

1                                   **PROCUREMENT CODE REQUIREMENT OF**  
2                                   **HEALTH CARE BENEFITS**

3                                   1999 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Sponsor: Ed P. Mayne**

6 AN ACT RELATING TO STATE AFFAIRS IN GENERAL; REQUIRING A BUSINESS TO  
7 PROVIDE HEALTH INSURANCE COVERAGE TO EMPLOYEES AS A CONDITION FOR  
8 CONTRACTING WITH THE STATE; AND MAKING TECHNICAL CORRECTIONS.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11                   **63-56-40**, as enacted by Chapter 75, Laws of Utah 1980

12                   **63-56-48**, as enacted by Chapter 75, Laws of Utah 1980

13 ENACTS:

14                   **63-56-20.1**, Utah Code Annotated 1953

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

16                   Section 1. Section **63-56-20.1** is enacted to read:

17                   **63-56-20.1. Health insurance requirement.**

18                   (1) As used in this section, "employee" means an "employee," "worker," or "operative" as  
19 defined in Section 34A-2-104.

20                   (2) To be eligible to contract with a public procurement unit under this chapter, a business  
21 shall provide health insurance coverage to each employee.

22                   (3) Within ten days of a contract being awarded under this chapter, a business shall submit  
23 documentation of current health insurance coverage for its employees to the public procurement  
24 unit that awarded the contract.

25                   (4) The public procurement unit shall terminate a contract it has awarded and may seek  
26 debarment of the contractor under Section 63-56-48 if the contracting business:

27                   (a) fails to submit documentation of current health insurance coverage as required by

28 Subsection (3); or

29 (b) submits documentation of current health insurance coverage when none exists.

30 (5) (a) If a business enters into a contract with the public procurement unit that is in effect  
31 or is expected to be in effect for 60 or more days, the business shall inform the public procurement  
32 unit if the business fails to provide health insurance coverage to its employees for 30 or more days  
33 during the term of the contract.

34 (b) A public procurement unit that receives notice that a contractor is not providing health  
35 insurance shall terminate the contract unless:

36 (i) termination would materially harm the interests of the public procurement unit; and

37 (ii) a comparable contracting business is not readily available.

38 (c) A public procurement unit that receives notice that a contractor is not providing health  
39 insurance may seek debarment of the contractor under Section 63-56-48.

40 (d) A business may not terminate a contract it has with the public procurement unit  
41 because the business does not provide health insurance coverage to its employees.

42 Section 2. Section **63-56-40** is amended to read:

43 **63-56-40. Required contract clauses -- Computation of price adjustments -- Use of**  
44 **rules and regulations.**

45 (1) Rules and regulations shall require for state construction contracts and may permit or  
46 require for state contracts for supplies and services the inclusion of clauses providing for  
47 adjustments in prices, time of performance, or other appropriate contract provisions, and covering  
48 the following subjects:

49 (a) the unilateral right of the state to order in writing changes in the work within the scope  
50 of the contract and changes in the time of performance of the contract that do not alter the scope  
51 of the contract work;

52 (b) variations occurring between estimated quantities of work in a contract and actual  
53 quantities;

54 (c) suspension of work ordered by the state; and

55 (d) site conditions differing from those indicated in the construction contract, or ordinarily  
56 encountered, except that differing site conditions clauses required by the rules and regulations need  
57 not be included in a construction contract when the contract is negotiated, when the contractor  
58 provides the site or design, or when the parties have otherwise agreed with respect to the risk of

59 differing site conditions.

60 (2) Adjustments in price pursuant to clauses promulgated under Subsection (1) shall be  
61 computed in one or more of the following ways:

62 (a) by agreement on a fixed price adjustment before commencement of the pertinent  
63 performance or as soon thereafter as practicable;

64 (b) by unit prices specified in the contract or subsequently agreed upon;

65 (c) by the costs attributable to the events or situations under the clauses with adjustment  
66 of profit or fee, all as specified in the contract or subsequently agreed upon;

67 (d) in any other manner as the contracting parties may mutually agree; or

68 (e) in the absence of agreement by the parties, by a unilateral determination by the state  
69 of the costs attributable to the events or situations under the clauses with adjustment of profit or  
70 fee, all as computed by the state in accordance with applicable sections of the rules and regulations  
71 issued under Subsection 63-56-28(1) and subject to the provisions of Part H of this chapter.

72 (3) A contractor shall be required to submit cost or pricing data if any adjustment in  
73 contract price is subject to the provisions of Section 63-56-28.

74 (4) Rules and regulations shall require for state construction contracts and may permit or  
75 require for state contracts for supplies and services the inclusion of clauses providing for  
76 appropriate remedies and covering at least the following subjects:

77 (a) liquidated damages as appropriate;

78 (b) specified excuses for delay or nonperformance;

79 (c) termination of the contract for default; and

80 (d) termination of the contract in whole or in part for the convenience of the state.

81 (5) A contract for construction, supplies, or service shall include the health insurance  
82 requirement of Section 63-56-20.1.

83 [~~5~~] (6) The contract clauses promulgated under this section shall be set forth in rules and  
84 regulations. However, the chief procurement officer or the head of a purchasing agency may  
85 modify the clauses for inclusion in any particular contract. Any variations shall be supported by  
86 a written determination that describes the circumstances justifying the variations, and notice of any  
87 material variation shall be included in the invitation for bids or request for proposals.

88 Section 3. Section **63-56-48** is amended to read:

89 **63-56-48. Debarment from consideration for award of contracts -- Causes for**

90 **debarment.**

91 (1) After reasonable notice to the person involved and reasonable opportunity for that  
92 person to be heard, the chief procurement officer or the head of a purchasing agency, after  
93 consultation with the using agency and the attorney general, shall have authority to debar a person  
94 for cause from consideration for award of contracts. The debarment shall not be for a period  
95 exceeding three years. The same officer, after consultation with the using agency and the attorney  
96 general, shall have authority to suspend a person from consideration for award of contracts if there  
97 is probable cause to believe that the person has engaged in any activity which might lead to  
98 debarment. The suspension shall not be for a period exceeding three months unless an indictment  
99 has been issued for an offense which would be a cause for debarment under subsection (2) of this  
100 section, in which case the suspension shall, at the request of the attorney general, remain in effect  
101 until after the trial of the suspended person.

102 (2) The causes for debarment include the following:

103 (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a  
104 public or private contract or subcontract or in the performance of such contract or subcontract;

105 (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery,  
106 falsification or destruction of records, receiving stolen property, or any other offense indicating a  
107 lack of business integrity or business honesty which currently, seriously, and directly affects  
108 responsibility as a state contractor;

109 (c) conviction under state or federal antitrust statutes;

110 (d) failure without good cause to perform in accordance with the terms of the contract; [or]

111 (e) violation of the health insurance requirement of Section 63-56-20.1; or

112 [~~e~~] (f) any other cause the chief procurement officer, or the head of a purchasing agency  
113 determines to be so serious and compelling as to affect responsibility as a state contractor,  
114 including debarment by another governmental entity for any cause listed in rules and regulations.

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**Legislative Review Note**  
**as of 12-30-98 1:04 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**