

Senator Curtis S. Bramble proposes the following substitute bill:

1 **BID REQUIREMENTS ON COUNTY OR**
2 **MUNICIPAL CONSTRUCTION PROJECTS**

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Howard A. Stephenson**

6 **This act modifies the Utah Municipal Code, the County Code, the State System of Public**
7 **Education Code, the Transportation Code, and the Special Districts Code to require that**
8 **government entities bid out certain construction projects. The act defines which types of**
9 **improvements and construction projects must be bid and provides for attorney's fees in a**
10 **civil suit for violation of the bidding requirements. The act provides for inflation indexing**
11 **of bid limits.**

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

13 AMENDS:

14 **10-7-20**, as last amended by Chapter 365, Laws of Utah 1999

15 **53A-20-101**, as last amended by Chapters 86 and 123, Laws of Utah 2000

16 **72-6-109**, as renumbered and amended by Chapter 270, Laws of Utah 1998

17 ENACTS:

18 **17-50-321**, Utah Code Annotated 1953

19 **17A-1-901**, Utah Code Annotated 1953

20 REPEALS:

21 **17A-2-531**, as last amended by Chapters 86 and 254, Laws of Utah 2000

22 **17A-2-723**, as last amended by Chapters 86 and 254, Laws of Utah 2000

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

24 Section 1. Section **10-7-20** is amended to read:

25 **10-7-20. Definition -- Necessity for contract -- Call for bids -- Acceptance or rejection**



26 -- Retainage -- Attorney's fees.

27 (1) As used in this section~~[-, the term]:~~

28 (a) "base amount" means the bid limit amount for a building improvement or a public
29 works improvement stated in Subsection (2)(b):

30 (b) "building improvement" means constructing or repairing any building or structure,
31 except for improvements at international airports financed by non-Utah based tax dollars;

32 (c) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers
33 as published by the Bureau of Labor Statistics of the U.S. Department of Labor;

34 (d) "CPI%" means the lesser of 3% or the actual total percent change in the Consumer
35 Price Index during the calendar year immediately preceding the year in which the bid limit is
36 calculated;

37 (e) "emergency repairs" means any work which must be undertaken on an expedited basis
38 in order to prevent further damage to or loss of public or private property or to remedy a condition
39 that poses an immediate physical danger;

40 (f) "lowest responsive responsible bidder" means any prime contractor who:

41 ~~[(a)]~~ (i) has bid in compliance with the invitation to bid and within the requirements of the
42 plans and specifications for a construction project;

43 ~~[(b)]~~ (ii) is the low bidder;

44 ~~[(c)]~~ (iii) has furnished a bid bond or equivalent in money as a condition to the award of
45 a prime contract; and

46 ~~[(d)]~~ (iv) furnishes a payment and performance bond as required by law~~[-]; and~~

47 (g) "public works improvement" means constructing any park or recreation facility,
48 pipeline, culvert, dam, canal, or other system for water, sewer, storm water, or flood control,
49 except for:

50 (i) the replacement or repair of existing infrastructure on private property; and

51 (ii) improvements at international airports financed by non-Utah based tax dollars.

52 (2) (a) Whenever the board of commissioners or city council of any city or the board of
53 trustees of any town contemplates making any new building improvement or public works
54 improvement ~~[to be]~~ paid for ~~[out of the general funds of]~~ by the city or town, the governing body
55 shall cause plans and specifications for, and an estimate of the cost of, the improvement to be
56 made.

57 (b) If the estimated cost of the building improvement is less than [~~\$25,000;~~] \$40,000, as
58 adjusted for inflation in accordance with Subsection (6), or the estimated cost of the public works
59 improvement is less than \$125,000, as adjusted for inflation in accordance with Subsection (6),
60 the city or town may make the improvement without calling for bids for making the same.

61 (c) (i) If the estimated cost of the proposed building improvement exceeds [~~\$25,000;~~]
62 \$40,000, **§ AS ADJUSTED FOR INFLATION IN ACCORDANCE WITH SUBSECTION (6), §** or the
62a estimated cost of the public works improvement exceeds \$125,000, as adjusted for
63 inflation in accordance with Subsection (6), the city or town shall, if it determines to make the
64 improvement, do so by contract let to the lowest responsive responsible bidder after publication
65 of notice at least twice in a newspaper published or of general circulation in that city or town at
66 least five days prior to the opening of bids.

67 (ii) If there is no newspaper published or of general circulation in the city or town, the
68 notice shall be posted at least five days prior to the opening of bids in at least five public places
69 in the city or town. The notice shall remain posted for at least three days.

70 (d) If the cost of a contemplated building improvement exceeds the sum of [~~\$25,000;~~]
71 \$40,000, as adjusted for inflation in accordance with Subsection (6), or the estimated cost of the
72 public works improvement exceeds \$125,000, as adjusted for inflation in accordance with
73 Subsection (6), the same shall not be so divided as to permit the making of such improvement in
74 several parts, except by contract.

75 (e) (i) The governing body has the right to reject any or all bids presented, and all notices
76 calling for bids shall so state.

77 (ii) If all bids are rejected and the governing body decides to make the improvement, it
78 shall advertise anew in the same manner as before.

79 (iii) If after twice advertising as provided in this section, no bid is received that is
80 satisfactory, the governing body may proceed under its own direction to make the improvement.

81 (f) Emergency repairs are not subject to the requirements of this Subsection (2).

82 (3) If any payment on a contract with a private person, firm, or corporation is retained or
83 withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

84 (4) (a) Cities and towns are not required to call for bids or let contracts for the conduct or
85 management of any of the departments, business, or property of the city or town[;].

86 (b) Cities and towns are not required to call for bids or let contracts for lowering or
87 repairing water mains or sewers, making connections with water mains or sewers, or for grading,

88 repairing, or maintaining streets, sidewalks, bridges, culverts, or conduits in any city or town if the
89 estimated cost of the work is less than \$125,000, as adjusted for inflation in accordance with
90 Subsection (6).

91 ~~[(b)]~~ (c) Work excluded under this Subsection (4) shall comply with Section 72-6-108 as
92 applicable.

93 (5) In a civil action to enforce the provisions of this section against a municipality, the
94 court ~~§ [shall]~~ **MAY** § award attorney's fees and costs to the prevailing party.

95 (6) The bid limit amounts listed in Subsection (2) shall be annually adjusted for inflation
96 by multiplying the base amount by the CPI% and adding that amount to the bid limit amount
97 calculated for the previous year.

98 Section 2. Section **17-50-321** is enacted to read:

99 **17-50-321. Definition -- Necessity for contract -- Call for bids -- Acceptance or**
100 **rejection -- Retainage -- Attorney's fees.**

101 (1) As used in this section:

102 (a) "base amount" means the bid limit amount for a building improvement or a public
103 works improvement stated in Subsection (2)(b);

104 (b) "building improvement" means constructing or repairing any building or structure,
105 except for improvements at international airports financed by non-Utah based tax dollars;

106 (c) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers
107 as published by the Bureau of Labor Statistics of the U.S. Department of Labor;

108 (d) "CPI%" means the lesser of 3% or the actual total percent change in the Consumer
109 Price Index during the calendar year immediately preceding the year in which the bid limit is
110 calculated;

111 (e) "emergency repairs" means any work which must be undertaken on an expedited basis
112 in order to prevent further damage to or loss of public or private property or to remedy a condition
113 that poses an immediate physical danger;

114 (f) "lowest responsive responsible bidder" means any prime contractor who:

115 (i) has bid in compliance with the invitation to bid and within the requirements of the plans
116 and specifications for a construction project;

117 (ii) is the low bidder;

118 (iii) has furnished a bid bond or equivalent in money as a condition to the award of a prime

119 contract; and

120 (iv) furnishes a payment and performance bond as required by law; and

121 (g) "public works improvement" means constructing any park or recreational facility,

122 pipeline, culvert, dam, canal, or other system for water, sewer, storm water, or flood control,

123 except for:

124 (i) the replacement or repair of existing infrastructure on private property; and

125 (ii) improvements at international airports financed by non-Utah based tax dollars.

126 (2) (a) Whenever the governing body of any county contemplates making any new building

127 improvement or public works improvement paid for by the county, the governing body shall cause

128 plans and specifications for, and an estimate of the cost of, the improvement to be made.

129 (b) If the estimated cost of the building improvement is less than \$40,000, as adjusted for

130 inflation in accordance with Subsection (6), or the estimated cost of the public works improvement

131 is less than \$125,000, as adjusted for inflation in accordance with Subsection (6), the county may

132 make the improvement without calling for bids for making the same.

133 (c) (i) If the estimated cost of the proposed building improvement exceeds \$40,000, as

134 adjusted for inflation in accordance with Subsection (6), or the estimated cost of the public works

135 improvement exceeds \$125,000, as adjusted for inflation in accordance with Subsection (6), the

136 county shall, if it determines to make the improvement, do so by contract let to the lowest

137 responsive responsible bidder after publication of notice at least twice in a newspaper published

138 or of general circulation in that county at least five days prior to the opening of bids.

139 (ii) If there is no newspaper published or of general circulation in the county, the notice

140 shall be posted at least five days prior to the opening of bids in at least five public places in the

141 county. The notice shall remain posted for at least three days.

142 (d) If the cost of a contemplated building improvement exceeds the sum of \$40,000, as

143 adjusted for inflation in accordance with Subsection (6), or the estimated cost of the public works

144 improvement exceeds \$125,000, as adjusted for inflation in accordance with Subsection (6), the

145 same shall not be so divided as to permit the making of such improvement in several parts, except

146 by contract.

147 (e) (i) The governing body has the right to reject any or all bids presented, and all notices

148 calling for bids shall so state.

149 (ii) If all bids are rejected and the governing body decides to make the improvement, it

150 shall advertise anew in the same manner as before.

151 (iii) If after twice advertising as provided in this section, no bid is received that is
152 satisfactory, the governing body may proceed under its own direction to make the improvement.

153 (f) Emergency repairs are not subject to the requirements of this Subsection (2).

154 (3) If any payment on a contract with a private person, firm, or corporation is retained or
155 withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

156 (4) (a) Counties are not required to call for bids or let contracts for the conduct or
157 management of any of the departments, business, or property of the county.

158 (b) Counties are not required to call for bids or let contracts for lowering or repairing water
159 mains or sewers, making connections with water mains or sewers, or for grading, repairing, or
160 maintaining streets, sidewalks, bridges, culverts, or conduits in any county if the estimated cost of
161 the work is less than \$125,000, as adjusted for inflation in accordance with Subsection (6).

162 (c) Work excluded under this Subsection (4) shall comply with Section 72-6-108 as
163 applicable.

164 (5) In a civil action to enforce the provisions of this section against a county, the court
165 § [shall] MAY § award attorney's fees and costs to the prevailing party.

166 (6) The bid limit amounts listed in Subsection (2) shall be annually adjusted for inflation
167 by multiplying the base amount by the CPI% and adding that amount to the bid limit amount
168 calculated for the previous year.

169 Section 3. Section **17A-1-901** is enacted to read:

170 **Part 9. Call for Bids**

171 **17A-1-901. Necessity for contract -- Call for bids -- Acceptance or rejection --**

172 **Retainage -- Attorney's fees.**

173 (1) As used in this section:

174 (a) "base amount" means the bid limit amount for a building improvement or a public
175 works improvement stated in Subsection (2)(b);

176 (b) "building improvement" means constructing or repairing any building or structure,
177 except for improvements at international airports financed by non-Utah based tax dollars;

178 (c) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers
179 as published by the Bureau of Labor Statistics of the U.S. Department of Labor;

180 (d) "CPI%" means the lesser of 3% or the actual total percent change in the Consumer

181 Price Index during the calendar year immediately preceding the year in which the bid limit is
182 calculated;

183 (e) "emergency repairs" means any work which must be undertaken on an expedited basis
184 in order to prevent further damage to or loss of public or private property or to remedy a condition
185 that poses an immediate physical danger;

186 (f) "lowest responsive responsible bidder" means any prime contractor who:

187 (i) has bid in compliance with the invitation to bid and within the requirements of the plans
188 and specifications for a construction project;

189 (ii) is the low bidder;

190 (iii) has furnished a bid bond or equivalent in money as a condition to the award of a prime
191 contract; and

192 (iv) furnishes a payment and performance bond as required by law; and

193 (g) "public works improvement" means constructing any park or recreational facility,
194 pipeline, culvert, dam, canal, or other system for water, sewer, storm water, or flood control,
195 except for:

196 (i) the replacement or repair of existing infrastructure on private property; and

197 (ii) improvements at international airports financed by non-Utah based tax dollars.

198 (2) (a) Whenever the governing body of any special district governed by this title
199 contemplates making any new building improvement or public works improvement paid for by the
200 special district, the governing body shall cause plans and specifications for, and an estimate of the
201 cost of, the improvement to be made.

202 (b) If the estimated cost of the building improvement is less than \$40,000, as adjusted for
203 inflation in accordance with Subsection (6), or the estimated cost of the public works improvement
204 is less than \$125,000, as adjusted for inflation in accordance with Subsection (6), the special
205 district may make the improvement without calling for bids for making the same.

206 (c) (i) If the estimated cost of the proposed building improvement exceeds \$40,000, as
207 adjusted for inflation in accordance with Subsection (6), or the estimated cost of the public works
208 improvement exceeds \$125,000, as adjusted for inflation in accordance with Subsection (6), the
209 special district shall, if it determines to make the improvement, do so by contract let to the lowest
210 responsive responsible bidder after publication of notice at least twice in a newspaper published
211 or of general circulation in the boundaries of that special district at least five days prior to the

212 opening of bids.

213 (ii) If there is no newspaper published of general circulation in the special district, the
214 notice shall be posted at least five days prior to the opening of bids in at least five public places
215 in the special district. The notice shall remain posted for at least three days.

216 (d) If the cost of a contemplated building improvement exceeds the sum of \$40,000, as
217 adjusted for inflation in accordance with Subsection (6), or the estimated cost of the public works
218 improvement exceeds \$125,000, as adjusted for inflation in accordance with Subsection (6), the
219 same shall not be so divided as to permit the making of such improvement in several parts, except
220 by contract.

221 (e) (i) The governing body has the right to reject any or all bids presented, and all notices
222 calling for bids shall so state.

223 (ii) If all bids are rejected and the governing body decides to make the improvement, it
224 shall advertise anew in the same manner as before.

225 (iii) If after twice advertising as provided in this section, no bid is received that is
226 satisfactory, the governing body may proceed under its own direction to make the improvement.

227 (f) Emergency repairs are not subject to the requirements of this Subsection (2).

228 (3) If any payment on a contract with a private person, firm, or corporation is retained or
229 withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

230 (4) (a) Special districts are not required to call for bids or let contracts for the conduct or
231 management of any of the departments, business, or property of the special district.

232 (b) Special districts are not required to call for bids or let contracts for lowering or
233 repairing water mains or sewers, making connections with water mains or sewers, or for grading,
234 repairing, or maintaining streets, sidewalks, bridges, culverts, or conduits in any special district
235 if the estimated cost of the work is less than \$125,000, as adjusted for inflation in accordance with
236 Subsection (6).

237 (5) In a civil action to enforce the provisions of this section against a special district, the
238 court ~~§ [shall]~~ MAY § award attorney's fees and costs to the prevailing party.

239 (6) The bid limit amounts listed in Subsection (2) shall be annually adjusted for inflation
240 by multiplying the base amount by the CPI% and adding that amount to the bid limit amount
241 calculated for the previous year.

242 Section 4. Section **53A-20-101** is amended to read:

243 **53A-20-101. Construction and alteration of schools and plants -- Advertising for bids**
244 **-- Payment and performance bonds -- Contracts -- Bidding limitations on local school boards**
245 **-- Interest of local school board members.**

246 (1) As used in this section, the word "sealed" does not preclude acceptance of
247 electronically sealed and submitted bids or proposals in addition to bids or proposals manually
248 sealed and submitted.

249 (2) (a) Prior to the construction of any school or the alteration of any existing school plant,
250 if the total estimated accumulative building project cost exceeds \$80,000, a local school board
251 shall advertise for bids on the project at least ten days before the bid due date.

252 (b) The board shall have the advertisement published in a newspaper having general
253 circulation throughout the state and in appropriate construction trade publications that offer free
254 listings.

255 (c) A similar advertisement is required in a newspaper published or having general
256 circulation in any city or county that would be affected by the proposed project.

257 (d) The advertisement shall:

258 (i) require sealed proposals for the building project in accordance with plans and
259 specifications furnished by the local school board;

260 (ii) state where and when the proposals will be opened and shall reserve the right of the
261 board to reject any and all proposals; and

262 (iii) require a certified check or bid bond of not less than 5% of the bid to accompany the
263 bid.

264 (3) (a) The board shall meet at the time and place specified in the advertisement and
265 publicly open and read all received proposals.

266 (b) If satisfactory bids are received, the board shall award the contract to the lowest
267 responsible bidder.

268 (c) If none of the proposals are satisfactory, all shall be rejected.

269 (d) The board shall again advertise in the manner provided in this section.

270 (e) If, after advertising a second time no satisfactory bid is received, the board may proceed
271 under its own direction with the required project.

272 (4) (a) The check or bond required under Subsection (2)(d) shall be drawn in favor of the
273 local school board.

274 (b) If the successful bidder fails or refuses to enter into the contract and furnish the
275 additional bonds required under this section, then the bidder's check or bond is forfeited to the
276 district.

277 (5) A local school board shall require payment and performance bonds of the successful
278 bidder as required in Section 63-56-38.

279 (6) (a) A local school board may require in the proposed contract that at least 10% of the
280 contract price be withheld until the project is completed and accepted by the board.

281 (b) If money is withheld, the board shall place it in an interest bearing account, and the
282 interest accrues for the benefit of the contractor and subcontractors.

283 (c) This money shall be paid upon completion of the project and acceptance by the board.

284 (7) (a) A local school board may not bid on projects within the district if the total
285 accumulative estimated cost exceeds \$80,000.

286 (b) The board may use its resources if no satisfactory bids are received under this section.

287 (8) If the local school board determines in accordance with Section 63-56-36 to use a
288 construction manager/general contractor as its method of construction contracting management on
289 projects where the total estimated accumulative cost exceeds \$80,000, it shall select the
290 construction manager/general contractor using one of the source selection methods provided for
291 in Sections 63-56-20 through 63-56-36.

292 (9) A local school board member may not have a direct or indirect financial interest in the
293 construction project contract.

294 (10) In a civil action to enforce the provisions of this section against a school board, the
295 court shall award attorney's fees and costs to the prevailing party.

296 Section 5. Section **72-6-109** is amended to read:

297 **72-6-109. Class B and C roads -- Construction and maintenance -- Definitions --**

298 **Estimates lower than bids -- Accountability.**

299 (1) As used in this section and Section 72-6-108:

300 (a) "Bid limit" means [~~\$100,000~~] \$125,000, as adjusted for inflation in accordance with
301 Subsection (4).

302 (b) (i) "Construction" means the work that would apply to:

303 (A) any new roadbed either by addition to existing systems or relocation;

304 (B) resurfacing of existing roadways with more than two inches of bituminous pavement;

305 or

306 (C) new structures or replacement of existing structures, except the replacement of
307 drainage culverts.

308 (ii) "Construction" does not include maintenance, emergency repairs, or the installation
309 of traffic control devices as described in Section 41-6-20.

310 (c) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers
311 as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

312 (d) "CPI%" means the lesser of 3% or the actual total percent change in the Consumer
313 Price Index during the calendar year immediately preceding the year in which the bid limit is
314 calculated.

315 [~~(e)~~] (e) "Improvement project" means construction and maintenance as defined in this
316 section except for that maintenance excluded under Subsection (2).

317 [~~(f)~~] (f) "Maintenance" means the keeping of a road facility in a safe and usable condition
318 to which it was constructed or improved, and includes:

319 (i) the reworking of an existing surface by the application of up to and including two
320 inches of bituminous pavement;

321 (ii) the installation or replacement of guardrails, seal coats, and culverts;

322 (iii) the grading or widening of an existing unpaved road or flattening of shoulders or side
323 slopes to meet current width and safety standards; and

324 (iv) horizontal or vertical alignment changes necessary to bring an existing road in
325 compliance with current safety standards.

326 [~~(g)~~] (g) "Project" means the performance of a clearly identifiable group of associated road
327 construction activities or the same type of maintenance process, where the construction or
328 maintenance is performed on any one class B or C road, within a half-mile proximity and occurs
329 within the same calendar year.

330 (2) The following types of maintenance work are not subject to the contract or bid limit
331 requirements of this section:

332 (a) the repair of less than the entire surface by crack sealing or patching; and

333 (b) road repairs incidental to the installation, replacement, or repair of water mains, sewers,
334 drainage pipes, culverts, or curbs and gutters.

335 (3) (a) (i) If the estimates of a qualified engineer referred to in Section 72-6-108 are

336 substantially lower than any responsible bid received or in the event no bids are received, the
337 county or municipality may perform the work by force account.

338 (ii) In no event shall "substantially lower" mean estimates that are less than 10% below
339 the lowest responsible bid.

340 (b) If a county or municipality performs an improvement project by force account, it shall:

341 (i) provide an accounting of the costs and expenditures of the improvement including
342 material, labor, and direct equipment costs to be calculated using the Cost Reference Guide for
343 Construction Equipment by Dataquest Inc.;

344 (ii) disclose the costs and expenditures to any person upon request and allow the person
345 to make a copy and pay for the actual cost of the copy; and

346 (iii) perform the work using the same specifications and standards that would apply to a
347 private contractor.

348 (4) The amount of the bid limit under Subsection (1)(a) shall be annually adjusted for
349 inflation by multiplying the bid limit amount as calculated for the previous year by the CPI% and
350 adding that amount to the bid limit amount calculated for the previous year.

351 Section 6. **Repealer.**

352 This act repeals:

353 Section 17A-2-531, **Bids for construction -- Contracts -- Payment and performance**
354 **bonds -- Retainage.**

355 Section 17A-2-723, **Construction -- Notice -- Awarding contracts -- Contractor's**
356 **bonds.**