

2nd Sub. H.B. 503 CONSTRUCTION AMENDMENTS

Representative **Wayne A. Harper** proposes the following amendments:

1. *Page 1, Line 21:*

- 21 • any other entity that provides or collects for labor; ~~{and}~~
▶ provides that a design-build construction project contract may include provision by the contractor of operations, maintenance, or financing ; and

2. *Page 2, Line 34:*

- 34 38-1-32.5, as enacted by Laws of Utah 2011, Chapter 299
= 63G-6-501, as renumbered and amended by Laws of Utah 2008, Chapter 382
 63G-6-502, as last amended by Laws of Utah 2010, Chapter 358

3. *Page 2, Line 40:*

- 40 63G-6-506.5, Utah Code Annotated 1953
Uncodified Material Affected:
ENACTS UNCODIFIED MATERIAL

4. *Page 8, Line 239 through Page 9, Line 240:*

- 239 conditions clause.
Section 9. Section 63G-6-501 is amended to read:
63G-6-501. 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 Part 4, Source Selections and Contract Formation, and Section 63G-6-502; 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 Part 4, Source Selections and Contract Formation, 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.

(4) A design-build contract or a construction manager/general contractor contract may include provision by the contractor of operations, maintenance, or financing.

Section 10. Section 63G-6-502 is amended to read:

63G-6-502. 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.

(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:

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

(ii) shall make rules, by following the procedures and requirements of Title 63G, Chapter 3, 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).

(d) A design-build transportation project contract may include provision by the contractor of operations, maintenance, or financing.

(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) (i) Except as provided in Subsection (5)(b)(ii), if the transportation agency fails to receive at least two qualified eligible competing proposers, the transportation agency shall readvertise the project.

(ii) A transportation agency may award a contract for a transportation project that has an estimated cost of \$5,000,000 or less to a qualified eligible proposer if:

(A) only a single proposal is received; and

(B) the transportation agency determines that:

(I) the proposal is advantageous to the state; and

- (II) the proposal price is reasonable.
- (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.

240 Section ~~{-9}~~ 11 . Section **63G-6-506** is amended to read:

5. Page 9, Line 258:

258 Section ~~{-10}~~ 12 . Section **63G-6-506.5** is enacted to read:

6. Page 9, Line 263:

263 Section ~~{-11}~~ 13 . Section **63G-6-601** is amended to read:

7. Page 11, Line 319:

319 clause.

Section 14. Mountain View Corridor Construction.
The Department of Transportation may issue a request for proposals to construct Mountain View Corridor from 5400 South to I-80. The request for proposals may include the provision of financing by

the contractor for the construction project.