

**TRANSPORTATION CONSTRUCTION**

**AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Dan R. Eastman**

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Procurement Code and the Public Transit Districts Code to amend provisions related to the procurement of construction for transportation projects.

**Highlighted Provisions:**

This bill:

- ▶ provides that public transit facilities and works construction contracts that exceed \$25,000 shall be let in accordance with the Utah Procurement Code;

- ▶ provides that the procurement of design-build transportation project contracts is an authorized source selection method for the selection of the Construction Manager/General Contractor;

- ▶ provides that a public transit district that has more than 200,000 people residing within its boundaries:

- may award design-build transportation project contracts for any transportation project by following certain requirements; and

- shall pass ordinances or a resolution establishing requirements for the procurement of design-build contracts; and

- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**17A-2-1016**, as last amended by Chapter 254, Laws of Utah 2000

**63-56-36**, as last amended by Chapter 185, Laws of Utah 2002

**63-56-36.1**, as last amended by Chapter 318, Laws of Utah 2000

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

Section 1. Section **17A-2-1016** is amended to read:

**17A-2-1016. Powers of incorporated district -- Bidding -- Eminent domain.**

(1) As used in this section, "operator" means any city, public agency, person, firm, or private corporation engaged in the transportation of passengers for hire.

(2) Any district incorporated under this part may:

(a) have perpetual succession;

(b) sue and be sued in all actions and proceedings and in all courts and tribunals of competent jurisdiction;

(c) adopt a corporate seal and alter it at pleasure;

(d) levy and collect taxes only for paying:

(i) the principal and interest of bonded indebtedness of the district; or

(ii) any final judgment obtained against the district beyond the amount of any collectable insurance or indemnity policy if the district is required by final order of any court of competent jurisdiction to levy a tax to pay the judgment;

(e) take by grant, purchase, bequest, devise, or lease, and to hold, enjoy, lease, sell, encumber, alien, or otherwise dispose of real or personal property of every kind within the district;

(f) make contracts and enter into stipulations of any nature, including contracts and stipulations:

(i) to indemnify and save harmless;

(ii) to do all acts to exercise the powers granted in this part; and

(iii) with any department or agency of the United States of America, of the state, or with

any public agency or private person, firm, or corporation upon terms and conditions the board of trustees finds are in the best interests of the district;

(g) (i) insure against:

(A) loss of revenues from accident or destruction of the system or any part of the system, from any cause whatsoever; or

(B) public liability or property damage, or against all other types of events, acts, or omissions; and

(ii) provide in the proceedings authorizing the issuance of any bonds for the carrying of any other insurance, in an amount and of such character as may be specified, and for the payment of the premiums on the insurance;

(h) provide a public transit system for the transportation of passengers and their incidental baggage;

(i) purchase all supplies, equipment, and materials;

(j) construct facilities and works, but when the expenditure required exceeds \$25,000 construction shall be let [~~by contract to the lowest responsible bidder or proposer~~] in accordance with Title 63, Chapter 56, Utah Procurement Code;

(k) acquire, contract for, lease, construct, own, operate, control, or use rights-of-way, rail lines, monorails, bus lines, stations, platforms, switches, yards, terminals, parking lots, any facilities necessary or convenient for public transit service, and all structures necessary for access by persons and vehicles;

(l) hire, lease, or contract for the supplying of, or management of, any facilities, operations, equipment, services, employees, or management staff of any operator and provide for subleases or subcontracts by the operator upon terms that are in the public interest; and

(m) operate feeder bus lines and other feeder services as necessary.

(3) (a) Bids or proposals shall be advertised through public notice as determined by the board.

(b) The notice may include publication in a newspaper of general circulation in the district, trade journal, or other method determined by the board at least once and not less than ten

days prior to the expiration of the period within which bids or proposals are received.

(c) The board may reject any and all bids or proposals and readvertise or give renote at its discretion.

(d) If, after rejecting bids or proposals, the board determines and declares by vote of two-thirds of all its members present that in its opinion the supplies, equipment, and materials may be purchased at a lower price in the open market, the board may proceed to purchase the same in the open market without further observance of the provisions requiring contracts, bids or proposals, advertisement, or notice.

(e) Contracts, in writing or otherwise, may be let without advertising for or inviting bids when any repairs, alterations, or other work or the purchase of materials, supplies, equipment, or other property is found by the board upon a two-thirds vote of its members present to be of urgent necessity, or where the general manager certifies by affidavit that there is only one source for the required supplies, equipment, and materials, or construction items.

(f) If any payment on a contract with a private contractor to construct facilities under this section is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

(4) (a) Installations in state highways or freeways are subject to the approval of the Department of Transportation.

(b) It is presumed that the use of the streets, roads, highways, and other public places by the district for any of the purposes permitted in this section constitutes no greater burden on adjoining properties than the uses existing on July 9, 1969.

(c) If facilities, other than state highways or freeways referred to in Subsection (2), including streets, roads, highways, pipelines, sewers, water mains, storm drains, poles, and communications wires of another public agency of the state, or of a private owner must be relocated, replaced, or altered in order for the district to construct or operate its system, or to preserve and maintain already constructed district facilities, the facilities shall be relocated, replaced, or altered with reasonable promptness by the respective public corporation, state, or private owner and the district shall by prior agreement reimburse the public corporation, state, or

private owner for the reasonable cost incurred in relocation, replacement, or alteration.

(d) The district may enter into an agreement with any city or county having jurisdiction over the street, road, or highway involved and, as may be provided by agreement, close any city street or county road at or near the point of its interception with any district facility or provide for carrying the city street or county road over or under or to a connection with the district facility and may do any and all work on the city street or county road as is necessary. A city street or county road may not be closed directly or indirectly by the construction of district facilities except:

- (i) pursuant to agreement; or
- (ii) while temporarily necessary during the construction of district facilities.

(5) The state, a municipality, or a county may acquire private property interests by eminent domain pursuant to Title 78, Chapter 34, Eminent Domain, including fee simple, easements, air rights, rights-of-way, and other private property interests necessary to the establishment and operation of a public transit district.

Section 2. Section **63-56-36** is amended to read:

**63-56-36. Alternative methods of construction contracting management.**

(1) (a) Rules shall provide as many alternative methods of construction contracting management as determined to be feasible.

(b) These rules shall:

(i) grant to the chief procurement officer or the head of the purchasing agency responsible for carrying out the construction project the discretion to select the appropriate method of construction contracting management for a particular project; and

(ii) require the procurement officer to execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

(c) Before choosing a construction contracting management method, the chief procurement officer or the head of the purchasing agency responsible for carrying out the construction project shall consider the following factors:

- (i) when the project must be ready to be occupied;
- (ii) the type of project;
- (iii) the extent to which the requirements of the procuring agencies and the ways in which they are to be met are known;
- (iv) the location of the project;
- (v) the size, scope, complexity, and economics of the project;
- (vi) the source of funding and any resulting constraints necessitated by the funding source;
- (vii) the availability, qualification, and experience of state personnel to be assigned to the project and how much time the state personnel can devote to the project; and
- (viii) the availability, qualifications, and experience of outside consultants and contractors to complete the project under the various methods being considered.

(2) (a) Rules adopted by state public procurement units and local public procurement units to implement this section may authorize the use of a Construction Manager/General Contractor as one method of construction contracting management.

(b) Those rules shall require that:

(i) the Construction Manager/General Contractor shall be selected using one of the source selection methods provided for in Sections 63-56-20 through 63-56-35.8 [~~of this chapter~~] and Section 63-56-36.1; and

(ii) when entering into any subcontract that was not specifically included in the Construction Manager/General Contractor's cost proposal submitted under the requirements of Subsection (2)(b)(i), the Construction Manager/General Contractor shall procure that subcontractor by using one of the source selection methods provided for in Sections 63-56-20 through 63-56-35.8 [~~of this chapter~~] in the same manner as if the subcontract work was procured directly by the state.

(3) Procurement rules adopted by the State Building Board under Subsection (1) for state building construction projects may authorize the use of a design-build provider as one method of construction contracting management.

Section 3. Section **63-56-36.1** is amended to read:

**63-56-36.1. Procurement of design-build transportation project contracts.**

(1) As used in this section:

(a) "Design-build transportation project contract" means the procurement of both the design and construction of a transportation project in a single contract with a company or combination of companies capable of providing the necessary engineering services and construction.

(b) "Transportation agency" means:

(i) the Department of Transportation;

(ii) a county of the first or second class, as defined in Section 17-50-501;

(iii) a municipality of the first class, as defined in Section 10-2-301;

(iv) a public transit district that has more than 200,000 people residing within its boundaries; and

(v) a public airport authority, as [~~created under Title 17A, Chapter 2, Part 15, Airport Authorities~~] defined in Section 72-10-102.

(2) Except as provided in Subsection (3), a transportation agency may award a design-build transportation project contract for any transportation project that has an estimated cost of at least \$50,000,000 by following the requirements of this section.

(3) (a) The Department of Transportation [~~may~~]:

~~[(a)]~~ (i) may award a design-build transportation project contract for any transportation project by following the requirements of this section; and

~~[(b)]~~ (ii) shall make rules, by following the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act, establishing requirements for the procurement of its design-build transportation project contracts in addition to those required by this section.

(b) A public transit district that has more than 200,000 people residing within its boundaries:

(i) may award a design-build transportation project contract for any transportation project by following the requirements of this section; and

(ii) shall pass ordinances or a resolution establishing requirements for the procurement of its design-build transportation project contracts in addition to those required by this section.

(c) A design-build transportation project contract authorized under this Subsection (3) is not subject to the estimated cost threshold under Subsection (2).

(4) (a) Before entering a design-build transportation project contract, a transportation agency may issue a request for qualifications to prequalify potential contractors.

(b) Public notice of the request for qualifications shall be given in accordance with policy board rules.

(c) A transportation agency shall require, as part of the qualifications specified in the request for qualifications, that potential contractors at least demonstrate their:

- (i) construction experience;
- (ii) design experience;
- (iii) financial, manpower, and equipment resources available for the project; and
- (iv) experience in other design-build transportation projects with attributes similar to the project being procured.

(d) The request for qualifications shall identify the number of eligible competing proposers that the transportation agency will select to submit a proposal, which must be at least two.

(5) (a) The transportation agency shall:

- (i) evaluate the responses received from the request for qualifications;
- (ii) select from their number those qualified to submit proposals; and
- (iii) invite those respondents to submit proposals based upon the transportation agency's request for proposals.

(b) If the transportation agency fails to receive at least two qualified eligible competing proposers, the transportation agency shall readvertise the project.

(6) The transportation agency shall issue a request for proposals to those qualified respondents that:

- (a) includes a scope of work statement constituting an information for proposal that may



include:

- (i) preliminary design concepts;
- (ii) design criteria, needs, and objectives;
- (iii) warranty and quality control requirements;
- (iv) applicable standards;
- (v) environmental documents;
- (vi) constraints;
- (vii) time expectations or limitations;
- (viii) incentives or disincentives; and
- (ix) other special considerations;
- (b) requires submitters to provide:
  - (i) a sealed cost proposal;
  - (ii) a critical path matrix schedule, including cash flow requirements;
  - (iii) proposal security; and
  - (iv) other items required by the department for the project; and
- (c) may include award of a stipulated fee to be paid to submitters who submit

unsuccessful proposals.

(7) The transportation agency shall:

- (a) evaluate the submissions received in response to the request for proposals from the prequalified proposers;
- (b) comply with rules relating to discussion of proposals, best and final offers, and evaluations of the proposals submitted; and
- (c) after considering price and other identified factors, award the contract to the responsible proposer whose proposal is most advantageous to the state.