

DEPARTMENT OF WORKFORCE SERVICES

LABOR STANDARDS DIVISION

CHAPTER 4

CERTIFICATION OF RESIDENT CONTRACTORS, SUPPLIERS AND ENFORCEMENT OF PREFERENCE LAWS

Section 1. Authority. The Department of Workforce Services is authorized under the Department of Workforce Services Act, W.S. 9-2-2602(b)(vi), Wyoming Administrative Procedures Act, W.S. 16-3-101, et seq., Public Works and Contracts Act, W.S. 16-6-120(a), Wyoming Preference Act of 1971, W.S. 16-6-205(a), and Wyoming Labor and Statistics Act, W.S. 27-2-104(a)(v).

Section 2. Purpose. Certification of Resident Contractors, Suppliers and Enforcement of Preference Laws rules are adopted by the Department of Workforce Services to ensure compliance with Wyoming Public Works and Contracts Act, W.S. 16-6-101 through 16-6-121 and Wyoming Preference Act of 1971, W.S. 16-6-201 through 16-6-206.

Section 3. Definitions (see also W.S. 16-6-101).

(a) “Department” means the Department of Workforce Services, State of Wyoming.

(b) “Labor Standards” means Labor Standards, a program within the Department of Workforce Services.

(c) “Public Works Project” means any project for the construction, erection, alteration or repair of a public building, public structure, public property or any addition or improvement thereto let by the state, any department thereof, or any county, city, town, school district, community college district or other public corporation or government agency.

Section 4. Resident Documentation and Affidavits.

(a) A contractor or supplier may apply for a resident certificate at any time.

(b) All contractors and suppliers wishing to be certified as a resident for purposes of receiving preference on public works construction projects shall complete and submit the documents and affidavit(s) required by Labor Standards, a program within the Department of Workforce Services. No residency preference shall be granted to any contractor or supplier who has not been certified as a resident by Labor Standards. No

residency preference shall be granted to any contractor who has not participated in the prevailing wage survey as required by W.S. 27-4-405(a). Prevailing wage survey participation is not required to qualify as a resident supplier.

(c) Upon request by Labor Standards, applicants and certificate holders shall submit any additional information or documentation that Labor Standards may deem necessary to determine residency eligibility.

(d) A contractor or supplier shall not be certified as a resident until the certificate of residency has been issued by Labor Standards.

Section 5. Notification of Changes.

(a) Resident certificate holders are required to notify Labor Standards in writing within thirty (30) calendar days of any of the following changes:

(i) Sole Proprietorships

(A) Any change in the mailing address or street address of the owner of the sole proprietorship.

(B) Any change of ownership of the sole proprietorship.

(C) Any change in the business address of the sole proprietorship.

(ii) Partnerships or Associations

(A) Any change in the mailing address or street address of any partner of the partnership or member of the association.

(B) Any change of partners of the partnership or members of the association.

(C) Any change in the business address of the partnership or the association.

(iii) Limited Partnerships

(A) Any change in the mailing address or street address of any of the general partners of the limited partnership.

(B) Any change of the general partners of the limited partnership.

(C) Any change in the business address of the limited partnership.

(iv) Registered Limited Liability Partnership

(A) Any change in the mailing address or street address of any of the members of the registered limited liability partnership.

(B) Any change in the membership of the registered limited liability partnership.

(C) Any change in the business address of the registered limited liability partnership.

(v) Limited Liability Company

(A) Any change in the mailing address or street address of any of the managing members or appointed managers of the limited liability company.

(B) Any changes in the managing members or appointed managers of the limited liability company.

(C) Any changes in the business address of the limited liability company.

(vi) Corporations

(A) Any change in the mailing address or street address of the president of the corporation.

(B) Any change of the president of the corporation.

(C) Any change of the business address of the corporation.

Section 6. Principal Office and Principal Place of Business.

(a) The principal office and principal place of business shall be permanently and physically located within the State of Wyoming.

(b) The principal office and principal place of business of a sole proprietorship, partnership, limited partnership, registered limited liability partnership, limited liability company or corporation means the headquarters or administrative center where the business activities are conducted and controlled.

Section 7. Investigations.

(a) Labor Standards shall investigate an applicant or certificate holder to determine compliance with W.S. 16-6-101 through W.S. 16-6-121 if there is reason to suspect noncompliance or it has received a written complaint.

(b) Upon completion of its investigation, Labor Standards shall make a determination as to whether the applicant or certificate holder is in compliance with the provisions of W.S. 16-6-101 through W.S. 16-6-121.

Section 8. Notice of Determination.

(a) Labor Standards shall notify the subject applicant or certificate holder in writing of its determination.

(b) Where the investigation was initiated by a complaint, Labor Standards shall notify the complainant of its determination when the complainant is known to Labor Standards.

(c) Where Labor Standards makes a determination that the applicant or certificate holder is not in compliance with either W.S. 16-6-101 or 16-6-108, Labor Standards shall include in its determination a notification of its intent to deny or revoke the certificate of residency. Labor Standards shall also inform the applicant or certificate holder of the opportunity to request a fair hearing regarding the determination.

Section 9. Request for Fair Hearing.

(a) A request for a hearing must be in writing and received by Labor Standards within thirty (30) calendar days of the applicant or certificate holder's receipt of the Labor Standards' Notice of Determination.

(b) Where the applicant or certificate holder does not request a hearing within the thirty (30) calendar days, Labor Standards either shall deny or revoke the certificate of residency. Labor Standards denial or revocation of the certificate of residency shall constitute the final agency action subject to judicial review.

Section 10. Independent Hearing Officer. Upon receipt of a timely submitted written request for hearing, Labor Standards shall contract with an independent hearing officer to conduct a fair hearing in accordance with the Wyoming Administrative Procedures Act, W.S. 16-3-107 through 16-3-115.

Section 11. Recommended Decision.

(a) Within thirty (30) days of the fair hearing, the hearing officer shall issue a recommended decision and send a copy to each party.

(b) Any party to the fair hearing may file an exception to the hearing officer's recommended decision with Labor Standards. Exceptions must be received by Labor Standards within thirty (30) calendar days of the issue date of the recommended decision. Exceptions not timely received will not be reviewed or considered.

(c) A party may file a brief in support of its timely filed exception. The brief in support of the exception may be filed with the exception or separately. A separately filed brief must be received by Labor Standards within thirty (30) calendar days of the issue date of the recommended decision. Briefs not timely received will not be reviewed or considered.

(d) A party, in either its exception or brief in support of the exception, may request that Labor Standards conduct oral arguments regarding its exception to the recommended decision. Oral arguments may be held at the sole discretion of Labor Standards.

(e) Labor Standards shall notify all parties by certified mail of its decision whether or not to conduct oral arguments.

(f) Where a request for oral arguments is granted, Labor Standards shall conduct oral arguments within twenty (20) calendar days of the notification to the parties.

Section 12. Final Agency Decision.

(a) Where no exception to the recommended decision is timely filed, Labor Standards shall issue its final agency decision within thirty (30) calendar days from the end of the exception filing period.

(b) Where an exception to the recommended decision is timely filed but no request for oral arguments is filed, the director shall issue a final agency decision within thirty (30) calendar days from the end of the exception filing period.

(c) Where an exception to the recommended decision and a request for oral arguments is timely filed, the director may either grant or deny the request for oral arguments.

(i) **Granted:** Where the request for oral arguments is granted, the director shall issue a final agency decision within thirty (30) calendar days after the conclusion of the oral arguments.

(ii) **Denied:** Where the request for oral arguments is denied, the director shall issue a final agency decision within thirty (30) calendar days from the end of the exception filing period.

(d) In his/her final agency decision the director may accept, reject, or modify the hearing officer's recommended decision. The final agency decision shall constitute Labor Standards final action.

Section 13. Notification of Final Agency Decision. The director shall notify all parties by certified mail of his/her decision to deny or revoke the certificate of residency.

Section 14. Preference for Wyoming Subcontractors. Upon request from Labor Standards, the successful resident bidder upon a public works project shall submit the list of intended subcontractors for use on the project, including dollar amount of each sub-bid, to determine compliance with the requirements of W.S. 16-6-103.

Section 15. Preference for Wyoming Materials & Suppliers.

(a) Upon request from Labor Standards, the successful resident bidder shall provide proof of materials purchased in Wyoming to include documentation of price and quantity.

(b) Upon receipt of complaint of failure to utilize Wyoming materials or suppliers, Labor Standards shall investigate to determine compliance with the Act.

Section 16. Preference for Wyoming Laborers.

(a) Upon request from Labor Standards a contractor or subcontractor shall provide the position description and proof of any listed "necessary qualifications" for the position for which labor is being sought.

(b) Upon request from Labor Standards a contractor or subcontractor shall provide certification from the local Workforce Services Center that resident labor was sought but not found on any public works project.

(c) The Letter of Certification issued by the Workforce Center shall have effect for the duration of the project upon which labor certification has been sought.

(d) A contractor seeking to bring non-resident labor onto a public works project to fill openings from employee turnover, new openings or additional needs after receipt of the Letter of Certification must first post the opening with the local Workforce Center and make reasonable attempts to obtain qualified Wyoming resident labor.

(e) Upon request from Labor Standards a contractor or subcontractor shall provide a payroll listing of all laborers utilized and hours worked on the project to include name, address, position worked, number of hours worked in each position, wage & benefit rate paid to each laborer and certified to be a true and correct copy by the company CFO or president.

(f) Upon failure to obtain qualified resident labor, a contractor or subcontractor may then employ qualified non-resident labor on any public works project.

(g) Employing non-resident labor on any public works project without proper certification shall subject the contractor or subcontractor to penalties in accordance with W.S. 16-6-206.

(h) Any contractor or subcontractor aggrieved by a citation or debarment from Labor Standards has the right to appeal and request a fair hearing by an independent hearing officer.

(i) Requests for hearing must be addressed to and received by the Director of the Department of Workforce Services, c/o Labor Standards, 1510 E. Pershing Boulevard, West Wing, Room 150, Cheyenne, Wyoming 82002, within seven (7) days of receipt of notice of the penalty and include the reasons the citation, penalty or debarment should not be imposed and/or reason the Act does not apply to the aggrieved contractor or subcontractor in the instance cited.

(ii) The hearing will be held within fifteen (15) days of receipt of the request for hearing.

Section 17. Exclusions.

(a) Public Works projects involving federal funds restricting the application of state preference laws shall not be subject to the resident labor preference provisions.

(b) Upon assertion by the contractor or subcontractor of the involvement of restrictive federal funding, any issued and outstanding citations will be placed in suspended status until funding streams have been determined.

(i) Upon request from Labor Standards any contracting entity shall provide proof of the funding stream(s) involved in the project and the specific work on the project supported by the federal funds within fifteen (15) days.