

1                                   **UTAH PROCUREMENT CODE AMENDMENTS**

2   2002 GENERAL SESSION

3   STATE OF UTAH

4   **Sponsor: Mike Dmitrich**

5   **This act modifies provisions relating to State Affairs in General. This act amends the Utah**  
6   **Procurement Code to designate that the chief procurement officer or the head of the**  
7   **purchasing agency responsible for carrying out a construction project of both state and local**  
8   **procurement units may not require a person or entity who is bidding for or who has been**  
9   **awarded a construction contract to obtain a bond from a specific insurance or surety**  
10   **company, producer, agent, or broker. This act makes a person who violates this act guilty**  
11   **of an infraction.**

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

13   AMENDS:

14           **63-56-2**, as last amended by Chapter 123, Laws of Utah 1997

15           **63-56-37**, as last amended by Chapter 92, Laws of Utah 1987

16           **63-56-38**, as last amended by Chapter 232, Laws of Utah 1993

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

18           Section 1. Section **63-56-2** is amended to read:

19           **63-56-2. Application of chapter.**

20           (1) This chapter applies only to contracts solicited or entered into after the effective date  
21   of this chapter unless the parties agree to its application to a contract solicited or entered into prior  
22   to the effective date.

23           (2) Except as provided in Section 63-56-3, this chapter shall apply to every expenditure  
24   of public funds irrespective of their source, including federal assistance, by any state agency under  
25   any contract.

26           (3) (a) Only the following sections shall apply to local public procurement units: Sections  
27   63-56-3, 63-56-5, 63-56-16, 63-56-19 through 63-56-33, 63-56-35.5, 63-56-36 through 63-56-41,



28 63-56-45 through 63-56-50, and 63-56-59 through 63-56-63; provided, however, that, except as  
29 provided in Sections 63-56-70 and 63-56-71, the jurisdiction of the procurement appeals board is  
30 limited to matters involving state agencies.

31 (b) ~~[Subsection]~~ Subsections 63-56-14(1)(b), 63-56-37(4), and 63-56-38(2) also ~~[applies]~~  
32 apply to local public procurement units.

33 (c) For the purpose of application of those sections and subsections to a local public  
34 procurement unit, "state" shall mean "local public procurement unit," "chief procurement officer"  
35 or "head of a purchasing agency" shall mean any person conducting procurement for a local public  
36 procurement unit, and "rules and regulations" shall mean ordinances and rules and regulations  
37 promulgated by a local public procurement unit to implement or supplement those sections.

38 (d) In addition to the sections and subsections listed above and except as provided in  
39 Section 17A-1-801 relating to special districts, each local public procurement unit shall adopt  
40 ordinances relating to the procurement of architect-engineer services not inconsistent with the  
41 provisions of Part G of this chapter.

42 (e) Any other section of this chapter, or its implementing regulations, may be adopted by  
43 any local public procurement unit.

44 (f) Any other implementing regulations adopted by local public procurement units may not  
45 be inconsistent with the provisions of this chapter.

46 (4) Unless otherwise provided by statute, this chapter does not apply to procurement of real  
47 property.

48 Section 2. Section **63-56-37** is amended to read:

49 **63-56-37. Bid security requirements -- Directed suretyship prohibited -- Penalty.**

50 (1) Bid security in amount equal to at least 5% of the amount of the bid shall be required  
51 for all competitive sealed bidding for construction contracts. Bid security shall be a bond provided  
52 by a surety company authorized to do business in this state, the equivalent in cash, or any other  
53 form satisfactory to the state.

54 (2) When a bidder fails to comply with the requirement for bid security set forth in the  
55 invitation for bids, the bid shall be rejected unless, pursuant to rules, it is determined that the  
56 failure to comply with the security requirements is nonsubstantial.

57 (3) After the bids are opened, they shall be irrevocable for the period specified in the  
58 invitation for bids, except as provided in Subsection 63-56-20(6). If a bidder is permitted to

59 withdraw a bid before award, no action shall be taken against the bidder or the bid security.

60 (4) (a) When issuing an invitation for a bid under this chapter, the chief procurement  
61 officer or the head of the purchasing agency responsible for carrying out a construction project may  
62 not require a person or entity who is bidding for a contract to obtain a bond of the type referred to  
63 in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.

64 (b) A person who violates Subsection (4)(a) is guilty of an infraction.

65 Section 3. Section **63-56-38** is amended to read:

66 **63-56-38. Bonds necessary when contract is awarded -- Waiver -- Action --**

67 **Attorneys' fees.**

68 (1) When a construction contract is awarded under this chapter, the contractor to whom  
69 the contract is awarded shall deliver the following bonds or security to the state, which shall  
70 become binding on the parties upon the execution of the contract:

71 (a) a performance bond satisfactory to the state that is in an amount equal to 100% of the  
72 price specified in the contract and is executed by a surety company authorized to do business in  
73 this state or any other form satisfactory to the state; and

74 (b) a payment bond satisfactory to the state that is in an amount equal to 100% of the price  
75 specified in the contract and is executed by a surety company authorized to do business in this state  
76 or any other form satisfactory to the state, which is for the protection of each person supplying  
77 labor, service, equipment, or material for the performance of the work provided for in the contract.

78 (2) (a) When a construction contract is awarded under this chapter, the chief procurement  
79 officer or the head of the purchasing agency responsible for carrying out a construction project may  
80 not require a contractor to whom a contract is awarded to obtain a bond of the types referred to in  
81 Subsections (1)(a) and (b) from a specific insurance or surety company, producer, agent, or broker.

82 (b) A person who violates Subsection (2)(a) is guilty of an infraction.

83 [~~(2)~~] (3) Rules may provide for waiver of the requirement of a bid, performance, or  
84 payment bond for circumstances in which the state considers any or all of the bonds to be  
85 unnecessary to protect the state.

86 [~~(3)~~] (4) A person shall have a right of action on a payment bond under this section for any  
87 unpaid amount due him if:

88 (a) he has furnished labor, service, equipment, or material for the work provided for in the  
89 contract for which the payment bond is furnished under this section; and

90 (b) he has not been paid in full within 90 days after the last date on which he performed  
91 the labor or service or supplied the equipment or material for which the claim is made.

92 [~~4~~] (5) An action upon a payment bond shall be brought in a court of competent  
93 jurisdiction in any county where the construction contract was to be performed and not elsewhere.  
94 The action is barred if not commenced within one year after the last day on which the claimant  
95 performed the labor or service or supplied the equipment or material on which the claim is based.  
96 The obligee named in the bond need not be joined as a party to the action.

97 [~~5~~] (6) In any suit upon a payment bond, the court shall award reasonable attorneys' fees  
98 to the prevailing party, which fees shall be taxed as costs in the action.

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**Legislative Review Note**  
**as of 1-29-02 2:57 PM**

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

**Office of Legislative Research and General Counsel**