

**LOCAL GOVERNMENTS - AUTHORITY FOR
DESIGN-BUILD CONSTRUCTION**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill modifies provisions relating to local government building improvement and public works projects.

Highlighted Provisions:

This bill:

▶ adds **§ CERTAIN §** design-build projects as a type of building improvement or public works project that is subject to certain requirements relating to plans and specifications, cost estimates, and bid procedures; and

▶ allows a local government entity, with respect to **§ [a] CERTAIN §** design-build **§ [-project] PROJECTS §** , to award a bid to a responsible bidder that offers design-build services rather than to the lowest responsive responsible bidder.

Monies Appropriated in this Bill:

§ [None] THIS BILL PROVIDES AN IMMEDIATE EFFECTIVE DATE. §

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-39-101, as enacted by Chapter 259, Laws of Utah 2003

11-39-103, as enacted by Chapter 259, Laws of Utah 2003

§ UNCODIFIED MATERIAL AFFECTED:

ENACTS UNCODIFIED MATERIAL §



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

29 Section 1. Section 11-39-101 is amended to read:

30 11-39-101. Definitions.

31 As used in this chapter:

32 (1) "Bid limit" means:

33 (a) for a building improvement:

34 (i) for the year 2003, \$40,000; and

35 (ii) for each year after 2003, the amount of the bid limit for the previous year, plus an
36 amount calculated by multiplying the amount of the bid limit for the previous year by the
lesser

37 of 3% or the actual percent change in the Consumer Price Index during the previous calendar
38 year; and

39 (b) for a public works project:

40 (i) for the year 2003, \$125,000; and

41 (ii) for each year after 2003, the amount of the bid limit for the previous year, plus an
42 amount calculated by multiplying the amount of the bid limit for the previous year by the
lesser

43 of 3% or the actual percent change in the Consumer Price Index during the previous calendar
44 year.

45 (2) "Building improvement":

46 (a) means the construction or repair of a public building or structure; and

47 (b) does not include construction or repair at an international airport.

48 (3) "Consumer Price Index" means the Consumer Price Index for All Urban
49 Consumers as published by the Bureau of Labor Statistics of the United States Department of
50 Labor.

51 (4) "Design-build project" ~~is~~ is

51a1 is (a) it means a building improvement or public works project § COSTING

51a OVER \$1,000,000 \$250,000 it § with

52 respect to which both the design and construction are provided for in a single contract with a
53 contractor or combination of contractors capable of providing design-build services ; AND

53a (b) DOES NOT INCLUDE A BUILDING IMPROVEMENT OR PUBLIC WORKS PROJECT:

53b (i) THAT IS UNDERTAKEN BY A LOCAL ENTITY UNDER CONTRACT WITH A CONSTRUCTION
53c MANAGER THAT GUARANTEES THE CONTRACT PRICE AND IS AT RISK FOR ANY AMOUNT OVER
53d THE CONTRACT PRICE; AND

53e (ii) EACH COMPONENT OF WHICH IS COMPETITIVELY BID .

54 (5) "Design-build services" means the engineering, architectural, and other services
55 necessary to formulate and implement a design-build project, including its actual construction.

56 ~~(4)~~ (6) "Emergency repairs" means a building improvement or public works project
57 undertaken on an expedited basis to:

58 (a) eliminate an imminent risk of damage to or loss of public or private property;

- 59 (b) remedy a condition that poses an immediate physical danger; or
60 (c) reduce a substantial, imminent risk of interruption of an essential public service.
- 61 ~~[(5)]~~ (7) "Independent special district" means an independent special district under
62 Title 17A, Chapter 2, Independent Special Districts, excluding a special service district under
63 Title 17A, Chapter 2, Part 13, Utah Special Service District Act.
- 64 ~~[(6)]~~ (8) "Local district" has the same meaning as defined in Section 17B-2-101.
- 65 ~~[(7)]~~ (9) "Local entity" means a county, city, town, special district, or local district.
- 66 ~~[(8)]~~ (10) "Lowest responsive responsible bidder" means a prime contractor who:
67 (a) has submitted a bid in compliance with the invitation to bid and within the
68 requirements of the plans and specifications for the building improvement or public works
69 project;
- 70 (b) is the lowest bidder that satisfies the local entity's criteria relating to financial
71 strength, past performance, integrity, reliability, and other factors that the local entity uses to
72 assess the ability of a bidder to perform fully and in good faith the contract requirements;
- 73 (c) has furnished a bid bond or equivalent in money as a condition to the award of a
74 prime contract; and
- 75 (d) furnishes a payment and performance bond as required by law.
- 76 ~~[(9)]~~ (11) "Procurement code" means the provisions of Title 63, Chapter 56, Utah
77 Procurement Code.
- 78 ~~[(10)]~~ (12) "Public works project":
79 (a) means the construction of:
80 (i) a park or recreational facility; or
81 (ii) a pipeline, culvert, dam, canal, or other system for water, sewage, storm water, or
82 flood control; and
83 (b) does not include:
84 (i) the replacement or repair of existing infrastructure on private property;
85 (ii) construction commenced before June 1, 2003; and
86 (iii) construction or repair at an international airport.
- 87 ~~[(11)]~~ (13) "Special district" has the same meaning as defined in Section 17A-1-101.
88 Section 2. Section 11-39-103 is amended to read:
89 11-39-103. Requirements for undertaking a building improvement or public

90 works project -- Request for bids -- Authority to reject bids.

91 (1) If the estimated cost of the building improvement or public works project exceeds
92 the bid limit, the local entity shall, if it determines to proceed with the building improvement
or

93 public works project:

94 (a) request bids for completion of the building improvement or public works project
95 by:

96 (i) publishing notice at least twice in a newspaper published or of general circulation in
97 the local entity at least five days before opening the bids; or

98 (ii) if there is no newspaper published or of general circulation in the local entity,
99 posting notice at least five days before opening the bids in at least five public places in the
100 local entity and leaving the notice posted for at least three days; and

101 (b) except as provided in Subsection (3), enter into a contract for the completion of the
102 building improvement or public works project with:

103 (i) the lowest responsive responsible bidder[=]; or

104 (ii) for a design-build project § THAT THE LOCAL ENTITY BEGAN FORMULATING
BEFORE

104a1 MARCH 1, 2004 AND WITH RESPECT TO WHICH A CONTRACT IS ENTERED INTO BEFORE

104a2 SEPTEMBER 1, 2004 § , a responsible bidder that § :

104a (A) § offers design-build services § ; AND

104b (B) SATISFIES THE LOCAL ENTITY'S CRITERIA RELATING TO FINANCIAL STRENGTH, PAST
104c PERFORMANCE, INTEGRITY, RELIABILITY, AND OTHER FACTORS THAT THE LOCAL ENTITY USES
104d TO ASSESS THE ABILITY OF A BIDDER TO PERFORM FULLY AND IN GOOD FAITH THE CONTRACT
104e REQUIREMENTS FOR A DESIGN-BUILD PROJECT § .

105 (2) (a) Each notice under Subsection (1)(a) shall indicate that the local entity may reject
106 any or all bids submitted.

107 (b) (i) The cost of a building improvement or public works project may not be divided
108 to avoid:

109 (A) exceeding the bid limit; and

110 (B) subjecting the local entity to the requirements of this section.

111 (ii) Notwithstanding Subsection (2)(b)(i), a local entity may divide the cost of a
112 building improvement or public works project that would, without dividing, exceed the bid
113 limit if the local entity complies with the requirements of this section with respect to each part
114 of the building improvement or public works project that results from dividing the cost.

115 (3) (a) The local entity may reject any or all bids submitted.

116 (b) If the local entity rejects all bids submitted but still intends to undertake the
117 building improvement or public works project, the local entity shall again request bids by
118 following the procedure provided in Subsection (1)(a).

119 (c) If, after twice requesting bids by following the procedure provided in Subsection
120 (1)(a), the local entity determines that no satisfactory bid has been submitted, the legislative

121 body may undertake the building improvement or public works project as it considers
122 appropriate.

122a § Section 3. Interim study.

122b IT IS THE INTENT OF THE LEGISLATURE THAT DURING THE 2004 INTERIM THE POLITICAL
122c SUBDIVISIONS INTERIM COMMITTEE STUDY THE ISSUE OF DESIGN-BUILD PROJECTS BY LOCAL
122d GOVERNMENT AND WHETHER THE PROVISIONS OF THIS BILL RELATING TO DESIGN-BUILD
122e PROJECTS SHOULD BE EXTENDED TO FUTURE PROJECTS, MODIFIED, OR ELIMINATED.

122f Section 4. Effective date.

122g IF APPROVED BY TWO-THIRDS OF ALL MEMBERS ELECTED TO EACH HOUSE, THIS BILL
122h TAKES EFFECT UPON APPROVAL BY THE GOVERNOR, OR THE DAY FOLLOWING THE
122i CONSTITUTIONAL TIME LIMIT OF UTAH CONSTITUTION ARTICLE VII, SECTION 8, WITHOUT THE
122j GOVERNOR'S SIGNATURE, OR, IN THE CASE OF A VETO, THE DATE OF THE VETO OVERRIDE. §

Legislative Review Note

as of 2-4-04 6:01 PM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0183

Local Governments - Authority for Design-Build Construction

13-Feb-04

12:11 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst