

28 17-53-308, as renumbered and amended by Chapter 133, Laws of Utah 2000

29 17A-2-531, as last amended by Chapters 86 and 254, Laws of Utah 2000

30 17A-2-723, as last amended by Chapter 285, Laws of Utah 2002

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

32 Section 1. Section 11-39-101 is enacted to read:

33 **CHAPTER 39. BUILDING IMPROVEMENTS AND PUBLIC WORKS PROJECTS**

34 **11-39-101. Definitions.**

35 As used in this chapter:

36 (1) "Bid limit" means:

37 (a) for a building improvement:

38 (i) for the year 2003, \$40,000; and

39 (ii) for each year after 2003, the amount of the bid limit for the previous year, plus an
40 amount calculated by multiplying \$40,000 by the lesser of 3% or the actual percent change in
41 the Consumer Price Index during the previous calendar year; and

42 (b) for a public works project:

43 (i) for the year 2003, \$125,000; and

44 (ii) for each year after 2003, the amount of the bid limit for the previous year, plus an
45 amount calculated by multiplying \$125,000 by the lesser of 3% or the actual percent change in
46 the Consumer Price Index during the previous calendar year.

47 (2) "Building improvement":

48 (a) means the construction or repair of a public building or structure; and

49 (b) does not include the construction or repair:

50 (i) of a building or structure;

51 (ii) at an international airport; and

52 (iii) that is financed by tax dollars collected outside of the state.

53 (3) "Consumer Price Index" means the Consumer Price Index for All Urban

54 Consumers as published by the Bureau of Labor Statistics of the United States Department of
55 Labor.

56 (4) "Emergency repairs" means a building improvement or public works project
57 undertaken on an expedited basis to:

58 (a) eliminate an imminent risk of damage to or loss of public or private property;

- 59 (b) remedy a condition that poses an immediate physical danger; or
- 60 (c) reduce a substantial, imminent risk of interruption of an essential public service.
- 61 (5) "Legislative body" means:
- 62 (a) for a county, the county legislative body;
- 63 (b) for a city or town, the municipal legislative body;
- 64 (c) for an independent special district under Title 17A, Chapter 2, Independent Special
- 65 Districts, or local district under Title 17B, Chapter 2, Local Districts, the board of trustees; and
- 66 (d) for a dependent special district under Title 17A, Chapter 3, Dependent Special
- 67 Districts, the board or other body that exercises legislative authority with respect to the
- 68 dependent special district.
- 69 (6) "Local entity" means a county, city, town, special district under Title 17A, Special
- 70 Districts, or local district under Title 17B, Chapter 2, Local Districts.
- 71 (7) "Lowest responsive responsible bidder" means a prime contractor who:
- 72 (a) has submitted a bid in compliance with the invitation to bid and within the
- 73 requirements of the plans and specifications for the building improvement or public works
- 74 project;
- 75 (b) is the low bidder;
- 76 (c) has furnished a bid bond or equivalent in money as a condition to the award of a
- 77 prime contract; and
- 78 (d) furnishes a payment and performance bond as required by law.
- 79 (8) "Public works project":
- 80 (a) means the construction of:
- 81 (i) a park or recreational facility; or
- 82 (ii) a pipeline, culvert, dam, canal, or other system for water, sewage, storm water, or
- 83 flood control; and
- 84 (b) does not include:
- 85 (i) the replacement or repair of existing infrastructure on private property;
- 86 (ii) construction commenced before June 1, 2002; and
- 87 (iii) construction at an international airport financed by tax dollars collected outside of
- 88 the state.

89 Section 2. Section **11-39-102** is enacted to read:

90 **11-39-102. Requirement for plans and specifications and cost estimate.**

91 The legislative body of each local entity intending to undertake a building improvement
92 or public works project paid for by the local entity shall cause:

93 (1) plans and specifications to be made for the building improvement or public works
94 project; and

95 (2) an estimate of the cost of the building improvement or public works project to be
96 made.

97 Section 3. Section **11-39-103** is enacted to read:

98 **11-39-103. Requirements for undertaking a building improvement or public**
99 **works project -- Request for bids.**

100 (1) If the estimated cost of the building improvement or public works project exceeds
101 the bid limit, the legislative body shall, if it determines to proceed with the building
102 improvement or public works project:

103 (a) request bids for completion of the building improvement or public works project
104 by:

105 (i) publishing notice at least twice in a newspaper published or of general circulation in
106 the local entity at least five days before opening the bids; or

107 (ii) if there is no newspaper published or of general circulation in the local entity,
108 posting notice at least five days before opening the bids in at least five public places in the
109 local entity and leaving the notice posted for at least three days; and

110 (b) except as provided in Subsection (3)(c), enter into a contract for the completion of
111 the building improvement or public works project with the lowest responsive responsible
112 bidder.

113 (2) (a) Each notice under Subsection (1)(a) shall indicate that the legislative body may
114 reject any or all bids submitted.

115 (b) The cost of a building improvement or public works project may not be divided to
116 permit the making of the building improvement or public works project in multiple parts,
117 except by contract.

118 (3) (a) The legislative body may reject any or all bids submitted.

119 (b) If the legislative body rejects all bids submitted but still intends to undertake the
120 building improvement or public works project, the legislative body shall again request bids by

121 following the procedure provided in Subsection (1)(a).

122 (c) If, after twice requesting bids by following the procedure provided in Subsection
123 (1)(a), the legislative body determines that no satisfactory bid has been submitted, the
124 legislative body may undertake the building improvement or public works project as it
125 considers appropriate.

126 Section 4. Section **11-39-104** is enacted to read:

127 **11-39-104. Exceptions.**

128 (1) The requirements of Section 11-39-103 do not apply to:

129 (a) emergency repairs;

130 (b) a building improvement or public works project if the estimated cost under Section
131 11-39-102 is less than the bid limit; or

132 (c) the conduct or management of any of the departments, business, or property of the
133 local entity.

134 (2) This section may not be construed to limit the application of Section 72-6-108 to an
135 improvement project, as defined in Section 72-6-109, that would otherwise be subject to
136 Section 72-6-108.

137 Section 5. Section **11-39-105** is enacted to read:

138 **11-39-105. Retained payments.**

139 Each payment that the local entity retains or withholds on a contract with a private
140 person, firm, or corporation shall be retained or withheld and released as provided in Section
141 13-8-5.

142 Section 6. Section **11-39-106** is enacted to read:

143 **11-39-106. Attorney's fees and costs in civil action.**

144 In a civil action to enforce the provisions of this part against a local entity, the court
145 may award attorney's fees and costs to the prevailing party.

146 Section 7. Section **17A-2-1314** is amended to read:

147 **17A-2-1314. Rights, powers, and authority of service district.**

148 (1) In addition to all other rights, powers, and authority granted by law or by other
149 provisions of this part, a service district has the following rights, powers and authority:

150 (a) The right to sue and be sued.

151 (b) The power to exercise all powers of eminent domain possessed by the county or

152 municipality which established the service district.

153 (c) The power to enter into contracts considered desirable by the governing authority of
154 the service district to carry out the functions of the service district, including, without
155 limitation, the power to enter into contracts with the government of the United States or any of
156 its agencies, the State of Utah, counties, municipalities, school districts, and other public
157 corporations, districts, or political subdivisions including institutions of higher education.
158 These contracts may include, without limitation, provisions concerning the use, operation, and
159 maintenance of any facilities of the service district and the collection of fees or charges with
160 respect to commodities, services, or facilities provided by the service district.

161 (d) The power to acquire or construct facilities, to purchase, take, receive, lease, take
162 by gift, devise or bequest, or otherwise acquire, own, hold, improve, use, finance, and
163 otherwise deal in and with real and personal property, or any interest in them, wherever
164 situated, either within or outside of the service district, including water and water rights, and
165 including the power to acquire other than by condemnation property or interests in property
166 owned or held by institutions of higher education.

167 (e) The power to sell, convey, mortgage, pledge, lease, exchange, transfer, and
168 otherwise dispose of or contract with respect to the use, operation, and maintenance of, all or
169 any part of its property and assets, including water and water rights.

170 (f) The power to accept governmental grants, loans, or funds and to comply with the
171 conditions of them.

172 (g) The right to utilize any officers, employees, property, equipment, offices, or
173 facilities of the county or municipality which established the service district, and for which the
174 governing authority of the service district shall reimburse the county or municipality from
175 service district funds, a reasonable amount for the services so rendered or for the property,
176 equipment, offices, or facilities so used.

177 (h) The right to employ officers, employees, and agents for the service district,
178 including engineers, accountants, attorneys, and financial consultants, and to fix their
179 compensation.

180 (i) The right to adopt an official seal for the service district.

181 (2) The county legislative body shall by ordinance establish those classes of contracts
182 of a service district which shall be subject to the requirements of ~~[Section 17-53-308]~~ Title 11,

183 Chapter 39, Building Improvements and Public Works Projects, or of any law hereafter enacted
184 for the same purpose.

185 (3) The governing authority of a municipality shall by ordinance establish those classes
186 of contracts of a service district which shall be subject to the requirements of [~~Section 10-7-20~~]
187 Title 11, Chapter 39, Building Improvements and Public Works Projects, or of any law
188 hereafter enacted for the same purpose.

189 Section 8. Section **17A-3-208** is amended to read:

190 **17A-3-208. Contract required for improvement -- Bidding requirements --**

191 **Exceptions.**

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

195 (2) (a) Except as otherwise provided in this section, improvements in a special
196 improvement district shall be made only under contract duly let to the lowest responsible
197 bidder for the kind of service or material or form of construction which may be desired. The
198 improvements may be divided into parts, and separate contracts let for each part, or several
199 parts may be combined in the same contract. A contract may be let on a unit basis. A contract
200 shall not be let until a notice to contractors that sealed bids for the construction of the
201 improvements will be received by the governing body at a specified time and place, and this
202 notice has been published at least one time in a newspaper having general circulation in the
203 county at least 15 days before the date specified for the receipt of bids.

204 (b) If by inadvertence or oversight, the notice is not published or is not published for a
205 sufficient period of time prior to the receipt of bids, the governing body, however, may still
206 proceed to let a contract for the improvements if at the time specified for the receipt of bids it
207 has received not less than three sealed and bona fide bids from contractors.

208 (c) If, under the construction contract, periodic payments for work performed are to be
209 made by the issuance of interim warrants, this fact shall be disclosed in the notice to
210 contractors. The notice to contractors may be published simultaneously with the notice of
211 intention.

212 (3) The governing body, or its designated agent, shall at the time specified in the
213 notice, open, examine, and publicly declare the bids. From these bids, the governing body may

214 award a contract to the lowest, responsible bidder if that party's bid is responsive to the request
215 for proposal or invitation to bid; but the governing body shall not be obligated or required to
216 award a contract to any bidder and may reject any or all bids. In the event no bids are received
217 or no responsive or acceptable bids are received after one public invitation to bid, the
218 governing body may take any of the following actions:

219 (a) publicly rebid the project using the original plans, specifications, cost estimates,
220 and contract documents;

221 (b) negotiate a contract privately using the original project plans, specifications, cost
222 estimates, and contract documents;

223 (c) publicly rebid the project after revising the original plans, specifications, cost
224 estimates, or contract documents;

225 (d) cancel the project;

226 (e) abandon or dissolve the improvement district; or

227 (f) perform the project work with the governing entity's work forces and be reimbursed
228 for this work out of the special assessments levied.

229 (4) A contract need not be let for any improvement or part of any improvement the cost
230 of which or the making of which is donated or contributed by any individual, corporation, the
231 county, a municipality, the state, the United States, or any political subdivision of the state or of
232 the United States. These donations or contributions may be accepted by the governing entity,
233 but no assessments shall be levied against the property in the district for the amount of the
234 donations or contributions.

235 (5) A contract need not be let as provided in this section where the improvements
236 consist of the furnishing of utility services or maintenance of improvements. This work may be
237 done by the governing entity itself. Assessments may be levied for the actual cost incurred by
238 the governing entity for the furnishing of these services or maintenance, or in case the work is
239 done by the governing entity, to reimburse the governing entity for the reasonable cost of
240 supplying the services or maintenance.

241 (6) A contract need not be let as provided in this section where any labor, materials, or
242 equipment to make any of the improvements are supplied by the governing entity. Assessments
243 may be levied to reimburse the governing entity for the reasonable cost of supplying such labor,
244 materials or equipment. The provisions of [~~Sections 17-53-308~~] Title 11, Chapter 39, Building

245 Improvements and Public Works Projects, and Section 72-6-108 shall not apply to the
246 improvements to be placed in a special improvement district created under this part.

247 Section 9. Section **53A-20-101** is amended to read:

248 **53A-20-101. Construction and alteration of schools and plants -- Advertising for**
249 **bids -- Payment and performance bonds -- Contracts -- Bidding limitations on local**
250 **school boards -- Interest of local school board members.**

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

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

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

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

262 (d) The advertisement shall:

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

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

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

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

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

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

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

275 (e) If, after advertising a second time no satisfactory bid is received, the board may

276 proceed under its own direction with the required project.

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

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

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

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

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

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

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

292 (b) The board may use its resources if no satisfactory bids are received under this
293 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
296 on 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
298 for 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
300 the construction project contract.

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

303 Section 10. 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~~]:
308 (i) for the year 2003, \$125,000; and
309 (ii) for each year after 2003, the amount of the bid limit for the previous year, plus an
310 amount calculated by multiplying \$125,000 by the lesser of 3% or the actual percent change in
311 the Consumer Price Index during the previous calendar year.

312 (b) "Consumer Price Index" means the Consumer Price Index for All Urban
313 Consumers as published by the Bureau of Labor Statistics of the United States Department of
314 Labor.

315 [~~(b)~~] (c) (i) "Construction" means the work that would apply to:

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

317 (B) resurfacing of existing roadways with more than two inches of bituminous
318 pavement; or

319 (C) new structures or replacement of existing structures, except the replacement of
320 drainage culverts.

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

323 [~~(c)~~] (d) "Improvement project" means construction and maintenance as defined in this
324 section except for that maintenance excluded under Subsection (2).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

357 Section 11. **Repealer.**

358 This act repeals:

359 Section **10-7-20, Definition -- Necessity for contract -- Call for bids -- Acceptance**
360 **or rejection -- Retainage.**

361 Section **17-53-308, Repair, alteration, or construction of public buildings --**
362 **Contracts -- Bids -- Payment and performance bonds -- Retainage.**

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

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

Legislative Review Note

as of 1-28-03 6:44 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

State Impact

While there is no fiscal impact to State budgets, passage of this bill could increase or decrease construction costs to counties, school districts and special districts depending on the number and size of the bids received.

Individual and Business Impact

Passage of this bill may increase contractor accessibility to county, school districts and special district projects.

Office of the Legislative Fiscal Analyst