

TRANSPORTATION CONSTRUCTION

AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Dan R. Eastman

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;
 - ▶ repeals the estimated \$50,000,000 transportation project cost threshold for a transportation agency to award a design-build contract;
 - ▶ provides that certain transportation agencies may award design-build transportation project contracts for any transportation project by following certain requirements;
- and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **17A-2-1016**, as last amended by Chapter 254, Laws of Utah 2000

31 **63-56-36**, as last amended by Chapter 185, Laws of Utah 2002

32 **63-56-36.1**, as last amended by Chapter 318, Laws of Utah 2000



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

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

36 **17A-2-1016. Powers of incorporated district -- Bidding -- Eminent domain.**

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

39 (2) Any district incorporated under this part may:

40 (a) have perpetual succession;

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

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

44 (d) levy and collect taxes only for paying:

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

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

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

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

54 (i) to indemnify and save harmless;

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

56 (iii) with any department or agency of the United States of America, of the state, or
57 with any public agency or private person, firm, or corporation upon terms and conditions the
58 board of trustees finds are in the best interests of the district;

59 (g) (i) insure against:

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

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

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

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

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

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

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

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

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

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

83 (b) The notice may include publication in a newspaper of general circulation in the
84 district, trade journal, or other method determined by the board at least once and not less than
85 ten days prior to the expiration of the period within which bids or proposals are received.

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

88 (d) If, after rejecting bids or proposals, the board determines and declares by vote of
89 two-thirds of all its members present that in its opinion the supplies, equipment, and materials

90 may be purchased at a lower price in the open market, the board may proceed to purchase the
91 same in the open market without further observance of the provisions requiring contracts, bids
92 or proposals, advertisement, or notice.

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

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

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

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

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

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

- 121 (i) pursuant to agreement; or
- 122 (ii) while temporarily necessary during the construction of district facilities.
- 123 (5) The state, a municipality, or a county may acquire private property interests by
- 124 eminent domain pursuant to Title 78, Chapter 34, Eminent Domain, including fee simple,
- 125 easements, air rights, rights-of-way, and other private property interests necessary to the
- 126 establishment and operation of a public transit district.

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

128 **63-56-36. Alternative methods of construction contracting management.**

129 (1) (a) Rules shall provide as many alternative methods of construction contracting

130 management as determined to be feasible.

131 (b) These rules shall:

132 (i) grant to the chief procurement officer or the head of the purchasing agency

133 responsible for carrying out the construction project the discretion to select the appropriate

134 method of construction contracting management for a particular project; and

135 (ii) require the procurement officer to execute and include in the contract file a written

136 statement setting forth the facts which led to the selection of a particular method of

137 construction contracting management for each project.

138 (c) Before choosing a construction contracting management method, the chief

139 procurement officer or the head of the purchasing agency responsible for carrying out the

140 construction project shall consider the following factors:

141 (i) when the project must be ready to be occupied;

142 (ii) the type of project;

143 (iii) the extent to which the requirements of the procuring agencies and the ways in

144 which they are to be met are known;

145 (iv) the location of the project;

146 (v) the size, scope, complexity, and economics of the project;

147 (vi) the source of funding and any resulting constraints necessitated by the funding

148 source;

149 (vii) the availability, qualification, and experience of state personnel to be assigned to

150 the project and how much time the state personnel can devote to the project; and

151 (viii) the availability, qualifications, and experience of outside consultants and

152 contractors to complete the project under the various methods being considered.

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

156 (b) Those rules shall require that:

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

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

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

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

170 **63-56-36.1. Procurement of design-build transportation project contracts.**

171 (1) As used in this section:

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

176 (b) "Transportation agency" means:

177 (i) the Department of Transportation;

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

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

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

182 (v) a public airport authority, as [~~created under Title 17A, Chapter 2, Part 15, Airport~~

183 Authorities] defined in Section 72-10-102.

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

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

188 (2) A transportation agency may:

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

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

194 [~~(4)~~] (3) (a) Before entering a design-build transportation project contract, a
195 transportation agency may issue a request for qualifications to prequalify potential contractors.

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

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

200 (i) construction experience;

201 (ii) design experience;

202 (iii) financial, manpower, and equipment resources available for the project; and

203 (iv) experience in other design-build transportation projects with attributes similar to
204 the project being procured.

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

208 [~~(5)~~] (4) (a) The transportation agency shall:

209 (i) evaluate the responses received from the request for qualifications;

210 (ii) select from their number those qualified to submit proposals; and

211 (iii) invite those respondents to submit proposals based upon the transportation
212 agency's request for proposals.

213 (b) If the transportation agency fails to receive at least two qualified eligible competing

214 proposers, the transportation agency shall readvertise the project.

215 ~~[(6)]~~ (5) The transportation agency shall issue a request for proposals to those qualified
216 respondents that:

217 (a) includes a scope of work statement constituting an information for proposal that
218 may include:

- 219 (i) preliminary design concepts;
- 220 (ii) design criteria, needs, and objectives;
- 221 (iii) warranty and quality control requirements;
- 222 (iv) applicable standards;
- 223 (v) environmental documents;
- 224 (vi) constraints;
- 225 (vii) time expectations or limitations;
- 226 (viii) incentives or disincentives; and
- 227 (ix) other special considerations;

228 (b) requires submitters to provide:

- 229 (i) a sealed cost proposal;
- 230 (ii) a critical path matrix schedule, including cash flow requirements;
- 231 (iii) proposal security; and
- 232 (iv) other items required by the department for the project; and

233 (c) may include award of a stipulated fee to be paid to submitters who submit
234 unsuccessful proposals.

235 ~~[(7)]~~ (6) The transportation agency shall:

236 (a) evaluate the submissions received in response to the request for proposals from the
237 prequalified proposers;

238 (b) comply with rules relating to discussion of proposals, best and final offers, and
239 evaluations of the proposals submitted; and

240 (c) after considering price and other identified factors, award the contract to the
241 responsible proposer whose proposal is most advantageous to the state.

Legislative Review Note

as of 2-10-04 9:01 AM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0223

Transportation Construction Amendments

13-Feb-04

10:41 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst