

Representative Eli H. Anderson 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 project 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 imminent damage to or loss of public or private property or to remedy a
39 condition that poses an immediate physical danger or to reduce a substantial, imminent risk of
40 interruption of an essential public service;41 (f) "lowest responsive responsible bidder" means any prime contractor who:42 ~~[(a)]~~ (i) has bid in compliance with the invitation to bid and within the requirements of the
43 plans and specifications for a construction project;44 ~~[(b)]~~ (ii) is the low bidder;45 ~~[(c)]~~ (iii) has furnished a bid bond or equivalent in money as a condition to the award of
46 a prime contract; and47 ~~[(d)]~~ (iv) furnishes a payment and performance bond as required by law[-]; and48 (g) "public works project" means constructing any park or recreation facility, pipeline,
49 culvert, dam, canal, or other system for water, sewer, storm water, or flood control, except for:50 (i) the replacement or repair of existing infrastructure on private property;51 (ii) any construction commenced before June 1, 2002; and52 (iii) improvements at international airports financed by non-Utah based tax dollars.53 (2) (a) Whenever the board of commissioners or city council of any city or the board of
54 trustees of any town contemplates making any new ~~[improvement to be]~~ building improvement
55 or public works project paid for ~~[out of the general funds of]~~ by the city or town, the governing
56 body shall cause plans and specifications for, and an estimate of the cost of, the improvement or

57 project to be made.

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

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

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

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

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

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

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

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

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

87 (4) (a) Cities and towns are not required to call for bids or let contracts for the conduct or

88 management of any of the departments, business, or property of the city or town[;].

89 (b) Cities and towns are not required to call for bids or let contracts for lowering or
90 repairing water mains or sewers, making connections with water mains or sewers, or for grading,
91 repairing, or maintaining streets, sidewalks, bridges, culverts, or conduits in any city or town if the
92 estimated cost of the work is less than \$125,000, as adjusted for inflation in accordance with
93 Subsection (6).

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

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

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

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

102 **17-50-321. Definition -- Necessity for contract -- Call for bids -- Acceptance or**
103 **rejection -- Retainage -- Attorney's fees.**

104 (1) As used in this section:

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

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

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

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

114 (e) "emergency repairs" means any work which must be undertaken on an expedited basis
115 in order to prevent imminent damage to or loss of public or private property or to remedy a
116 condition that poses an immediate physical danger or to reduce a substantial, imminent risk of
117 interruption of an essential public service;

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

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

121 (ii) is the low bidder;

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

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

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

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

128 (ii) any construction commenced before June 1, 2002; and

129 (iii) improvements at international airports financed by non-Utah based tax dollars.

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

133 (b) If the estimated cost of the building improvement is less than \$40,000, as adjusted for
134 inflation in accordance with Subsection (6), or the estimated cost of the public works project is less
135 than \$125,000, as adjusted for inflation in accordance with Subsection (6), the county may make
136 the improvement or project without calling for bids for making the same.

137 (c) (i) If the estimated cost of the proposed building improvement exceeds \$40,000, as
138 adjusted for inflation in accordance with Subsection (6), or the estimated cost of the public works
139 project exceeds \$125,000, as adjusted for inflation in accordance with Subsection (6), the county
140 shall, if it determines to make the improvement or project, do so by contract let to the lowest
141 responsive responsible bidder after publication of notice at least twice in a newspaper published
142 or of general circulation in that county at least five days prior to the opening of bids.

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

146 (d) If the cost of a contemplated building improvement exceeds the sum of \$40,000, as
147 adjusted for inflation in accordance with Subsection (6), or the estimated cost of the public works
148 project exceeds \$125,000, as adjusted for inflation in accordance with Subsection (6), the same
149 shall not be so divided as to permit the making of such improvement in several parts, except by

150 contract.

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

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

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

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

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

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

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

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

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

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

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

175 **Part 9. Call for Bids**

176 **17A-1-901. Necessity for contract -- Call for bids -- Acceptance or rejection --**
177 **Retainage -- Attorney's fees.**

178 (1) As used in this section:

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

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

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

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

188 (e) "emergency repairs" means any work which must be undertaken on an expedited basis
189 in order to prevent imminent damage to or loss of public or private property or to remedy a
190 condition that poses an immediate physical danger or to reduce a substantial, imminent risk of
191 interruption of an essential public service;

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

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

195 (ii) is the low bidder;

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

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

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

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

202 (ii) any construction commenced before June 1, 2002; and

203 (iii) improvements at international airports financed by non-Utah based tax dollars.

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

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

212 (c) (i) If the estimated cost of the proposed building improvement exceeds \$40,000, as
213 adjusted for inflation in accordance with Subsection (6), or the estimated cost of the public works
214 project exceeds \$125,000, as adjusted for inflation in accordance with Subsection (6), the special
215 district shall, if it determines to make the improvement or project, do so by contract let to the
216 lowest responsive responsible bidder after publication of notice at least twice in a newspaper
217 published or of general circulation in the boundaries of that special district at least five days prior
218 to the opening of bids.

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

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

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

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

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

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

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

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

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

243 Subsection (6).

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

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

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

250 **53A-20-101. Construction and alteration of schools and plants -- Advertising for bids**
251 **-- Payment and performance bonds -- Contracts -- Bidding limitations on local school boards**
252 **-- Interest of local school board members.**

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

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

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

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

264 (d) The advertisement shall:

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

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

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

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

273 (b) If satisfactory bids are received, the board shall award the contract to the lowest

274 responsible bidder.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

304 **72-6-109. Class B and C roads -- Construction and maintenance -- Definitions --**

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

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

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

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

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

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

312 or

313 (C) new structures or replacement of existing structures, except the replacement of
314 drainage culverts.315 (ii) "Construction" does not include maintenance, emergency repairs, or the installation
316 of traffic control devices as described in Section 41-6-20.317 (c) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers
318 as published by the Bureau of Labor Statistics of the U.S. Department of Labor.319 (d) "CPI%" means the lesser of 3% or the actual total percent change in the Consumer
320 Price Index during the calendar year immediately preceding the year in which the bid limit is
321 calculated.322 [~~(e)~~] (e) "Improvement project" means construction and maintenance as defined in this
323 section except for that maintenance excluded under Subsection (2).324 [~~(f)~~] (f) "Maintenance" means the keeping of a road facility in a safe and usable condition
325 to which it was constructed or improved, and includes:326 (i) the reworking of an existing surface by the application of up to and including two
327 inches of bituminous pavement;

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

329 (iii) the grading or widening of an existing unpaved road or flattening of shoulders or side
330 slopes to meet current width and safety standards; and331 (iv) horizontal or vertical alignment changes necessary to bring an existing road in
332 compliance with current safety standards.333 [~~(g)~~] (g) "Project" means the performance of a clearly identifiable group of associated road
334 construction activities or the same type of maintenance process, where the construction or
335 maintenance is performed on any one class B or C road, within a half-mile proximity and occurs

336 within the same calendar year.

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

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

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

342 (3) (a) (i) If the estimates of a qualified engineer referred to in Section 72-6-108 are
343 substantially lower than any responsible bid received or in the event no bids are received, the
344 county or municipality may perform the work by force account.

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

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

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

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

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

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

358 Section 6. **Repealer.**

359 This act repeals:

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

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