

**LOCAL GOVERNMENTS - AUTHORITY FOR
DESIGN-BUILD CONSTRUCTION**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill modifies provisions relating to local government building improvement and public works projects.

Highlighted Provisions:

This bill:

- ▶ adds certain design-build projects as a type of building improvement or public works project that is subject to certain requirements relating to plans and specifications, cost estimates, and bid procedures; and
- ▶ allows a local government entity, with respect to certain design-build projects, to award a bid to a responsible bidder that offers design-build services rather than to the lowest responsive responsible bidder.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-39-101, as enacted by Chapter 259, Laws of Utah 2003

11-39-103, as enacted by Chapter 259, Laws of Utah 2003

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section **11-39-101** is amended to read:

11-39-101. Definitions.

As used in this chapter:

(1) "Bid limit" means:

(a) for a building improvement:

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

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

(b) for a public works project:

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

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

(2) "Building improvement":

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

(b) does not include construction or repair at an international airport.

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

(4) "Design-build project":

(a) means a building improvement or public works project costing over \$250,000 with respect to which both the design and construction are provided for in a single contract with a contractor or combination of contractors capable of providing design-build services; and

(b) does not include a building improvement or public works project:

(i) that is undertaken by a local entity under contract with a construction manager that guarantees the contract price and is at risk for any amount over the contract price; and

(ii) each component of which is competitively bid.

(5) "Design-build services" means the engineering, architectural, and other services necessary to formulate and implement a design-build project, including its actual construction.

~~[(4)]~~ (6) "Emergency repairs" means a building improvement or public works project undertaken on an expedited basis to:

- (a) eliminate an imminent risk of damage to or loss of public or private property;
- (b) remedy a condition that poses an immediate physical danger; or
- (c) reduce a substantial, imminent risk of interruption of an essential public service.

~~[(5)]~~ (7) "Independent special district" means an independent special district under Title 17A, Chapter 2, Independent Special Districts, excluding a special service district under Title 17A, Chapter 2, Part 13, Utah Special Service District Act.

~~[(6)]~~ (8) "Local district" has the same meaning as defined in Section 17B-2-101.

~~[(7)]~~ (9) "Local entity" means a county, city, town, special district, or local district.

~~[(8)]~~ (10) "Lowest responsive responsible bidder" means a prime contractor who:

(a) has submitted a bid in compliance with the invitation to bid and within the requirements of the plans and specifications for the building improvement or public works project;

(b) is the lowest bidder that satisfies the local entity's criteria relating to financial strength, past performance, integrity, reliability, and other factors that the local entity uses to assess the ability of a bidder to perform fully and in good faith the contract requirements;

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

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

~~[(9)]~~ (11) "Procurement code" means the provisions of Title 63, Chapter 56, Utah Procurement Code.

~~[(10)]~~ (12) "Public works project":

(a) means the construction of:

(i) a park or recreational facility; or

(ii) a pipeline, culvert, dam, canal, or other system for water, sewage, storm water, or

flood control; and

(b) does not include:

- (i) the replacement or repair of existing infrastructure on private property;
- (ii) construction commenced before June 1, 2003; and
- (iii) construction or repair at an international airport.

~~[(11)]~~ (13) "Special district" has the same meaning as defined in Section 17A-1-101.

Section 2. Section **11-39-103** is amended to read:

11-39-103. Requirements for undertaking a building improvement or public works project -- Request for bids -- Authority to reject bids.

(1) If the estimated cost of the building improvement or public works project exceeds the bid limit, the local entity shall, if it determines to proceed with the building improvement or public works project:

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

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

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

(b) except as provided in Subsection (3), enter into a contract for the completion of the building improvement or public works project with:

(i) the lowest responsive responsible bidder[?]; or

(ii) for a design-build project that the local entity began formulating before March 1, 2004 and with respect to which a contract is entered into before September 1, 2004, a responsible bidder that:

(A) offers design-build services; and

(B) satisfies the local entity's criteria relating to financial strength, past performance, integrity, reliability, and other factors that the local entity uses to assess the ability of a bidder to perform fully and in good faith the contract requirements for a design-build project.

(2) (a) Each notice under Subsection (1)(a) shall indicate that the local entity may reject any or all bids submitted.

(b) (i) The cost of a building improvement or public works project may not be divided to avoid:

(A) exceeding the bid limit; and

(B) subjecting the local entity to the requirements of this section.

(ii) Notwithstanding Subsection (2)(b)(i), a local entity may divide the cost of a building improvement or public works project that would, without dividing, exceed the bid limit if the local entity complies with the requirements of this section with respect to each part of the building improvement or public works project that results from dividing the cost.

(3) (a) The local entity may reject any or all bids submitted.

(b) If the local entity rejects all bids submitted but still intends to undertake the building improvement or public works project, the local entity shall again request bids by following the procedure provided in Subsection (1)(a).

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

Section 3. Interim study.

It is the intent of the Legislature that during the 2004 interim the Political Subdivisions Interim Committee study the issue of design-build projects by local government and whether the provisions of this bill relating to design-build projects should be extended to future projects, modified, or eliminated.