

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-1-901, 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 except for improvements at international airports financed by non-Utah based tax dollars;

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

31 (c) "lowest responsive responsible bidder" means any prime contractor who:

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

34 ~~(b)~~ (ii) is the low bidder;

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

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

38 (d) "public works improvement" means constructing any park or recreation facility,
39 pipeline, culvert, dam, canal, or other system for water, sewer, storm water, or flood control,
40 except for:

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

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

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

48 (b) If the estimated cost of the building improvement is less than [~~\$25,000;~~] \$40,000, or
49 the estimated cost of the public works improvement is less than \$125,000, the city or town may
50 make the improvement without calling for bids for making the same.

51 (c) (i) If the estimated cost of the proposed building improvement exceeds [~~\$25,000;~~]
52 \$40,000, or the estimated cost of the public works improvement exceeds \$125,000, the city or
53 town shall, if it determines to make the improvement, do so by contract let to the lowest responsive
54 responsible bidder after publication of notice at least twice in a newspaper published or of general
55 circulation in that city or town at least five days prior to the opening of bids.

56 (ii) If there is no newspaper published or of general circulation in the city or town, the

57 notice shall be posted at least five days prior to the opening of bids in at least five public places
58 in the city or town. The notice shall remain posted for at least three days.

59 (d) If the cost of a contemplated building improvement exceeds the sum of [~~\$25,000;~~
60 \$40,000, or the estimated cost of the public works improvement exceeds \$125,000, the same shall
61 not be so divided as to permit the making of such improvement in several parts, except by contract.

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

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

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

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

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

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

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

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

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

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

82 **17-50-321. Definition -- Necessity for contract -- Call for bids -- Acceptance or**
83 **rejection -- Retainage -- Attorney's fees.**

84 (1) As used in this section:

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

87 (b) "emergency repairs" means any work which must be undertaken on an expedited basis

88 in order to prevent further damage to or loss of public or private property or to remedy a condition
89 that poses an immediate physical danger;

90 (c) "lowest responsive responsible bidder" means any prime contractor who:

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

93 (ii) is the low bidder;

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

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

97 (d) "public works improvement" means constructing any park or recreational facility,
98 pipeline, culvert, dam, canal, or other system for water, sewer, storm water, or flood control,
99 except for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

139 **Part 9. Call for Bids**

140 **17A-1-901. Necessity for contract -- Call for bids -- Acceptance or rejection --**
141 **Retainage -- Attorney's fees.**

142 (1) As used in this section:

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

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

148 (c) "lowest responsive responsible bidder" means any prime contractor who:

149 (i) has bid in compliance with the invitation to bid and within the requirements of the plans

150 and specifications for a construction project;

151 (ii) is the low bidder;

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

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

155 (d) "public works improvement" means constructing any park or recreational facility,
156 pipeline, culvert, dam, canal, or other system for water, sewer, storm water, or flood control,
157 except for:

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

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

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

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

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

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

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

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

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

181 shall advertise anew in the same manner as before.

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

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

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

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

189 (b) Special districts are not required to call for bids or let contracts for lowering or
190 repairing water mains or sewers, making connections with water mains or sewers, or for grading,
191 repairing, or maintaining streets, sidewalks, bridges, culverts, or conduits in any special district
192 if the estimated cost of the work is less than \$125,000.

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

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

196 **53A-20-101. Construction and alteration of schools and plants -- Advertising for bids**
197 **-- Payment and performance bonds -- Contracts -- Bidding limitations on local school boards**
198 **-- Interest of local school board members.**

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

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

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

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

210 (d) The advertisement shall:

211 (i) require sealed proposals for the building project in accordance with plans and

212 specifications furnished by the local school board;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

240 (8) If the local school board determines in accordance with Section 63-56-36 to use a
241 construction manager/general contractor as its method of construction contracting management on
242 projects where the total estimated accumulative cost exceeds \$80,000, it shall select the

243 construction manager/general contractor using one of the source selection methods provided for
244 in Sections 63-56-20 through 63-56-36.

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

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

249 **Section 5. Repealer.**

250 This act repeals:

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

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