

Senator Ralph Okerlund proposes the following substitute bill:

POLITICAL SUBDIVISION'S PROCUREMENT PROCESS

FOR CONSTRUCTION PROJECTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Benjamin M. McAdams

House Sponsor: Jim Nielson

LONG TITLE

General Description:

This bill amends requirements for a local entity to undertake a building improvement or public works project.

Highlighted Provisions:

This bill:

- ▶ authorizes a city of the first class to adopt and follow provisions of Title 63G, Chapter 6, Utah Procurement Code for:
 - a building improvement or public works project that costs \$20,000,000 or more;
- and
 - certain construction methods;
- ▶ amends requirements for a local district or special service district to enter into a contract for design-build services; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **11-39-103**, as last amended by Laws of Utah 2009, First Special Session, Chapter 5

29 **11-39-107**, as last amended by Laws of Utah 2008, Chapter 382

30

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

32 Section 1. Section **11-39-103** is amended to read:

33 **11-39-103. Requirements for undertaking a building improvement or public**
34 **works project -- Request for bids -- Authority to reject bids.**

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

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

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

42 (B) if there is no newspaper published or of general circulation in the local entity as
43 described in Subsection (1)(a)(i)(A), posting notice at least five days before opening the bids in
44 at least five public places in the local entity and leaving the notice posted for at least three days;
45 and

46 (ii) publishing notice in accordance with Section 45-1-101, at least five days before
47 opening the bids; and

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

50 (i) the lowest responsive responsible bidder; or

51 (ii) except as provided in Subsection (2), for a design-build project [~~that the~~]
52 formulated by a local entity [began formulating before March 1, 2004 and with respect to
53 which a contract is entered into before September 1, 2004] subject to Section 11-39-107, a
54 responsible bidder that:

55 (A) offers design-build services; and

56 (B) satisfies the local entity's criteria relating to financial strength, past performance,

57 integrity, reliability, and other factors that the local entity uses to assess the ability of a bidder
58 to perform fully and in good faith the contract requirements for a design-build project.

59 (2) A local entity may not enter into a contract for design-build services if:

60 (a) the local entity is not subject Section 11-39-107; and

61 (b) the local entity did not enter a design-build services contract before September 1,
62 2004.

63 [~~(2)~~] (3) (a) Each notice under Subsection (1)(a) shall indicate that the local entity may
64 reject any or all bids submitted.

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

67 (A) exceeding the bid limit; and

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

69 (ii) Notwithstanding Subsection [~~(2)~~] (3)(b)(i), a local entity may divide the cost of a
70 building improvement or public works project that would, without dividing, exceed the bid
71 limit if the local entity complies with the requirements of this section with respect to each part
72 of the building improvement or public works project that results from dividing the cost.

73 [~~(3)~~] (4) (a) The local entity may reject any or all bids submitted.

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

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

81 Section 2. Section **11-39-107** is amended to read:

82 **11-39-107. Procurement code.**

83 (1) This chapter may not be construed to:

84 (a) prohibit a county or, subject to Subsection (2), a city of the first class legislative
85 body from adopting the procedures of the procurement code; or

86 (b) limit the application of the procurement code to a local district or special service
87 district.

88 (2) A city of the first class:

89 (a) for a building improvement or public works project costing \$20,000,000 or more,
90 may adopt the procedures and follow the provisions of the procurement code for the
91 procurement of and as the procedures and provisions relate to the following construction
92 contracting methods:

93 (i) design-build, as defined in Section 63G-6-103;

94 (ii) construction manager/general contractor, as defined in Section 63G-6-103; or

95 (iii) a method that requires that the local entity draft a plan, specifications, and an
96 estimate for the building improvement or public works project; and

97 (b) may not adopt the procedures or elect to follow the provisions of the procurement
98 code:

99 (i) for a building improvement or public works project costing less than \$20,000,000;

100 or

101 (ii) for a construction contracting method other than one listed in Subsection (2)(a).

102 (3) For a building improvement or public works project costing \$20,000,000 or more, a
103 local district or special service district may:

104 (a) enter into a contract for design-build services in accordance with Section
105 11-39-103; or

106 (b) adopt the procedures and follow the provisions of the procurement code for
107 design-build, as defined in Section 63G-6-103.

108 [~~2~~] (4) (a) In seeking bids and awarding a contract for a building improvement or
109 public works project, a county or, Subject to Subsection (2), a city of the first class legislative
110 body may elect to follow the provisions of the procurement code, as the county or city of the
111 first class legislative body considers appropriate under the circumstances, for specification
112 preparation, source selection, or contract formation.

113 (b) A county or a city of the first class legislative body's election to adopt the
114 procedures of the procurement code may not excuse the county or city of the first class,
115 respectively, from complying with the requirements to award a contract for work in excess of
116 the bid limit and to publish notice of the intent to award.

117 (c) An election under Subsection [~~2~~] (4)(a) may be made on a case-by-case basis,
118 unless the county or city of the first class has previously adopted the procurement code as

119 permitted by Subsection 63G-6-104(3)(e).

120 (d) The county or city of the first class legislative body shall:

121 (i) make each election under Subsection [~~(2)~~] (4)(a) in an open meeting; and

122 (ii) specify in its action the portions of the procurement code to be followed.

123 [~~(3)~~] (5) If the estimated cost of the building improvement or public works project
124 proposed by a local district or special service district exceeds the bid limit, the governing body
125 of the local district or special service district may, if it determines to proceed with the building
126 improvement or public works project, use the competitive procurement procedures of the
127 procurement code in place of the comparable provisions of this chapter.

FISCAL NOTE

S.B. 155 1st Sub. (Green)

SHORT TITLE: Political Subdivision's Procurement Process for Construction Projects

SPONSOR: Okerlund, R.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.