

UTAH PROCUREMENT CODE AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Mike Dmitrich

This act modifies provisions relating to State Affairs in General. This act amends the Utah Procurement Code to designate that the chief procurement officer or the head of the purchasing agency responsible for carrying out a construction project of both state and local procurement units may not require a person or entity who is bidding for or who has been awarded a construction contract to obtain a bond from a specific insurance or surety company, producer, agent, or broker. This act makes a person who violates this act guilty of an infraction.

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

AMENDS:

63-56-2, as last amended by Chapter 123, Laws of Utah 1997

63-56-37, as last amended by Chapter 92, Laws of Utah 1987

63-56-38, as last amended by Chapter 232, Laws of Utah 1993

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

Section 1. Section **63-56-2** is amended to read:

63-56-2. Application of chapter.

(1) This chapter applies only to contracts solicited or entered into after the effective date of this chapter unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

(2) Except as provided in Section 63-56-3, this chapter shall apply to every expenditure of public funds irrespective of their source, including federal assistance, by any state agency under any contract.

(3) (a) Only the following sections shall apply to local public procurement units: Sections 63-56-3, 63-56-5, 63-56-16, 63-56-19 through 63-56-33, 63-56-35.5, 63-56-36 through 63-56-41, 63-56-45 through 63-56-50, and 63-56-59 through 63-56-63; provided, however, that, except as provided in Sections 63-56-70 and 63-56-71, the jurisdiction of the procurement appeals board is

limited to matters involving state agencies.

(b) [~~Subsection~~] Subsections 63-56-14(1)(b), 63-56-37(4), and 63-56-38(2) also [~~applies~~] apply to local public procurement units.

(c) For the purpose of application of those sections and subsections to a local public procurement unit, "state" shall mean "local public procurement unit," "chief procurement officer" or "head of a purchasing agency" shall mean any person conducting procurement for a local public procurement unit, and "rules and regulations" shall mean ordinances and rules and regulations promulgated by a local public procurement unit to implement or supplement those sections.

(d) In addition to the sections and subsections listed above and except as provided in Section 17A-1-801 relating to special districts, each local public procurement unit shall adopt ordinances relating to the procurement of architect-engineer services not inconsistent with the provisions of Part G of this chapter.

(e) Any other section of this chapter, or its implementing regulations, may be adopted by any local public procurement unit.

(f) Any other implementing regulations adopted by local public procurement units may not be inconsistent with the provisions of this chapter.

(4) Unless otherwise provided by statute, this chapter does not apply to procurement of real property.

Section 2. Section **63-56-37** is amended to read:

63-56-37. Bid security requirements -- Directed suretyship prohibited -- Penalty.

(1) Bid security in amount equal to at least 5% of the amount of the bid shall be required for all competitive sealed bidding for construction contracts. Bid security shall be a bond provided by a surety company authorized to do business in this state, the equivalent in cash, or any other form satisfactory to the state.

(2) When a bidder fails to comply with the requirement for bid security set forth in the invitation for bids, the bid shall be rejected unless, pursuant to rules, it is determined that the failure to comply with the security requirements is nonsubstantial.

(3) After the bids are opened, they shall be irrevocable for the period specified in the

invitation for bids, except as provided in Subsection 63-56-20(6). If a bidder is permitted to withdraw a bid before award, no action shall be taken against the bidder or the bid security.

(4) (a) When issuing an invitation for a bid under this chapter, the chief procurement officer or the head of the purchasing agency responsible for carrying out a construction project may not require a person or entity who is bidding for a contract to obtain a bond of the type referred to in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.

(b) A person who violates Subsection (4)(a) is guilty of an infraction.

Section 3. Section **63-56-38** is amended to read:

63-56-38. Bonds necessary when contract is awarded -- Waiver -- Action -- Attorneys' fees.

(1) When a construction contract is awarded under this chapter, the contractor to whom the contract is awarded shall deliver the following bonds or security to the state, which shall become binding on the parties upon the execution of the contract:

(a) a performance bond satisfactory to the state that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in this state or any other form satisfactory to the state; and

(b) a payment bond satisfactory to the state that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in this state or any other form satisfactory to the state, which is for the protection of each person supplying labor, service, equipment, or material for the performance of the work provided for in the contract.

(2) (a) When a construction contract is awarded under this chapter, the chief procurement officer or the head of the purchasing agency responsible for carrying out a construction project may not require a contractor to whom a contract is awarded to obtain a bond of the types referred to in Subsections (1)(a) and (b) from a specific insurance or surety company, producer, agent, or broker.

(b) A person who violates Subsection (2)(a) is guilty of an infraction.

~~(2)~~ (3) Rules may provide for waiver of the requirement of a bid, performance, or payment bond for circumstances in which the state considers any or all of the bonds to be unnecessary to protect the state.

~~[(3)]~~ (4) A person shall have a right of action on a payment bond under this section for any unpaid amount due him if:

(a) he has furnished labor, service, equipment, or material for the work provided for in the contract for which the payment bond is furnished under this section; and

(b) he has not been paid in full within 90 days after the last date on which he performed the labor or service or supplied the equipment or material for which the claim is made.

~~[(4)]~~ (5) An action upon a payment bond shall be brought in a court of competent jurisdiction in any county where the construction contract was to be performed and not elsewhere. The action is barred if not commenced within one year after the last day on which the claimant performed the labor or service or supplied the equipment or material on which the claim is based. The obligee named in the bond need not be joined as a party to the action.

~~[(5)]~~ (6) In any suit upon a payment bond, the court shall award reasonable attorneys' fees to the prevailing party, which fees shall be taxed as costs in the action.