

## Chapter IV

### RULES OF PRACTICE AND PROCEDURE FOR THE CERTIFICATION OF RESIDENT CONTRACTORS AND ENFORCEMENT OF PREFERENCE LAWS

(i) Section 1. Authority.

(ii) These Rules of Practice and Procedure are promulgated as authorized by W.S. 16-6-101(a)(ii), W.S. 16-6-102(a) and W.S. 27-2-104(a)(v).

Section 2. General Provisions.

(i) The purpose of the following rules is to ensure compliance with W.S. 16-6-101 through 16-6-103 and W.S. 16-6-201 through 16-6-206.

Section 3. Definitions.

Section 4. “Department” means the Department of Workforce Services, State of Wyoming.

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

Section 5. Resident Documentation and Affidavits.

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

(b) All contractors wishing to be certified as a resident contractor for purposes of receiving the five percent (5%) bid preference on public works construction projects shall complete and submit the documents and affidavit(s) required by Labor Standards, a program within the Department Workforce Services. No residency preference shall be granted to any contractor who has not been certified as a resident contractor by Labor Standards.

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

Section 6. 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 7. 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 substantially all of the business activities are conducted and controlled.

Section 8. Investigations.

(a) Upon receipt of application for residency or upon receipt of a written complaint, Labor Standards shall investigate an applicant or certificate holder to determine compliance under W.S. 16-6-101 and W.S. 16-6-102.

(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 and W.S. 16-6-102.

Section 9. 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.

(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 16-6-102, 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 10. 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 11. 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 12. 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 13. 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 14. Notification of Final Agency Decision.

(i) The director shall notify all parties by certified mail of ~~its~~ his/her decision to deny or revoke the certificate of residency.

#### Section 15. Preference for Wyoming Subcontractors

(i) 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 16. Preference for Wyoming Materials

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

Section 17. 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) Upon request from Labor Standards a contractor or subcontractor shall provide a certified payroll listing of all laborers utilized on the project to include name, address, position worked, number of hours worked in each position, wage & benefit rate paid to each laborer.

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