

**BIDDING PROCESS ON STATE BUILDINGS**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Gerry A. Adair**

AN ACT RELATING TO PUBLIC CONSTRUCTION PROCUREMENT; ALLOWING THE DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT CERTAIN INCREASED FLEXIBILITY WHEN BIDS EXCEED AVAILABLE FUNDS; ~~h~~ **MAKING** TECHNICAL CORRECTIONS ~~h~~ ; **AND PROVIDING AN EFFECTIVE DATE h** .

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

AMENDS:

**63-56-20**, as enacted by Chapter 75, Laws of Utah 1980

**63A-5-103**, as last amended by Chapter 3, Laws of Utah 1997

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

Section 1. Section **63-56-20** is amended to read:

**63-56-20. Contracts awarded by sealed bidding -- Procedure.**

(1) Contracts shall be awarded by competitive sealed bidding except as otherwise provided by this chapter.

(2) (a) An invitation for bids shall be issued when a contract is to be awarded by competitive sealed bidding.

(b) The invitation shall include a purchase description and all contractual terms and conditions applicable to the procurement.

(3) (a) Public notice of the invitation for bids shall be given a reasonable time [prior to] before the date set forth [~~therein~~] in the invitation for the opening of bids, in accordance with rules [and regulations].

(b) The notice may include publication in a newspaper of general circulation a reasonable time [prior to] before bid opening.

(4) (a) Bids shall be opened publicly in the presence of one or more witnesses at the time

1 and place designated in the invitation for bids.

2       **(b)** The amount of each bid and any other relevant information specified by rules [and  
3 regulations], together with the name of each bidder, shall be recorded.

4       **(c)** The record and each bid shall be open to public inspection.

5       **(5) (a)** Bids shall be unconditionally accepted without alteration or correction, except as  
6 authorized in this chapter.

7       **(b) (i)** Bids shall be evaluated based on the requirements set forth in the invitation for bids,  
8 which may include criteria to determine acceptability such as inspection, testing, quality,  
9 workmanship, delivery, and suitability for a particular purpose.

10       **(ii)** Those criteria that will affect the bid price and be considered in evaluation for award  
11 shall be objectively measurable.

12       **(iii)** The criteria may include discounts, transportation costs, and total or life cycle costs.

13       **(c)** No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

14       **(6) (a)** Correction or withdrawal of inadvertently erroneous bids before or after award, or  
15 cancellation of awards or contracts based on [such] the bid mistakes, shall be permitted in  
16 accordance with rules [and regulations].

17       **(b)** After bid opening, no changes in bid prices or other provisions of bids prejudicial to  
18 the interest of the state or fair competition [shall] may be permitted.

19       **(c)** Except as otherwise provided by [~~rules and regulations~~] rule, all decisions to permit  
20 the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall  
21 be supported by a written determination made by the chief procurement officer or the head of a  
22 purchasing agency.

23       **(7) (a)** The contract shall be awarded with reasonable promptness by written notice to the  
24 lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth  
25 in the invitation for bids. [~~In the event all~~]

26       **(b) (i)** If all bids for a construction project exceed available funds as certified by the  
27 appropriate fiscal officer, and the low responsive and responsible bid does not exceed [such] those  
28 funds by more than 5%, the chief procurement officer or the head of a purchasing agency [is  
29 authorized] may, in situations where time or economic considerations preclude resolicitation of  
30 work of a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid  
31 requirements, with the low responsive and responsible bidder, in order to bring the bid within the

1 amount of available funds.

2 (ii) If the State Building Board establishes alternative procedures by rule under Section  
3 63A-5-103, the Division of Facilities Construction and Management need not comply with the  
4 provisions of Subsection (7) ~~h~~ [(a)] ~~h~~ when a bid meets the requirements of the State Building Board's  
5 rule.

6 (8) When it is considered impractical to prepare initially a purchase description to support  
7 an award based on price, an invitation for bids may be issued requesting the submission of  
8 unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have  
9 been qualified under the criteria set forth in the first solicitation.

10 Section 2. Section **63A-5-103** is amended to read:

11 **63A-5-103. Board -- Powers.**

12 (1) The State Building Board shall:

13 (a) in cooperation with state institutions, departments, commissions, and agencies, prepare  
14 a master plan of structures built or contemplated;

15 (b) submit to the governor and the Legislature a comprehensive five-year building plan  
16 for the state containing the information required by Subsection (2);

17 (c) amend and keep current the five-year building program for submission to the governor  
18 and subsequent legislatures;

19 (d) as a part of the long-range plan, recommend to the governor and Legislature any  
20 changes in the law that are necessary to insure an effective, well-coordinated building program for  
21 all state institutions;

22 (e) make rules necessary to discharge its duties and the duties of the Division of Facilities  
23 Construction and Management by following the procedures and requirements of Title 63, Chapter  
24 46a, Utah Administrative Rulemaking Act;

25 (f) with support from the Division of Facilities Construction and Management, establish  
26 design criteria, standards, and procedures for the use of state agencies and institutions in the  
27 planning for new state buildings and facilities including life-cycle costing, cost-effectiveness  
28 studies, and other methods and procedures that demonstrate:

29 (i) the need for the building or facility;

30 (ii) the effectiveness of its design;

31 (iii) the efficiency of energy use; and

1 (iv) the usefulness of the building or facility over its lifetime;

2 (g) prepare and submit a yearly request to the governor and the Legislature for a  
3 designated amount of square footage by type of space to be leased by the Division of Facilities  
4 Construction and Management in that fiscal year; and

5 (h) assure the efficient use of all building space.

6 (2) In order to provide adequate information upon which the State Building Board may  
7 make its recommendation under Subsection (1), any state agency requesting new full-time  
8 employees for the next fiscal year shall report those anticipated requests to the building board at  
9 least 90 days before the annual general session in which the request is made.

10 (3) (a) The State Building Board shall ensure that the five-year building plan required by  
11 Subsection (1)(c) includes:

12 (i) a list that prioritizes construction of new buildings for all structures built or  
13 contemplated based upon each agency's, department's, commission's, and institution's present and  
14 future needs;

15 (ii) information, and space use data for all state-owned and leased facilities;

16 (iii) substantiating data to support the adequacy of any projected plans;

17 (iv) a summary of all statewide contingency reserve and project reserve balances as of the  
18 end of the most recent fiscal year;

19 (v) a list of buildings that have completed a comprehensive facility evaluation by an  
20 architect/engineer or are scheduled to have an evaluation;

21 (vi) for those buildings that have completed the evaluation, the estimated costs of needed  
22 improvements; and

23 (vii) for projects recommended in the first two years of the five-year building plan:

24 (A) detailed estimates of the cost of each project;

25 (B) the estimated cost to operate and maintain the building or facility on an annual basis;

26 (C) the estimated number of new agency full-time employees expected to be housed in the  
27 building or facility;

28 (D) the estimated cost of new or expanded programs and personnel expected to be housed  
29 in the building or facility;

30 (E) the estimated lifespan of the building with associated costs for major component  
31 replacement over the life of the building; and

1 (F) the estimated cost of any required support facilities.

2 (b) The State Building Board may make rules prescribing the format for submitting the  
3 information required by this subsection.

4 (4) (a) The State Building Board may make rules establishing circumstances under which  
5 bids may be ~~h [canceled]~~ **MODIFIED** ~~h~~ when all bids for a construction project exceed available funds  
5a as certified  
6 by the director.

7 (b) In making those rules, the State Building Board shall provide for the fair and equitable  
8 treatment of bidders.

8a ~~h~~ **Section 3. Effective Date.**

8b **THIS ACT TAKES EFFECT JULY 1, 1998.** ~~h~~

**Legislative Review Note**  
**as of 1-26-98 7:55 AM**

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

**Office of Legislative Research and General Counsel**