

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

3                                   2001 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Sponsor: Ed P. Mayne**

6 **This act modifies the Utah Procurement Code by requiring certain businesses to provide**  
7 **qualified health insurance coverage to employees as a condition for contracting with the state**  
8 **under certain circumstances.**

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           **63-56-20.2**, Utah Code Annotated 1953

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

16           Section 1. Section **63-56-20.2** is enacted to read:

17           **63-56-20.2. Health insurance requirement.**

18           (1) As used in this section:

19           (a) "Business" means a corporation, partnership, sole proprietorship, or individual whose  
20 volume of business with the state exceeds \$500,000.

21           (b) (i) "Contract" means a contract with a public procurement unit that is awarded by  
22 sealed bid as required by Section 63-56-20.

23           (ii) "Contract" does not mean an agreement between a business and an academic or clinical  
24 researcher, institution, or subunit of an institution.

25           (c) "Employee" means an "employee," "worker," or "operative" as defined in Section  
26 34A-2-14 who works at least 20 hours per calendar week.

27           (d) "Qualified health insurance coverage" means health insurance in which the employer

28 pays at least 75% of the premium for the employee and at least 50% of the premium for any  
29 dependents of the employee.

30 (e) "Volume of Business" means the sum of the value of all contracts that the person or  
31 entity entering the contract has with the state.

32 (2) To be eligible to contract with a public procurement unit under Section 63-56-20, a  
33 business shall provide qualified health insurance coverage to each employee.

34 (3) Within ten days of a contract being awarded under Section 63-56-20, a business shall  
35 submit documentation of current qualified health insurance coverage for its employees to the  
36 public procurement unit that awarded the contract.

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

39 (a) fails to submit documentation of current qualified health insurance coverage as required  
40 by Subsection (3); or

41 (b) submits documentation of current qualified health insurance coverage when none  
42 exists.

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

47 (b) (i) A public procurement unit that receives notice that a contractor is not providing  
48 qualified health insurance shall terminate the contract unless:

49 (A) termination would materially harm the interests of the public procurement unit; and

50 (B) a comparable business to contract with is not readily available.

51 (ii) Before declining to terminate a contract under this Subsection (5)(b), the public  
52 procurement unit shall issue a written finding detailing specifically its basis for declining to  
53 terminate the contract.

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

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

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

59           **63-56-40. Required contract clauses -- Computation of price adjustments -- Use of**  
60 **rules and regulations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

- 93 (a) liquidated damages as appropriate;
- 94 (b) specified excuses for delay or nonperformance;
- 95 (c) termination of the contract for default; and
- 96 (d) termination of the contract in whole or in part for the convenience of the state.

97 (5) A contract awarded under Section 63-56-20 shall include the qualified health insurance  
98 requirement of Section 63-56-20.2.

99 [~~5~~] (6) The contract clauses promulgated under this section shall be set forth in rules and  
100 regulations. However, the chief procurement officer or the head of a purchasing agency may  
101 modify the clauses for inclusion in any particular contract. Any variations shall be supported by  
102 a written determination that describes the circumstances justifying the variations, and notice of any  
103 material variation shall be included in the invitation for bids or request for proposals.

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

105 **63-56-48. Debarment from consideration for award of contracts -- Causes for**  
106 **debarment.**

107 (1) After reasonable notice to the person involved and reasonable opportunity for that  
108 person to be heard, the chief procurement officer or the head of a purchasing agency, after  
109 consultation with the using agency and the attorney general, shall have authority to debar a person  
110 for cause from consideration for award of contracts. The debarment shall not be for a period  
111 exceeding three years. The same officer, after consultation with the using agency and the attorney  
112 general, shall have authority to suspend a person from consideration for award of contracts if there  
113 is probable cause to believe that the person has engaged in any activity which might lead to  
114 debarment. The suspension shall not be for a period exceeding three months unless an indictment  
115 has been issued for an offense which would be a cause for debarment under Subsection (2) of this  
116 section, in which case the suspension shall, at the request of the attorney general, remain in effect  
117 until after the trial of the suspended person.

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

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

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

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

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

127 (e) violation of the qualified health insurance requirement of Section 63-56-20.2; or

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

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**Legislative Review Note**  
**as of 1-12-01 10:39 AM**

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

**Office of Legislative Research and General Counsel**