

1 **BID REQUIREMENTS ON COUNTY OR**
2 **MUNICIPAL CONSTRUCTION PROJECTS**

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Howard A. Stephenson**

6 **This act modifies the Utah Municipal Code, the County Code, the State System of Public**
7 **Education Code, and the Special Districts Code to require that political subdivisions bid out**
8 **certain construction projects. The act defines which types of improvements and construction**
9 **projects must be bid and provides for attorney's fees in a civil suit for violation of the**
10 **bidding requirements.**

11 This act affects sections of Utah Code Annotated 1953 as follows:

12 AMENDS:

13 **10-7-20**, as last amended by Chapter 365, Laws of Utah 1999

14 **11-13-5.5**, as last amended by Chapter 337, Laws of Utah 1998

15 **11-13-5.6**, as last amended by Chapter 9, Laws of Utah 2001

16 **17A-2-531**, as last amended by Chapters 86 and 254, Laws of Utah 2000

17 **17A-2-723**, as last amended by Chapters 86 and 254, Laws of Utah 2000

18 **53A-20-101**, as last amended by Chapters 86 and 123, Laws of Utah 2000

19 ENACTS:

20 **17-50-321**, Utah Code Annotated 1953

21 *Be it enacted by the Legislature of the state of Utah:*

22 Section 1. Section **10-7-20** is amended to read:

23 **10-7-20. Definition -- Necessity for contract -- Call for bids -- Acceptance or rejection**
24 **-- Retainage -- Attorney's fees.**

25 (1) As used in this section[~~, the term~~]:

26 (a) "building improvement" means constructing or repairing any building or structure;

27 (b) "public works improvement" means:



28 (i) constructing any pipeline, culvert, dam, canal, or other system for water, sewer, storm
29 water, or flood control; or

30 (ii) any construction or repair work performed by a utility company owned by the
31 municipality; and

32 (c) "lowest responsible bidder" means any prime contractor who:

33 ~~(a)~~ (i) has bid in compliance with the invitation to bid and within the requirements of the
34 plans and specifications for a construction project;

35 ~~(b)~~ (ii) is the low bidder;

36 ~~(c)~~ (iii) has furnished a bid bond or equivalent in money as a condition to the award of
37 a prime contract; and

38 ~~(d)~~ (iv) furnishes a payment and performance bond as required by law.

39 (2) (a) Whenever the board of commissioners or city council of any city or the board of
40 trustees of any town contemplates making any new building improvement or public works
41 improvement ~~[to be]~~ paid for ~~[out of the general funds of]~~ by the city or town, the governing body
42 shall cause plans and specifications for, and an estimate of the cost of, the improvement to be
43 made.

44 (b) If the estimated cost of the building improvement is less than \$25,000, or the estimated
45 cost of the public works improvement is less than \$100,000, the city or town may make the
46 improvement without calling for bids for making the same.

47 (c) (i) If the estimated cost of the proposed building improvement exceeds \$25,000, or the
48 estimated cost of the public works improvement exceeds \$100,000, the city or town shall, if it
49 determines to make the improvement, do so by contract let to the lowest responsible bidder after
50 publication of notice at least twice in a newspaper published or of general circulation in that city
51 or town at least five days prior to the opening of bids.

52 (ii) If there is no newspaper published or of general circulation in the city or town, the
53 notice shall be posted at least five days prior to the opening of bids in at least five public places
54 in the city or town. The notice shall remain posted for at least three days.

55 (d) If the cost of a contemplated building improvement exceeds the sum of \$25,000, or the
56 estimated cost of the public works improvement exceeds \$100,000, the same shall not be so
57 divided as to permit the making of such improvement in several parts, except by contract.

58 (e) (i) The governing body has the right to reject any or all bids presented, and all notices

59 calling for bids shall so state.

60 (ii) If all bids are rejected and the governing body decides to make the improvement, it
61 shall advertise anew in the same manner as before.

62 (iii) If after twice advertising as provided in this section, no bid is received that is
63 satisfactory, the governing body may proceed under its own direction to make the improvement.

64 (3) If any payment on a contract with a private person, firm, or corporation is retained or
65 withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

66 (4) (a) Cities and towns are not required to call for bids or let contracts for the conduct or
67 management of any of the departments, business, or property of the city or town[;].

68 (b) Cities and towns are not required to call for bids or let contracts for lowering or
69 repairing water mains or sewers, making connections with water mains or sewers, or for grading,
70 repairing, or maintaining streets, sidewalks, bridges, culverts, or conduits in any city or town if the
71 estimated cost of the work is less than \$100,000.

72 [~~(b)~~] (c) Work excluded under this Subsection (4) shall comply with Section 72-6-108 as
73 applicable.

74 (5) In a civil action to enforce the provisions of this section against a municipality, the
75 court shall award attorney's fees and costs to the prevailing party.

76 Section 2. Section **11-13-5.5** is amended to read:

77 **11-13-5.5. Contract by public agencies to create new entities to provide services --**
78 **Powers and duties of new entities -- Generation of electricity.**

79 (1) Any two or more public agencies of Utah may agree to create a separate legal or
80 administrative entity to accomplish the purpose of their joint or cooperative action, including the
81 undertaking and financing of a facility or improvement to provide the service contemplated by that
82 agreement.

83 (2) (a) The separate legal or administrative entity created under the authority of this section
84 is a political subdivision of Utah and may:

85 (i) own, acquire, construct, operate, maintain, and repair or cause to be constructed,
86 operated, maintained, and repaired any facility or improvement set forth in the agreement;

87 (ii) borrow money, incur indebtedness, and issue revenue bonds or notes for the purposes
88 for which it was created;

89 (iii) offer, issue, and sell warrants, options, or other rights related to:

90 (A) the bonds or notes issued by the entity; and

91 (B) any rights or interests pertaining to the bonds or notes;

92 (iv) assign, pledge, or otherwise convey as security for the payment of any bonded
93 indebtedness, the revenues, and receipts from the facility, improvement, or service; or

94 (v) sell or contract for the sale of the product of the service or other benefits from the
95 facility or improvement to public agencies within or without the state on whatever terms that it
96 considers to be in the best interest of its participants.

97 (b) The assignment, pledge, or other conveyance specified in Subsection (2)(a)(iii) may
98 rank prior in right to any other obligation except taxes or payments in lieu of taxes payable to the
99 state or its political subdivisions.

100 (c) An entity created under this section shall be subject to the bid requirements of Sections
101 10-7-20 and 17-50-321.

102 (3) (a) Any entity formed to construct any electrical generation facility shall, at least 150
103 days before adoption of the bond resolution for financing the project, offer to enter into firm or
104 withdrawable power sales contracts to suppliers of electric energy within Utah who are existing
105 and furnishing services in this state at the time that the offer is made.

106 (b) That offer must be:

107 (i) accepted within 120 days from the date offered or it will be considered rejected; and

108 (ii) for not less than 50% of its energy output.

109 (c) The demand by those electric energy suppliers or the amounts deliverable to any
110 electric energy supplier or a combination of them may not exceed the amount allowable by the
111 United States Internal Revenue Service in a way that would result in a change in or a loss of the
112 tax exemption from federal income tax for the interest paid, or to be paid, under any bonds or
113 indebtedness created or incurred by any entity formed under this section.

114 (d) For any electrical generation facility, the amount of energy output available within this
115 state may not be less than 5% of the total output.

116 (4) Subsection (3) applies only to the construction and operation of a facility to generate
117 electricity.

118 (5) Any entity formed to construct and operate facilities for the generation of electricity
119 and any entity formed to facilitate the transmission or supply of electrical power under this section
120 may include within the agreement creating the entity provisions authorizing any public agency

121 located within a contiguous state to:

122 (a) participate as a member of the project entity if it enters into an agreement in accordance
123 with Section 11-13-11; and

124 (b) vote on any issues affecting that public agency's interests, if the public agency enters
125 into the agreement required by Subsection (5)(a).

126 (6) (a) The governing authority of each entity created under this section on or after May
127 4, 1998, shall, within 30 days of the creation, file a written notice of the creation with the State Tax
128 Commission.

129 (b) Each written notice required under Subsection (6)(a) shall:

130 (i) be accompanied by:

131 (A) a copy of the agreement creating the entity; and

132 (B) a map or plat that delineates a metes and bounds description of the area affected and
133 evidence that the information has been recorded by the county recorder; and

134 (ii) contain a certification by the governing authority that all necessary legal requirements
135 relating to the creation have been completed.

136 Section 3. Section **11-13-5.6** is amended to read:

137 **11-13-5.6. Contract by public agencies to create new entities to own sewage and**
138 **wastewater facilities -- Powers and duties of new entities -- Validation of previously created**
139 **entities.**

140 (1) It is declared that the policy of the state is to assure the health, safety, and welfare of
141 its citizens, that adequate sewage and wastewater treatment plants and facilities are essential to the
142 well-being of the citizens of the state and that the acquisition of adequate sewage and wastewater
143 treatment plants and facilities on a regional basis in accordance with federal law and state and
144 federal water quality standards and effluent standards in order to provide services to public
145 agencies is a matter of statewide concern and is in the public interest. It is found and declared that
146 there is a statewide need to provide for regional sewage and wastewater treatment plants and
147 facilities, and as a matter of express legislative determination it is declared that the compelling
148 need of the state for construction of regional sewage and wastewater treatment plants and facilities
149 requires the creation of entities under the Interlocal Cooperation Act to own, construct, operate,
150 and finance sewage and wastewater treatment plants and facilities; and it is the purpose of this law
151 to provide for the accomplishment thereof in the manner provided in this section.

152 (2) (a) Any two or more public agencies of the state may also agree to create a separate
153 legal or administrative entity to accomplish and undertake the purpose of owning, acquiring,
154 constructing, financing, operating, maintaining, and repairing regional sewage and wastewater
155 treatment plants and facilities.

156 (b) An entity created under this section shall be subject to the bid requirements of Sections
157 10-7-20 and 17-50-321.

158 (3) A separate legal or administrative entity created in the manner provided herein is
159 considered to be a political subdivision and body politic and corporate of the state with power to
160 carry out and effectuate its corporate powers, including, but not limited to, the power:

161 (a) to adopt, amend, and repeal rules, bylaws, and regulations, policies, and procedures for
162 the regulation of its affairs and the conduct of its business, to sue and be sued in its own name, to
163 have an official seal and power to alter that seal at will, and to make and execute contracts and all
164 other instruments necessary or convenient for the performance of its duties and the exercise of its
165 powers and functions under the Interlocal Cooperation Act;

166 (b) to own, acquire, construct, operate, maintain, repair, or cause to be constructed,
167 operated, maintained, and repaired one or more regional sewage and wastewater treatment plants
168 and facilities, all as shall be set forth in the agreement providing for its creation;

169 (c) to borrow money, incur indebtedness and issue revenue bonds, notes or other
170 obligations payable solely from the revenues and receipts derived from all or a portion of the
171 regional sewage and wastewater treatment plants and facilities which it owns, operates, and
172 maintains, such bonds, notes, or other obligations to be issued and sold in compliance with the
173 provisions of Title 11, Chapter 14, Utah Municipal Bond Act;

174 (d) to enter into agreements with public agencies and other parties and entities to provide
175 sewage and wastewater treatment services on such terms and conditions as it considers to be in the
176 best interests of its participants; and

177 (e) to acquire by purchase or by exercise of the power of eminent domain, any real or
178 personal property in connection with the acquisition and construction of any sewage and
179 wastewater treatment plant and all related facilities and rights-of-way which it owns, operates, and
180 maintains.

181 (4) The provisions of Sections 11-13-25, 11-13-26, 11-13-27, 11-13-28, 11-13-29,
182 11-13-30, 11-13-31, 11-13-32, 11-13-33, 11-13-34, 11-13-35, and 11-13-36 do not apply to a legal

183 or administrative entity created for regional sewage and wastewater treatment purposes under this
184 section.

185 (5) All proceedings previously had in connection with the creation of any legal or
186 administrative entity pursuant to this chapter, and all proceedings previously had by any such entity
187 for the authorization and issuance of bonds of the entity are validated, ratified, and confirmed; and
188 these entities are declared to be validly created interlocal cooperation entities under this chapter.
189 These bonds, whether previously or subsequently issued pursuant to these proceedings, are
190 validated, ratified, and confirmed and declared to constitute, if previously issued, or when issued,
191 the valid and legally binding obligations of the entity in accordance with their terms. Nothing in
192 this section shall be construed to affect or validate any bonds, or the organization of any entity, the
193 legality of which is being contested at the time this act takes effect.

194 (6) (a) The governing authority of each entity created under this section on or after May
195 4, 1998, shall, within 30 days of the creation, file a written notice of the creation with the State Tax
196 Commission.

197 (b) Each written notice required under Subsection (6)(a) shall:

198 (i) be accompanied by:

199 (A) a copy of the agreement creating the entity; and

200 (B) a map or plat that delineates a metes and bounds description of the area affected and
201 evidence that the information has been recorded by the county recorder; and

202 (ii) contain a certification by the governing authority that all necessary legal requirements
203 relating to the creation have been completed.

204 Section 4. Section **17-50-321** is enacted to read:

205 **17-50-321. Definition -- Necessity for contract -- Call for bids -- Acceptance or**
206 **rejection -- Retainage -- Attorney's fees.**

207 (1) As used in this section:

208 (a) "building improvement" means constructing or repairing any building or structure;

209 (b) "public works improvement" means:

210 (i) constructing any pipeline, culvert, dam, canal, or other system for water, sewer, storm
211 water, or flood control; or

212 (ii) any construction or repair work performed by a utility company owned by the county;

213 and

214 (c) "lowest responsible bidder" means any prime contractor who:
215 (i) has bid in compliance with the invitation to bid and within the requirements of the plans
216 and specifications for a construction project;
217 (ii) is the low bidder;
218 (iii) has furnished a bid bond or equivalent in money as a condition to the award of a prime
219 contract; and
220 (iv) furnishes a payment and performance bond as required by law.
221 (2) (a) Whenever the governing body of any county contemplates making any new building
222 improvement or public works improvement paid for by the county, the governing body shall cause
223 plans and specifications for, and an estimate of the cost of, the improvement to be made.
224 (b) If the estimated cost of the building improvement is less than \$25,000, or the estimated
225 cost of the public works improvement is less than \$100,000, the county may make the
226 improvement without calling for bids for making the same.
227 (c) (i) If the estimated cost of the proposed building improvement exceeds \$25,000, or the
228 estimated cost of the public works improvement exceeds \$100,000, the county shall, if it
229 determines to make the improvement, do so by contract let to the lowest responsible bidder after
230 publication of notice at least twice in a newspaper published or of general circulation in that county
231 at least five days prior to the opening of bids.
232 (ii) If there is no newspaper published or of general circulation in the county, the notice
233 shall be posted at least five days prior to the opening of bids in at least five public places in the
234 county. The notice shall remain posted for at least three days.
235 (d) If the cost of a contemplated building improvement exceeds the sum of \$25,000, or the
236 estimated cost of the public works improvement exceeds \$100,000, the same shall not be so
237 divided as to permit the making of such improvement in several parts, except by contract.
238 (e) (i) The governing body has the right to reject any or all bids presented, and all notices
239 calling for bids shall so state.
240 (ii) If all bids are rejected and the governing body decides to make the improvement, it
241 shall advertise anew in the same manner as before.
242 (iii) If after twice advertising as provided in this section, no bid is received that is
243 satisfactory, the governing body may proceed under its own direction to make the improvement.
244 (3) If any payment on a contract with a private person, firm, or corporation is retained or

245 withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

246 (4) (a) Counties are not required to call for bids or let contracts for the conduct or
247 management of any of the departments, business, or property of the county.

248 (b) Counties are not required to call for bids or let contracts for lowering or repairing water
249 mains or sewers, making connections with water mains or sewers, or for grading, repairing, or
250 maintaining streets, sidewalks, bridges, culverts, or conduits in any county if the estimated cost of
251 the work is less than \$100,000.

252 (c) Work excluded under this Subsection (4) shall comply with Section 72-6-108 as
253 applicable.

254 (5) In a civil action to enforce the provisions of this section against a county, the court
255 shall award attorney's fees and costs to the prevailing party.

256 Section 5. Section **17A-2-531** is amended to read:

257 **17A-2-531. Bids for construction -- Contracts -- Payment and performance bonds**
258 **-- Retainage -- Attorney's fees.**

259 (1) As used in this section, the word "sealed" does not preclude acceptance of
260 electronically sealed and submitted bids or proposals in addition to bids or proposals manually
261 sealed and submitted.

262 (2) After adopting a plan and making an estimate of the cost of any drainage canal or
263 canals, drains, drain ditches, and works, the board of trustees shall give notice by publication for
264 at least 20 days in at least one newspaper published or having a general circulation in each of the
265 counties comprising the district, and in any other publication they consider advisable, calling for
266 bids for the construction of such work or of any portion of it. If less than the whole work is
267 advertised, then the portion so advertised shall be particularly described in the notice. The notice
268 shall state:

269 (a) that plans and specifications can be seen at the office of the board of trustees;

270 (b) that the board of trustees will receive sealed proposals for the work;

271 (c) that the contract will be let to the lowest responsible bidder; and

272 (d) the time and place appointed for opening bids. The bids shall be opened in public, and
273 as soon as convenient thereafter the trustees shall let the work, either in portions or as a whole, to
274 the lowest responsible bidder, or they may reject any or all bids. Contracts for the purchase of
275 material shall be awarded to the lowest responsible bidder. Any person or persons to whom a

276 contract is awarded shall provide the board with bonds under Sections 14-1-18 and 63-56-38. The
277 work shall be done under the direction and to the satisfaction of the engineer, and subject to the
278 approval of the board of trustees. This section does not apply in the case of any contract with the
279 United States.

280 (3) If any payment on a contract with a private contractor for the construction of works
281 under this section is retained or withheld, it shall be retained or withheld and released as provided
282 in Section 13-8-5.

283 (4) In a civil action to enforce the provisions of this section against a drainage district, the
284 court shall award attorney's fees and costs to the prevailing party.

285 Section 6. Section **17A-2-723** is amended to read:

286 **17A-2-723. Construction -- Notice -- Awarding contracts -- Contractor's bonds.**

287 (1) As used in this section, the word "sealed" does not preclude acceptance of
288 electronically sealed and submitted bids or proposals in addition to bids or proposals manually
289 sealed and submitted.

290 (2) After adopting a plan for the construction of canals, reservoirs, and works, the board
291 of trustees shall give notice thereof by publication in the county in which the principal office of
292 the district is located at least once not less than ten days prior to the expiration of the period in
293 which bids shall be received, and the other notice as they consider advisable calling for bids for
294 the furnishing of material or construction of the work or any portion thereof.

295 (3) If less than the whole work is advertised, then the portion so advertised must be
296 particularly described in the notice; the notice shall set forth that plans and specifications, or
297 specifications alone where there are no plans, may be seen at the office of the board, and that the
298 board will receive sealed proposals therefor, and that the contract will be let to the lowest
299 responsible bidder, stating the time and the place for opening the proposal which at that time and
300 place shall be opened in public, and as soon as convenient thereafter the board shall let the work,
301 either in portions or as a whole, or award and order for materials, to the lowest responsible bidder,
302 or it may reject any or all bids, and thereupon readvertise for proposals, or proceed to construct the
303 work under its own superintendence.

304 (4) Contracts for the purchase of material shall be awarded to the lowest responsible bidder
305 unless all bids are rejected or the board determines to readvertise for bids.

306 (5) The person or persons to whom a contract may be awarded shall enter into a bond, with

307 good and sufficient sureties, to be approved by the board, payable to the district for not less than
308 25% of the amount of the contract price and conditioned for the faithful performance of the
309 contract, but no such bond need be required by the board where materials are contracted for the
310 bond requirement.

311 (6) The work shall be done under the direction and to the satisfaction of the engineer in
312 charge, and be approved by the board, and shall be paid for out of the general fund account;
313 provided, that the provisions of this section shall not apply in the case of any contract between the
314 district and the United States.

315 (7) Nothing herein contained shall be construed to prohibit the district from purchasing
316 material or doing any work required by it without advertising for bids and without the letting of
317 a contract where the estimated cost of the work or the material does not exceed \$30,000 or in cases
318 of emergencies the board of trustees may let contracts for the work required in the emergency
319 without advertising for bids or may cause the work to be done by the district itself.

320 (8) In a civil action to enforce the provisions of this section against an irrigation district,
321 the court shall award attorney's fees and costs to the prevailing party.

322 Section 7. Section **53A-20-101** is amended to read:

323 **53A-20-101. Construction and alteration of schools and plants -- Advertising for bids**
324 **-- Payment and performance bonds -- Contracts -- Bidding limitations on local school boards**
325 **-- Interest of local school board members.**

326 (1) As used in this section, the word "sealed" does not preclude acceptance of
327 electronically sealed and submitted bids or proposals in addition to bids or proposals manually
328 sealed and submitted.

329 (2) (a) Prior to the construction of any school or the alteration of any existing school plant,
330 if the total estimated accumulative building project cost exceeds \$80,000, a local school board
331 shall advertise for bids on the project at least ten days before the bid due date.

332 (b) The board shall have the advertisement published in a newspaper having general
333 circulation throughout the state and in appropriate construction trade publications that offer free
334 listings.

335 (c) A similar advertisement is required in a newspaper published or having general
336 circulation in any city or county that would be affected by the proposed project.

337 (d) The advertisement shall:

338 (i) require sealed proposals for the building project in accordance with plans and
339 specifications furnished by the local school board;

340 (ii) state where and when the proposals will be opened and shall reserve the right of the
341 board to reject any and all proposals; and

342 (iii) require a certified check or bid bond of not less than 5% of the bid to accompany the
343 bid.

344 (3) (a) The board shall meet at the time and place specified in the advertisement and
345 publicly open and read all received proposals.

346 (b) If satisfactory bids are received, the board shall award the contract to the lowest
347 responsible bidder.

348 (c) If none of the proposals are satisfactory, all shall be rejected.

349 (d) The board shall again advertise in the manner provided in this section.

350 (e) If, after advertising a second time no satisfactory bid is received, the board may proceed
351 under its own direction with the required project.

352 (4) (a) The check or bond required under Subsection (2)(d) shall be drawn in favor of the
353 local school board.

354 (b) If the successful bidder fails or refuses to enter into the contract and furnish the
355 additional bonds required under this section, then the bidder's check or bond is forfeited to the
356 district.

357 (5) A local school board shall require payment and performance bonds of the successful
358 bidder as required in Section 63-56-38.

359 (6) (a) A local school board may require in the proposed contract that at least 10% of the
360 contract price be withheld until the project is completed and accepted by the board.

361 (b) If money is withheld, the board shall place it in an interest bearing account, and the
362 interest accrues for the benefit of the contractor and subcontractors.

363 (c) This money shall be paid upon completion of the project and acceptance by the board.

364 (7) (a) A local school board may not bid on projects within the district if the total
365 accumulative estimated cost exceeds \$80,000.

366 (b) The board may use its resources if no satisfactory bids are received under this section.

367 (8) If the local school board determines in accordance with Section 63-56-36 to use a
368 construction manager/general contractor as its method of construction contracting management on

369 projects where the total estimated accumulative cost exceeds \$80,000, it shall select the
370 construction manager/general contractor using one of the source selection methods provided for
371 in Sections 63-56-20 through 63-56-36.

372 (9) A local school board member may not have a direct or indirect financial interest in the
373 construction project contract.

374 (10) In a civil action to enforce the provisions of this section against a school board, the
375 court shall award attorney's fees and costs to the prevailing party.

Legislative Review Note
as of 10-18-01 2:53 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel