

Chapter 39

Building Improvements and Public Works Projects

11-39-101 Definitions.

As used in this chapter:

- (1) "Bid limit" means:
 - (a) for a building improvement:
 - (i) for the year 2003, \$40,000; and
 - (ii) for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the Consumer Price Index during the previous calendar year; and
 - (b) for a public works project:
 - (i) for the year 2003, \$125,000; and
 - (ii) for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the Consumer Price Index during the previous calendar year.
- (2) "Building improvement":
 - (a) means the construction or repair of a public building or structure; and
 - (b) does not include construction or repair at an international airport.
- (3) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics of the United States Department of Labor.
- (4) "Design-build project":
 - (a) means a building improvement or public works project costing over \$250,000 with respect to which both the design and construction are provided for in a single contract with a contractor or combination of contractors capable of providing design-build services; and
 - (b) does not include a building improvement or public works project:
 - (i) that is undertaken by a local entity under contract with a construction manager that guarantees the contract price and is at risk for any amount over the contract price; and
 - (ii) each component of which is competitively bid.
- (5) "Design-build services" means the engineering, architectural, and other services necessary to formulate and implement a design-build project, including its actual construction.
- (6) "Emergency repairs" means a building improvement or public works project undertaken on an expedited basis to:
 - (a) eliminate an imminent risk of damage to or loss of public or private property;
 - (b) remedy a condition that poses an immediate physical danger; or
 - (c) reduce a substantial, imminent risk of interruption of an essential public service.
- (7) "Governing body" means:
 - (a) for a county, city, town, or metro township, the legislative body of the county, city, town, or metro township;
 - (b) for a local district, the board of trustees of the local district; and
 - (c) for a special service district:
 - (i) the legislative body of the county, city, or town that established the special service district, if no administrative control board has been appointed under Section 17D-1-301; or
 - (ii) the administrative control board of the special service district, if an administrative control board has been appointed under Section 17D-1-301.

- (8) "Local district" has the same meaning as defined in Section 17B-1-102.
- (9) "Local entity" means a county, city, town, metro township, local district, or special service district.
- (10) "Lowest responsive responsible bidder" means a prime contractor who:
 - (a) has submitted a bid in compliance with the invitation to bid and within the requirements of the plans and specifications for the building improvement or public works project;
 - (b) is the lowest bidder that satisfies the local entity's criteria relating to financial strength, past performance, integrity, reliability, and other factors that the local entity uses to assess the ability of a bidder to perform fully and in good faith the contract requirements;
 - (c) has furnished a bid bond or equivalent in money as a condition to the award of a prime contract; and
 - (d) furnishes a payment and performance bond as required by law.
- (11) "Procurement code" means the provisions of Title 63G, Chapter 6a, Utah Procurement Code.
- (12) "Public works project":
 - (a) means the construction of:
 - (i) a park or recreational facility; or
 - (ii) a pipeline, culvert, dam, canal, or other system for water, sewage, storm water, or flood control; and
 - (b) does not include:
 - (i) the replacement or repair of existing infrastructure on private property;
 - (ii) construction commenced before June 1, 2003; and
 - (iii) construction or repair at an international airport.
- (13) "Special service district" has the same meaning as defined in Section 17D-1-102.

Amended by Chapter 176, 2016 General Session

11-39-102 Requirement for plans and specifications and cost estimate.

Each local entity intending to undertake a building improvement or public works project paid for by the local entity shall cause:

- (1) plans and specifications to be made for the building improvement or public works project; and
- (2) an estimate of the cost of the building improvement or public works project to be made.

Enacted by Chapter 259, 2003 General Session

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

- (1) If the estimated cost of the building improvement or public works project exceeds the bid limit, the local entity shall, if it determines to proceed with the building improvement or public works project:
 - (a) request bids for completion of the building improvement or public works project by:
 - (i)
 - (A) publishing notice at least twice in a newspaper published or of general circulation in the local entity at least five days before opening the bids; or
 - (B) if there is no newspaper published or of general circulation in the local entity as described in Subsection (1)(a)(i)(A), posting notice at least five days before opening the bids in at least five public places in the local entity and leaving the notice posted for at least three days; and

- (ii) publishing notice in accordance with Section 45-1-101, at least five days before opening the bids; and
 - (b) except as provided in Subsection (3), enter into a contract for the completion of the building improvement or public works project with:
 - (i) the lowest responsive responsible bidder; or
 - (ii) for a design-build project formulated by a local entity, a responsible bidder that:
 - (A) offers design-build services; and
 - (B) satisfies the local entity's criteria relating to financial strength, past performance, integrity, reliability, and other factors that the local entity uses to assess the ability of a bidder to perform fully and in good faith the contract requirements for a design-build project.
- (2)
- (a) Each notice under Subsection (1)(a) shall indicate that the local entity may reject any or all bids submitted.
 - (b)
 - (i) The cost of a building improvement or public works project may not be divided to avoid:
 - (A) exceeding the bid limit; and
 - (B) subjecting the local entity to the requirements of this section.
 - (ii) Notwithstanding Subsection (2)(b)(i), a local entity may divide the cost of a building improvement or public works project that would, without dividing, exceed the bid limit if the local entity complies with the requirements of this section with respect to each part of the building improvement or public works project that results from dividing the cost.
- (3)
- (a) The local entity may reject any or all bids submitted.
 - (b) If the local entity rejects all bids submitted but still intends to undertake the building improvement or public works project, the local entity shall again request bids by following the procedure provided in Subsection (1)(a).
 - (c) If, after twice requesting bids by following the procedure provided in Subsection (1)(a), the local entity determines that no satisfactory bid has been submitted, the governing body may undertake the building improvement or public works project as it considers appropriate.

Amended by Chapter 196, 2014 General Session

11-39-104 Exceptions.

- (1) The requirements of Section 11-39-103 do not apply to:
 - (a) emergency repairs;
 - (b) a building improvement or public works project if the estimated cost under Section 11-39-102 is less than the bid limit; or
 - (c) the conduct or management of any of the departments, business, or property of the local entity.
- (2) This section may not be construed to limit the application of Section 72-6-108 to an improvement project, as defined in Section 72-6-109, that would otherwise be subject to Section 72-6-108.
- (3) This part applies to a building improvement or public works project of a special service district only to the extent that the contract for the building improvement or public works project is in a class of contract designated under Section 17D-1-107 as subject to this part.

Amended by Chapter 360, 2008 General Session

11-39-105 Retained payments.

Each payment that the local entity retains on a contract with a private person, firm, or corporation shall be retained and released as provided in Section 13-8-5.

Enacted by Chapter 259, 2003 General Session

11-39-106 Attorney's fees and costs in civil action.

In a civil action to enforce the provisions of this part against a local entity, the court may award attorney's fees and costs to the prevailing party.

Enacted by Chapter 259, 2003 General Session

11-39-107 Procurement code.

- (1) This chapter may not be construed to:
 - (a) prohibit a county or municipal legislative body from adopting the procedures of the procurement code; or
 - (b) limit the application of the procurement code to a local district or special service district.
- (2) A local entity may adopt procedures for the following construction contracting methods:
 - (a) construction manager/general contractor, as defined in Section 63G-6a-103;
 - (b) a method that requires that the local entity draft a plan, specifications, and an estimate for the building improvement or public works project; or
 - (c) design-build, as defined in Section 63G-6a-103, if the local entity consults with a professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, or an architect licensed under Title 58, Chapter 3a, Architects Licensing Act, who has design-build experience and is employed by or under contract with the local entity.
- (3)
 - (a) In seeking bids and awarding a contract for a building improvement or public works project, a county or a municipal legislative body may elect to follow the provisions of the procurement code, as the county or municipal legislative body considers appropriate under the circumstances, for specification preparation, source selection, or contract formation.
 - (b) A county or municipal legislative body's election to adopt the procedures of the procurement code may not excuse the county or municipality, respectively, from complying with the requirements to award a contract for work in excess of the bid limit and to publish notice of the intent to award.
 - (c) An election under Subsection (3)(a) may be made on a case-by-case basis, unless the county or municipality has previously adopted the procurement code.
 - (d) The county or municipal legislative body shall:
 - (i) make each election under Subsection (3)(a) in an open meeting; and
 - (ii) specify in its action the portions of the procurement code to be followed.
- (4) If the estimated cost of the building improvement or public works project proposed by a local district or special service district exceeds the bid limit, the governing body of the local district or special service district may, if it determines to proceed with the building improvement or public works project, use the competitive procurement procedures of the procurement code in place of the comparable provisions of this chapter.

Amended by Chapter 196, 2014 General Session

