

UTAH ASSOCIATION OF SPECIAL DISTRICTS PROCUREMENT

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OVERVIEW

- The underlying purpose and policies of the Utah Procurement Code are:
 - 1. to simplify, clarify, and modernize the law governing procurement by this state;
 - 2. to ensure the fair and equitable treatment of all persons who deal with the procurement system of this state;
 - 3. to provide increased economy in state procurement activities; and
 - 4. to foster effective broad-based competition within the free enterprise system.

- Due to a number of technical glitches, the effective date of the Procurement Code adopted in 2012 was delayed by one year.
- The bulk of those technical issues were “fixed” by legislation adopted in the 2013 general session.
- The application of Part 23 (Ethics) to local districts and special service districts, along with counties and municipalities, was deferred to allow impacted local governments to reach consensus.
 - A new Part 23, with universal application, is being prepared for consideration during the 2014 general session.

- The Legislation will also correct a few remaining “glitches” and is expected to expand the lawful use of design-build (architect-engineer services and construction work covered by a single contract with a design-build provider).
- Purchasing entities, including local districts and special service districts, have until May 13, 2014 to have Procurement Rules in place.
 - Otherwise, the State’s Procurement Rules will apply by default.

Agencies Affected

- All local districts and special service districts
- Municipalities and counties, to the extent they elect to be covered
 - But, starting next year, all procurement units are expected to be subject to yet to be adopted Part 23 (Ethics)
 - But not interlocal cooperation entities (excepting anticipated new Part 23)

KEY DEFINITIONS

- “Chief Procurement Officer”
 - The Director of the Division of Purchasing and General Services (Kent Beers) appointed by the Director of the Department of Administrative Services with the consent of the Governor, after considering recommendations of the Utah State Procurement Policy Board
 - Authority respecting “state procurements” – subject to the Utah Procurement Code and applicable rules adopted by the Board, he’s the “King”
 - Relative to local districts and special service districts – absolutely none

KEY DEFINITIONS (cont.)

- “Procurement Officer”
 - Relative to local districts and special service districts, all of which have independent procurement authority:
 - The head of the procurement unit;
 - A designee of the head; or
 - A person designated by applicable rule
- “Head of a procurement unit”
 - Respecting a local district or special service district – the governing body or a designee of the governing body

KEY DEFINITIONS (cont.)

- “Board”
 - The Utah State Procurement Policy Board
 - A fifteen member state board representing various state and local governmental purchasing units
 - Including two representatives of local districts or special service districts appointed by the Utah Association of Special Districts
- “Applicable Rule Making Authority”
 - As it relates to a local district or special service district:
 - Before May 13, 2014, the governing body of the district; or
 - On or after May 13, 2014, the Board except to the extent that the district governing body makes its own rules covering a subject addressed by Board rules or in addition to Board approved rules.

KEY DEFINITIONS (cont.)

- “Procure” or “Procurement” – “includes all functions that pertain to obtaining a procurement item, including:”
 - Describing requirements
 - Selection process
 - Solicitation
 - Preparation of solicitation
 - Awarding a contract
 - All phases of contract administration
- “Protest Officer”
 - The head of the procurement unit;
 - A designee of the head; or
 - A person designated by applicable rule

KEY DEFINITIONS (cont.)

- “Responsible” bidder or offeror
 - “Capable, in all respects, to fully perform the contract requirements solicited in an invitation for bids or a request for proposals”; and
 - “Has the integrity and reliability to ensure good faith performance”
- “Responsive” Bidder or Offeror
 - “submits a response to an invitation for bids or a request for proposals that conforms in all material respects to the invitation for bids or request for proposals”

- “Local Government Procurement Unit”
 - A county or municipality that fails to adopt its own Procurement Code by Ordinance; or
 - A county or municipality that has adopted a portion of the Utah Procurement Code by Ordinance, to the extent applicable to the adopted portion of the Code
 - Not a local district or a special service district
- “Procurement Unit”
 - Essentially every governmental purchasing agency or entity except a political subdivision created under the Interlocal Cooperation Act