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

Section 1. Section **63-56-502** is amended to read:

63-56-502. Procurement of design-build transportation project contracts.

(1) As used in this section:

(a) "Design-build transportation project contract" means the procurement of both the design and construction of a transportation project in a single contract with a company or combination of companies capable of providing the necessary engineering services and construction.

(b) "Transportation agency" means:

(i) the Department of Transportation;

(ii) a county of the first or second class, as defined in Section 17-50-501;

(iii) a municipality of the first class, as defined in Section 10-2-301;

(iv) a public transit district that has more than 200,000 people residing within its boundaries; and

(v) a public airport authority.

(2) Except as provided in Subsection (3), a transportation agency may award a design-build transportation project contract for any transportation project that has an estimated cost of at least \$50,000,000 by following the requirements of this section.

(3) (a) The Department of Transportation:

(i) may award a design-build transportation project contract for any transportation project by following the requirements of this section; and

(ii) shall make rules, by following the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act, establishing requirements for the procurement of its design-build transportation project contracts in addition to those required by this section.

(b) A public transit district that has more than 200,000 people residing within its boundaries:

(i) may award a design-build transportation project contract for any transportation project by following the requirements of this section; and

(ii) shall pass ordinances or a resolution establishing requirements for the procurement of its design-build transportation project contracts in addition to those required by this section.

59 (c) A design-build transportation project contract authorized under this Subsection (3)
60 is not subject to the estimated cost threshold under Subsection (2).

61 (4) (a) Before entering a design-build transportation project contract, a transportation
62 agency may issue a request for qualifications to prequalify potential contractors.

63 (b) Public notice of the request for qualifications shall be given in accordance with
64 policy board rules.

65 (c) A transportation agency shall require, as part of the qualifications specified in the
66 request for qualifications, that potential contractors at least demonstrate their:

- 67 (i) construction experience;
- 68 (ii) design experience;
- 69 (iii) financial, manpower, and equipment resources available for the project; and
- 70 (iv) experience in other design-build transportation projects with attributes similar to
71 the project being procured.

72 (d) The request for qualifications shall identify the number of eligible competing
73 proposers that the transportation agency will select to submit a proposal, which must be at least
74 two.

75 (5) (a) The transportation agency shall:

- 76 (i) evaluate the responses received from the request for qualifications;
- 77 (ii) select from their number those qualified to submit proposals; and
- 78 (iii) invite those respondents to submit proposals based upon the transportation
79 agency's request for proposals.

80 (b) [Hf] (i) Except as provided in Subsection (5)(b)(ii), if the transportation agency fails
81 to receive at least two qualified eligible competing proposers, the transportation agency shall
82 readvertise the project.

83 (ii) A transportation agency may award a contract for a transportation project that has
84 an estimated cost of \$5,000,000 or less to a qualified eligible proposer if:

- 85 (A) only a single proposal is received; and
- 86 (B) the transportation agency determines that:
 - 87 (I) the proposal is advantageous to the state; and
 - 88 (II) the proposal price is reasonable.

89 (6) The transportation agency shall issue a request for proposals to those qualified

90 respondents that:

91 (a) includes a scope of work statement constituting an information for proposal that
92 may include:

- 93 (i) preliminary design concepts;
- 94 (ii) design criteria, needs, and objectives;
- 95 (iii) warranty and quality control requirements;
- 96 (iv) applicable standards;
- 97 (v) environmental documents;
- 98 (vi) constraints;
- 99 (vii) time expectations or limitations;
- 100 (viii) incentives or disincentives; and
- 101 (ix) other special considerations;

102 (b) requires submitters to provide:

- 103 (i) a sealed cost proposal;
- 104 (ii) a critical path matrix schedule, including cash flow requirements;
- 105 (iii) proposal security; and
- 106 (iv) other items required by the department for the project; and

107 (c) may include award of a stipulated fee to be paid to submitters who submit
108 unsuccessful proposals.

109 (7) The transportation agency shall:

110 (a) evaluate the submissions received in response to the request for proposals from the
111 prequalified proposers;

112 (b) comply with rules relating to discussion of proposals, best and final offers, and
113 evaluations of the proposals submitted; and

114 (c) after considering price and other identified factors, award the contract to the
115 responsible proposer whose proposal is most advantageous to the state.

Legislative Review Note

as of 1-4-06 10:38 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel