

Senator Howard A. Stephenson proposes the following substitute bill:

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

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Howard A. Stephenson

This act modifies the Utah Municipal Code, the County Code, the State System of Public Education Code, and the Special Districts Code to require that political subdivisions bid out certain construction projects. The act defines which types of improvements and construction projects must be bid and provides for attorney's fees in a civil suit for violation of the bidding requirements.

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

AMENDS:

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

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

ENACTS:

17-50-321, Utah Code Annotated 1953

17A-2-104, Utah Code Annotated 1953

REPEALS:

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

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

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

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

10-7-20. Definition -- Necessity for contract -- Call for bids -- Acceptance or rejection -- Retainage -- Attorney's fees.

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



- 26 (a) "building improvement" means constructing or repairing any building or structure;
27 (b) "emergency repairs" means any work which must be undertaken on an expedited basis
28 in order to prevent further damage to or loss of public or private property or to remedy a condition
29 that poses an immediate physical danger;
30 (c) "public works improvement" means constructing any park or recreation facility,
31 pipeline, culvert, dam, canal, or other system for water, sewer, storm water, or flood control,
32 except for the replacement or repair of existing infrastructure on private property; and
33 (d) "lowest responsible bidder" means any prime contractor who:
34 [~~(a)~~] (i) has bid in compliance with the invitation to bid and within the requirements of the
35 plans and specifications for a construction project;
36 [~~(b)~~] (ii) is the low bidder;
37 [~~(c)~~] (iii) has furnished a bid bond or equivalent in money as a condition to the award of
38 a prime contract; and
39 [~~(d)~~] (iv) furnishes a payment and performance bond as required by law.
40 (2) (a) Whenever the board of commissioners or city council of any city or the board of
41 trustees of any town contemplates making any new building improvement or public works
42 improvement [to be] paid for [out of the general funds of] by the city or town, the governing body
43 shall cause plans and specifications for, and an estimate of the cost of, the improvement to be
44 made.
45 (b) If the estimated cost of the building improvement is less than [~~\$25,000;~~] \$40,000, or
46 the estimated cost of the public works improvement is less than \$125,000, the city or town may
47 make the improvement without calling for bids for making the same.
48 (c) (i) If the estimated cost of the proposed building improvement exceeds [~~\$25,000;~~]
49 \$40,000, or the estimated cost of the public works improvement exceeds \$125,000, the city or
50 town shall, if it determines to make the improvement, do so by contract let to the lowest
51 responsible bidder after publication of notice at least twice in a newspaper published or of general
52 circulation in that city or town at least five days prior to the opening of bids.
53 (ii) If there is no newspaper published or of general circulation in the city or town, the
54 notice shall be posted at least five days prior to the opening of bids in at least five public places
55 in the city or town. The notice shall remain posted for at least three days.
56 (d) If the cost of a contemplated building improvement exceeds the sum of [~~\$25,000;~~]

57 \$40,000, or the estimated cost of the public works improvement exceeds \$125,000, the same shall
58 not be so divided as to permit the making of such improvement in several parts, except by contract.

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

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

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

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

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

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

70 (b) Cities and towns are not required to call for bids or let contracts for lowering or
71 repairing water mains or sewers, making connections with water mains or sewers, or for grading,
72 repairing, or maintaining streets, sidewalks, bridges, culverts, or conduits in any city or town if the
73 estimated cost of the work is less than \$125,000.

74 ~~(b)~~ (c) Work excluded under this Subsection (4) shall comply with Section 72-6-108 as
75 applicable.

76 (5) In a civil action to enforce the provisions of this section against a municipality, the
77 court shall award attorney's fees and costs to the prevailing party.

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

79 **17-50-321. Definition -- Necessity for contract -- Call for bids -- Acceptance or**
80 **rejection -- Retainage -- Attorney's fees.**

81 (1) As used in this section:

82 (a) "building improvement" means constructing or repairing any building or structure;

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

86 (c) "public works improvement" means constructing any park or recreational facility,
87 pipeline, culvert, dam, canal, or other system for water, sewer, storm water, or flood control,

88 except for the replacement or repair of existing infrastructure on private property; and

89 (d) "lowest responsible bidder" means any prime contractor who:

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

92 (ii) is the low bidder;

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

95 (iv) furnishes a payment and performance bond as required by law.

96 (2) (a) Whenever the governing body of any county contemplates making any new building
97 improvement or public works improvement paid for by the county, the governing body shall cause
98 plans and specifications for, and an estimate of the cost of, the improvement to be made.

99 (b) If the estimated cost of the building improvement is less than \$40,000, or the estimated
100 cost of the public works improvement is less than \$125,000, the county may make the
101 improvement without calling for bids for making the same.

102 (c) (i) If the estimated cost of the proposed building improvement exceeds \$40,000, or the
103 estimated cost of the public works improvement exceeds \$125,000, the county shall, if it
104 determines to make the improvement, do so by contract let to the lowest responsible bidder after
105 publication of notice at least twice in a newspaper published or of general circulation in that county
106 at least five days prior to the opening of bids.

107 (ii) If there is no newspaper published or of general circulation in the county, the notice
108 shall be posted at least five days prior to the opening of bids in at least five public places in the
109 county. The notice shall remain posted for at least three days.

110 (d) If the cost of a contemplated building improvement exceeds the sum of \$40,000, or the
111 estimated cost of the public works improvement exceeds \$125,000, the same shall not be so
112 divided as to permit the making of such improvement in several parts, except by contract.

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

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

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

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

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

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

124 (b) Counties are not required to call for bids or let contracts for lowering or repairing water
125 mains or sewers, making connections with water mains or sewers, or for grading, repairing, or
126 maintaining streets, sidewalks, bridges, culverts, or conduits in any county if the estimated cost of
127 the work is less than \$125,000.

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

130 (5) In a civil action to enforce the provisions of this section against a county, the court
131 shall award attorney's fees and costs to the prevailing party.

132 Section 3. Section **17A-2-104** is enacted to read:

133 **17A-2-104. Necessity for contract -- Call for bids -- Acceptance or rejection --**
134 **Retainage -- Attorney's fees.**

135 (1) As used in this section:

136 (a) "building improvement" means constructing or repairing any building or structure;

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

140 (c) "public works improvement" means constructing any park or recreational facility,
141 pipeline, culvert, dam, canal, or other system for water, sewer, storm water, or flood control,
142 except for the replacement or repair of existing infrastructure on private property; and

143 (d) "lowest responsible bidder" means any prime contractor who:

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

146 (ii) is the low bidder;

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

149 (iv) furnishes a payment and performance bond as required by law.

150 (2) (a) Whenever the governing body of any independent special district governed by this
151 chapter contemplates making any new building improvement or public works improvement paid
152 for by the independent special district, the governing body shall cause plans and specifications for,
153 and an estimate of the cost of, the improvement to be made.

154 (b) If the estimated cost of the building improvement is less than \$40,000, or the estimated
155 cost of the public works improvement is less than \$125,000, the independent special district may
156 make the improvement without calling for bids for making the same.

157 (c) (i) If the estimated cost of the proposed building improvement exceeds \$40,000, or the
158 estimated cost of the public works improvement exceeds \$125,000, the independent special district
159 shall, if it determines to make the improvement, do so by contract let to the lowest responsible
160 bidder after publication of notice at least twice in a newspaper published or of general circulation
161 in the boundaries of that independent special district at least five days prior to the opening of bids.

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

166 (d) If the cost of a contemplated building improvement exceeds the sum of \$40,000, or the
167 estimated cost of the public works improvement exceeds \$125,000, the same shall not be so
168 divided as to permit the making of such improvement in several parts, except by contract.

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

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

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

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

177 (4) (a) Independent special districts are not required to call for bids or let contracts for the
178 conduct or management of any of the departments, business, or property of the county.

179 (b) Independent special districts are not required to call for bids or let contracts for
180 lowering or repairing water mains or sewers, making connections with water mains or sewers, or

181 for grading, repairing, or maintaining streets, sidewalks, bridges, culverts, or conduits in any
182 independent special district if the estimated cost of the work is less than \$125,000.

183 (5) In a civil action to enforce the provisions of this section against an independent special
184 district, the court shall award attorney's fees and costs to the prevailing party.

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

186 **53A-20-101. Construction and alteration of schools and plants -- Advertising for bids**
187 **-- Payment and performance bonds -- Contracts -- Bidding limitations on local school boards**
188 **-- Interest of local school board members.**

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

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

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

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

200 (d) The advertisement shall:

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

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

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

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

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

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

- 212 (d) The board shall again advertise in the manner provided in this section.
- 213 (e) If, after advertising a second time no satisfactory bid is received, the board may proceed
214 under its own direction with the required project.
- 215 (4) (a) The check or bond required under Subsection (2)(d) shall be drawn in favor of the
216 local school board.
- 217 (b) If the successful bidder fails or refuses to enter into the contract and furnish the
218 additional bonds required under this section, then the bidder's check or bond is forfeited to the
219 district.
- 220 (5) A local school board shall require payment and performance bonds of the successful
221 bidder as required in Section 63-56-38.
- 222 (6) (a) A local school board may require in the proposed contract that at least 10% of the
223 contract price be withheld until the project is completed and accepted by the board.
- 224 (b) If money is withheld, the board shall place it in an interest bearing account, and the
225 interest accrues for the benefit of the contractor and subcontractors.
- 226 (c) This money shall be paid upon completion of the project and acceptance by the board.
- 227 (7) (a) A local school board may not bid on projects within the district if the total
228 accumulative estimated cost exceeds \$80,000.
- 229 (b) The board may use its resources if no satisfactory bids are received under this section.
- 230 (8) If the local school board determines in accordance with Section 63-56-36 to use a
231 construction manager/general contractor as its method of construction contracting management on
232 projects where the total estimated accumulative cost exceeds \$80,000, it shall select the
233 construction manager/general contractor using one of the source selection methods provided for
234 in Sections 63-56-20 through 63-56-36.
- 235 (9) A local school board member may not have a direct or indirect financial interest in the
236 construction project contract.
- 237 (10) In a civil action to enforce the provisions of this section against a school board, the
238 court shall award attorney's fees and costs to the prevailing party.

239 **Section 5. Repealer.**

240 This act repeals:

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

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