

**POLITICAL SUBDIVISION'S PROCUREMENT PROCESS  
FOR CONSTRUCTION PROJECTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Benjamin M. McAdams**

House Sponsor: Jim Nielson

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**LONG TITLE**

**General Description:**

This bill amends requirements for a local entity to undertake a building improvement or public works project.

**Highlighted Provisions:**

This bill:

- ▶ authorizes a municipality to adopt procedures of Title 63G, Chapter 6, Utah Procurement Code, with certain exceptions;
- ▶ authorizes a local entity to adopt procedures for certain construction methods;
- ▶ authorizes a city of the first class, a local district, or a special service district to adopt and follow provisions of Title 63G, Chapter 6, Utah Procurement Code, for a public works project using design-build that costs \$10,000,000 or more; and
- ▶ makes technical corrections.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**11-39-103**, as last amended by Laws of Utah 2009, First Special Session, Chapter 5

**11-39-107**, as last amended by Laws of Utah 2008, Chapter 382

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

31 Section 1. Section **11-39-103** is amended to read:

32 **11-39-103. Requirements for undertaking a building improvement or public**  
33 **works project -- Request for bids -- Authority to reject bids.**

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

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

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

41 (B) if there is no newspaper published or of general circulation in the local entity as  
42 described in Subsection (1)(a)(i)(A), posting notice at least five days before opening the bids in  
43 at least five public places in the local entity and leaving the notice posted for at least three days;  
44 and

45 (ii) publishing notice in accordance with Section 45-1-101, at least five days before  
46 opening the bids; and

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

49 (i) the lowest responsive responsible bidder; or

50 (ii) for a design-build project [~~that the~~] formulated by a local entity [~~began formulating~~  
51 ~~before March 1, 2004 and with respect to which a contract is entered into before September 1,~~  
52 ~~2004~~], except as provided in Section 11-39-107, a responsible bidder that:

53 (A) offers design-build services; and

54 (B) satisfies the local entity's criteria relating to financial strength, past performance,  
55 integrity, reliability, and other factors that the local entity uses to assess the ability of a bidder  
56 to perform fully and in good faith the contract requirements for a design-build project.

57 (2) (a) Each notice under Subsection (1)(a) shall indicate that the local entity may reject

58 any or all bids submitted.

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

61 (A) exceeding the bid limit; and

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

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

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

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

71 (c) If, after twice requesting bids by following the procedure provided in Subsection  
72 (1)(a), the local entity determines that no satisfactory bid has been submitted, the governing  
73 body may undertake the building improvement or public works project as it considers  
74 appropriate.

75 Section 2. Section **11-39-107** is amended to read:

76 **11-39-107. Procurement code.**

77 (1) This chapter may not be construed to:

78 (a) prohibit a county or municipal legislative body from adopting the procedures of the  
79 procurement code; or

80 (b) limit the application of the procurement code to a local district or special service  
81 district.

82 (2) A local entity may adopt procedures for the following construction contracting  
83 methods:

84 (a) construction manager/general contractor, as defined in Section 63G-6-103; or

85 (b) a method that requires that the local entity draft a plan, specifications, and an

86 estimate for the building improvement or public works project.

87 (3) For a public works project only and that costs \$10,000,000 or more, the following  
88 may enter into a contract for design-build, as defined in Section 63G-6-103, and adopt the  
89 procedures and follow the provisions of the procurement code for the procurement of and as  
90 the procedures and provisions relate to a design-build:

- 91 (a) a city of the first class;
- 92 (b) a local district; or
- 93 (c) a special service district.

94 ~~[(2)]~~ (4) (a) In seeking bids and awarding a contract for a building improvement or  
95 public works project, a county or a municipal legislative body may elect to follow the  
96 provisions of the procurement code, as the county or municipal legislative body considers  
97 appropriate under the circumstances, for specification preparation, source selection, or contract  
98 formation.

99 (b) A county or municipal legislative body's election to adopt the procedures of the  
100 procurement code may not excuse the county or municipality, respectively, from complying  
101 with the requirements to award a contract for work in excess of the bid limit and to publish  
102 notice of the intent to award.

103 (c) An election under Subsection ~~[(2)]~~ (4)(a) may be made on a case-by-case basis,  
104 unless the county or municipality has previously adopted the procurement code as permitted by  
105 Subsection 63G-6-104(3)(e).

106 (d) The county or municipal legislative body shall:

- 107 (i) make each election under Subsection ~~[(2)]~~ (4)(a) in an open meeting; and
- 108 (ii) specify in its action the portions of the procurement code to be followed.

109 ~~[(3)]~~ (5) If the estimated cost of the building improvement or public works project  
110 proposed by a local district or special service district exceeds the bid limit, the governing body  
111 of the local district or special service district may, if it determines to proceed with the building  
112 improvement or public works project, use the competitive procurement procedures of the  
113 procurement code in place of the comparable provisions of this chapter.

