

1 **TIE BIDS - PREFERENCE FOR IN-STATE**

2 **COMMODITIES**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Darin G. Peterson**

6 House Sponsor: James R. Gowans

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Utah Procurement Code to enact procedures for resolving tie
11 bids.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ provides definitions;
- 15 ▶ establishes statutory procedures for resolving tie bids under the Utah Procurement
16 Code;
- 17 ▶ requires that tie bids for contracts for the provision of commodities other than
18 services or construction be awarded to a provider of state products if all other tied
19 bidders are providers of out-of-state products and other conditions are met;
- 20 ▶ permits the procurement officer to select one of several methods to make an award
21 of a tie bid if the preference for a single provider of state products does not apply;
22 and
- 23 ▶ requires a state public procurement unit to keep a record of all tie bids and to
24 provide a copy of the record to the attorney general for bids over a certain amount.

25 **Monies Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 ENACTS:

31 **63-56-426**, Utah Code Annotated 1953

32

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

34 Section 1. Section **63-56-426** is enacted to read:

35 **63-56-426. Tie bids -- Preference for providers of state products -- Resolution of**
36 **tie bids -- Record of tie bids.**

37 (1) As used in this section:

38 (a) (i) "Commodity" means a good, product, material, or item, including an
39 agricultural, manufacturing, or mining product;

40 (ii) "Commodity" does not include:

41 (A) a service; or

42 (B) construction materials or services.

43 (b) "Provider of state products" means a bidder offering goods, supplies, products,
44 materials, or items that are produced, manufactured, mined, or grown in the state.

45 (c) "Tie bid" means a low responsive bid from a responsive bidder that is identical in
46 price to a responsive bid from another responsive bidder.

47 (2) In the event of a tie bid for the provision of a commodity where only one of the
48 bidders having the low responsive bid is a provider of state products, a public procurement unit
49 shall award the contract to the provider of state products if:

50 (a) the quality of the commodity offered by the provider of state products is equal to or
51 greater than the quality of the commodity offered by the other tied bidders;

52 (b) the commodity offered by the provider of state products is suitable for the use
53 required by the public procurement unit; and

54 (c) the provider of state products is able to produce the commodity in sufficient
55 quantity.

56 (3) Unless Subsection (2) applies, a public procurement unit shall make an award on a
57 tie bid by using one of the following procedures, which shall be selected in the sole discretion

58 of the procurement officer:

59 (a) where a tie bid includes the cost of delivery, awarding the contract to the bidder
60 closest to the point of delivery;

61 (b) awarding the contract to the identical bidder who received the previous award, and
62 continue to award succeeding contracts to the same bidder so long as all low bids are tie bids;

63 (c) awarding the contract to the bidder with the earliest delivery date;

64 (d) if the price of the tie bid is considered excessive or the bids are unsatisfactory for
65 another reason, rejecting all bids and negotiating a more favorable contact on the open market;

66 or

67 (e) if the procurement officer determines in writing that no method under this
68 Subsection (3) will equitably resolve the tie bid, awarding the contract by drawing lots.

69 (4) Awards of tie bids shall not be made by:

70 (a) dividing business among tied bidders; or

71 (b) drawing lots, except as provided in Subsection (3)(e).

72 (5) (a) A state public procurement unit shall retain a record of each invitation for bids
73 on which a tie bid is received, that shall include the following information:

74 (i) the invitation for bids;

75 (ii) the supply, service, or construction item requested by the invitation for bids;

76 (iii) all the bidders and the prices submitted;

77 (iv) the procedure used to resolve the tie bid; and

78 (v) the results of the procedure used to resolve the tie bid, including the name of the
79 bidder awarded the contract.

80 (b) A copy of the record maintained under Subsection (5)(a) shall be provided to the
81 attorney general for all contracts having a tie bid in excess of \$50,000.