them aware of UW capital plans
- UW requires:
  - Contractors/CMs to publicly advertise all subcontracts
    - Casper Star Tribune, Laramie Boomerang, UW Facilities Planning website
  - Contractors to develop subcontractors awareness of upcoming opportunities (note: if no bids are received from WY firms, UW attempts to identify potential firms and invite them to become involved in projects)
  - Public bidding process, including public opening of bids (no pre-qualifications)
  - Limiting amount of self-performed work by construction manager
  - Extending preference to WY contractors to the extent authorized and required
UW Criteria for Successful Completion of Capital Project

- Address programmatic requirements that initiated the capital project (i.e., meet Level 1 program requirements)
- Complete project within the budgeted resources for the project (in some cases, UW has returned appropriated $s)
- Complete project on schedule
- UW facilities designed to achieve Leadership in Energy and Environmental Design (LEED) standards
  - Design and construct facilities using environmentally responsible methods
  - Design facilities that will be energy efficient once in operation
- Utilize WY contractors consistent with recently adopted statutory preference requirements