

SB0155S01 compared with SB0155

~~deleted text~~ shows text that was in SB0155 but was deleted in SB0155S01.

inserted text shows text that was not in SB0155 but was inserted into SB0155S01.

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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: _____

LONG TITLE

General Description:

This bill ~~authorizes a city of the first class to adopt and follow, in certain circumstances, provisions of Title 63G, Chapter 6, Utah Procurement Code~~ 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;

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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

Utah Code Sections Affected:

AMENDS:

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

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

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

Section 1. 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) (A) 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

(B) if there is no newspaper published or of general circulation in the local entity as described in Subsection (1)(a)(i)(A), 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

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

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(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) except as provided in Subsection (2), for a design-build project ~~[that the]~~ formulated by a local entity ~~[began formulating before March 1, 2004 and with respect to which a contract is entered into before September 1, 2004]~~ subject to Section 11-39-107, 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 local entity may not enter into a contract for design-build services if:

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

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

~~[(2)]~~ (3) (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)]~~ (3)(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)]~~ (4) (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 governing

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body may undertake the building improvement or public works project as it considers appropriate.

Section ~~(1)~~2. Section **11-39-107** is amended to read:

11-39-107. Procurement code.

(1) This chapter may not be construed to:

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

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

(2) A city of the first class:

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

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

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

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

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

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

or

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

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

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

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

~~[(2)]~~ ~~(1)~~4 (a) In seeking bids and awarding a contract for a building improvement or public works project, a county or, Subject to Subsection (2), a city of the first class legislative

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body may elect to follow the provisions of the procurement code, as the county or city of the first class legislative body considers appropriate under the circumstances, for specification preparation, source selection, or contract formation.

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

(c) An election under Subsection [(2)] (~~(3)~~4)(a) may be made on a case-by-case basis, unless the county or city of the first class has previously adopted the procurement code as permitted by Subsection 63G-6-104(3)(e).

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

- (i) make each election under Subsection [(2)] (~~(3)~~4)(a) in an open meeting; and
- (ii) specify in its action the portions of the procurement code to be followed.

[(3)] (~~(4)~~5) If the estimated cost of the building improvement or public works project proposed by a local district or special service district exceeds the bid limit, the governing body of the local district or special service district may, if it determines to proceed with the building improvement or public works project, use the competitive procurement procedures of the procurement code in place of the comparable provisions of this chapter.

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Legislative Review Note

as of ~~2-4-11 11:20 AM~~

~~Office of Legislative Research and General Counsel~~