

**GOVERNMENT PROCUREMENT - PRIVATE
PROPOSALS**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kevin S. Garn

Senate Sponsor: _____

LONG TITLE

General Description:

This bill creates a program allowing a private entity to submit proposals to provide certain products or services to the Department of Technology Services or the State School Board.

Highlighted Provisions:

This bill:

- ▶ makes legislative findings;
- ▶ creates a program allowing the submission of a proposal to provide a product or service to the Department of Technology Services or the State School Board;
- ▶ requires the Board of Business and Economic Development to appoint a committee to evaluate a proposal under the program;
- ▶ defines terms;
- ▶ addresses the requirements of an initial proposal submitted to the committee;
- ▶ provides for review of an initial proposal by the committee and the affected department;
- ▶ addresses the issuance of an invitation for detailed proposals if the initial proposal is accepted by the committee;
- ▶ provides requirements for a detailed proposal;
- ▶ makes an initial proposal a protected record under Title 63, Chapter 2, Government



28 Records Access and Management Act;

29 ▶ allows the committee, by rule, to maintain certain portions of an initial proposal as a
30 protected record;

31 ▶ addresses cooperation between a private entity submitting a detailed proposal and
32 the affected department;

33 ▶ requires the Governor's Office of Planning and Budget to prepare an economic
34 feasibility report concerning a detailed proposal;

35 ▶ provides for the acceptance of a detailed proposal and the preparation and execution
36 of a project agreement;

37 ▶ creates a restricted account, comprised of monies collected from fees for submitting
38 a proposal;

39 ▶ establishes uses for which monies may be expended from the restricted account;

40 ▶ requires the establishment of fees for proposals and project agreements;

41 ▶ allows for the appointment of an advisory committee to assist the committee in
42 evaluating proposals and preparing project agreements; and

43 ▶ makes technical changes.

44 **Monies Appropriated in this Bill:**

45 None

46 **Other Special Clauses:**

47 None

48 **Utah Code Sections Affected:**

49 AMENDS:

50 **53A-20-101**, as last amended by Laws of Utah 2005, Chapter 25

51 **63-2-304**, as last amended by Laws of Utah 2008, Chapter 3

52 **63-38f-203**, as renumbered and amended by Laws of Utah 2005, Chapter 148

53 **63-56-102**, as last amended by Laws of Utah 2007, Chapter 329

54 **63F-1-205**, as last amended by Laws of Utah 2007, Chapter 306

55 ENACTS:

56 **63G-6-408.5**, Utah Code Annotated 1953

57 **63M-1-2401**, Utah Code Annotated 1953

58 **63M-1-2402**, Utah Code Annotated 1953

- 59 **63M-1-2403**, Utah Code Annotated 1953
- 60 **63M-1-2404**, Utah Code Annotated 1953
- 61 **63M-1-2405**, Utah Code Annotated 1953
- 62 **63M-1-2406**, Utah Code Annotated 1953
- 63 **63M-1-2407**, Utah Code Annotated 1953
- 64 **63M-1-2408**, Utah Code Annotated 1953
- 65 **63M-1-2409**, Utah Code Annotated 1953
- 66 **63M-1-2410**, Utah Code Annotated 1953
- 67 **63M-1-2411**, Utah Code Annotated 1953
- 68 **63M-1-2412**, Utah Code Annotated 1953
- 69 **63M-1-2413**, Utah Code Annotated 1953

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

72 Section 1. Section **53A-20-101** is amended to read:

73 **53A-20-101. Construction and alteration of schools and plants -- Advertising for**
 74 **bids -- Payment and performance bonds -- Contracts -- Bidding limitations on local**
 75 **school boards -- Interest of local school board members.**

76 (1) As used in this section, the word "sealed" does not preclude acceptance of
 77 electronically sealed and submitted bids or proposals in addition to bids or proposals manually
 78 sealed and submitted.

79 (2) (a) ~~[Prior to]~~ Except as provided in Title 63M, Chapter 1, Part 24, Government
 80 Procurement Private Proposal Program, before the construction of any school or the alteration
 81 of any existing school plant, if the total estimated accumulative building project cost exceeds
 82 \$80,000, a local school board shall advertise for bids on the project at least ten days before the
 83 bid due date.

84 (b) The board shall have the advertisement published in a newspaper having general
 85 circulation throughout the state and in appropriate construction trade publications that offer
 86 free listings.

87 (c) A similar advertisement is required in a newspaper published or having general
 88 circulation in any city or county that would be affected by the proposed project.

89 (d) The advertisement shall:

90 (i) require sealed proposals for the building project in accordance with plans and
91 specifications furnished by the local school board;

92 (ii) state where and when the proposals will be opened and shall reserve the right of the
93 board to reject any and all proposals; and

94 (iii) require a certified check or bid bond of not less than 5% of the bid to accompany
95 the bid.

96 (3) (a) The board shall meet at the time and place specified in the advertisement and
97 publicly open and read all received proposals.

98 (b) If satisfactory bids are received, the board shall award the contract to the lowest
99 responsible bidder.

100 (c) If none of the proposals are satisfactory, all shall be rejected.

101 (d) The board shall again advertise in the manner provided in this section.

102 (e) If, after advertising a second time no satisfactory bid is received, the board may
103 proceed under its own direction with the required project.

104 (4) (a) The check or bond required under Subsection (2)(d) shall be drawn in favor of
105 the local school board.

106 (b) If the successful bidder fails or refuses to enter into the contract and furnish the
107 additional bonds required under this section, then the bidder's check or bond is forfeited to the
108 district.

109 (5) A local school board shall require payment and performance bonds of the
110 successful bidder as required in Section 63-56-504.

111 (6) (a) A local school board may require in the proposed contract that at least 10% of
112 the contract price be withheld until the project is completed and accepted by the board.

113 (b) If money is withheld, the board shall place it in an interest bearing account, and the
114 interest accrues for the benefit of the contractor and subcontractors.

115 (c) This money shall be paid upon completion of the project and acceptance by the
116 board.

117 (7) (a) A local school board may not bid on projects within the district if the total
118 accumulative estimated cost exceeds \$80,000.

119 (b) The board may use its resources if no satisfactory bids are received under this
120 section.

121 (8) If the local school board determines in accordance with Section 63-56-501 to use a
122 construction manager/general contractor as its method of construction contracting management
123 on projects where the total estimated accumulative cost exceeds \$80,000, it shall select the
124 construction manager/general contractor using one of the source selection methods provided
125 for in Sections 63-56-401 through 63-56-501.

126 (9) A local school board member may not have a direct or indirect financial interest in
127 the construction project contract.

128 Section 2. Section **63-2-304** is amended to read:

129 **63-2-304. Protected records.**

130 The following records are protected if properly classified by a governmental entity:

131 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
132 has provided the governmental entity with the information specified in Section 63-2-308;

133 (2) commercial information or nonindividual financial information obtained from a
134 person if:

135 (a) disclosure of the information could reasonably be expected to result in unfair
136 competitive injury to the person submitting the information or would impair the ability of the
137 governmental entity to obtain necessary information in the future;

138 (b) the person submitting the information has a greater interest in prohibiting access
139 than the public in obtaining access; and

140 (c) the person submitting the information has provided the governmental entity with
141 the information specified in Section 63-2-308;

142 (3) commercial or financial information acquired or prepared by a governmental entity
143 to the extent that disclosure would lead to financial speculations in currencies, securities, or
144 commodities that will interfere with a planned transaction by the governmental entity or cause
145 substantial financial injury to the governmental entity or state economy;

146 (4) records the disclosure of which could cause commercial injury to, or confer a
147 competitive advantage upon a potential or actual competitor of, a commercial project entity as
148 defined in Subsection 11-13-103(4);

149 (5) test questions and answers to be used in future license, certification, registration,
150 employment, or academic examinations;

151 (6) records the disclosure of which would impair governmental procurement

152 proceedings or give an unfair advantage to any person proposing to enter into a contract or
153 agreement with a governmental entity, except that this Subsection (6) does not restrict the right
154 of a person to see bids submitted to or by a governmental entity after bidding has closed;

155 (7) records that would identify real property or the appraisal or estimated value of real
156 or personal property, including intellectual property, under consideration for public acquisition
157 before any rights to the property are acquired unless:

158 (a) public interest in obtaining access to the information outweighs the governmental
159 entity's need to acquire the property on the best terms possible;

160 (b) the information has already been disclosed to persons not employed by or under a
161 duty of confidentiality to the entity;

162 (c) in the case of records that would identify property, potential sellers of the described
163 property have already learned of the governmental entity's plans to acquire the property;

164 (d) in the case of records that would identify the appraisal or estimated value of
165 property, the potential sellers have already learned of the governmental entity's estimated value
166 of the property; or

167 (e) the property under consideration for public acquisition is a single family residence
168 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
169 the property as required under Section 78B-6-505;

170 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
171 compensated transaction of real or personal property including intellectual property, which, if
172 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
173 of the subject property, unless:

174 (a) the public interest in access outweighs the interests in restricting access, including
175 the governmental entity's interest in maximizing the financial benefit of the transaction; or

176 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
177 the value of the subject property have already been disclosed to persons not employed by or
178 under a duty of confidentiality to the entity;

179 (9) records created or maintained for civil, criminal, or administrative enforcement
180 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
181 release of the records:

182 (a) reasonably could be expected to interfere with investigations undertaken for

183 enforcement, discipline, licensing, certification, or registration purposes;

184 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
185 proceedings;

186 (c) would create a danger of depriving a person of a right to a fair trial or impartial
187 hearing;

188 (d) reasonably could be expected to disclose the identity of a source who is not
189 generally known outside of government and, in the case of a record compiled in the course of
190 an investigation, disclose information furnished by a source not generally known outside of
191 government if disclosure would compromise the source; or

192 (e) reasonably could be expected to disclose investigative or audit techniques,
193 procedures, policies, or orders not generally known outside of government if disclosure would
194 interfere with enforcement or audit efforts;

195 (10) records the disclosure of which would jeopardize the life or safety of an
196 individual;

197 (11) records the disclosure of which would jeopardize the security of governmental
198 property, governmental programs, or governmental recordkeeping systems from damage, theft,
199 or other appropriation or use contrary to law or public policy;

200 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
201 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
202 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

203 (13) records that, if disclosed, would reveal recommendations made to the Board of
204 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
205 Board of Pardons and Parole, or the Department of Human Services that are based on the
206 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
207 jurisdiction;

208 (14) records and audit workpapers that identify audit, collection, and operational
209 procedures and methods used by the State Tax Commission, if disclosure would interfere with
210 audits or collections;

211 (15) records of a governmental audit agency relating to an ongoing or planned audit
212 until the final audit is released;

213 (16) records prepared by or on behalf of a governmental entity solely in anticipation of

214 litigation that are not available under the rules of discovery;

215 (17) records disclosing an attorney's work product, including the mental impressions or
216 legal theories of an attorney or other representative of a governmental entity concerning
217 litigation;

218 (18) records of communications between a governmental entity and an attorney
219 representing, retained, or employed by the governmental entity if the communications would be
220 privileged as provided in Section 78B-1-137;

221 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
222 from a member of the Legislature; and

223 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
224 legislative action or policy may not be classified as protected under this section; and

225 (b) (i) an internal communication that is part of the deliberative process in connection
226 with the preparation of legislation between:

227 (A) members of a legislative body;

228 (B) a member of a legislative body and a member of the legislative body's staff; or

229 (C) members of a legislative body's staff; and

230 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
231 legislative action or policy may not be classified as protected under this section;

232 (20) (a) records in the custody or control of the Office of Legislative Research and
233 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
234 legislation or contemplated course of action before the legislator has elected to support the
235 legislation or course of action, or made the legislation or course of action public; and

236 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
237 Office of Legislative Research and General Counsel is a public document unless a legislator
238 asks that the records requesting the legislation be maintained as protected records until such
239 time as the legislator elects to make the legislation or course of action public;

240 (21) research requests from legislators to the Office of Legislative Research and
241 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
242 in response to these requests;

243 (22) drafts, unless otherwise classified as public;

244 (23) records concerning a governmental entity's strategy about collective bargaining or

245 pending litigation;

246 (24) records of investigations of loss occurrences and analyses of loss occurrences that
247 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
248 Uninsured Employers' Fund, or similar divisions in other governmental entities;

249 (25) records, other than personnel evaluations, that contain a personal recommendation
250 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
251 personal privacy, or disclosure is not in the public interest;

252 (26) records that reveal the location of historic, prehistoric, paleontological, or
253 biological resources that if known would jeopardize the security of those resources or of
254 valuable historic, scientific, educational, or cultural information;

255 (27) records of independent state agencies if the disclosure of the records would
256 conflict with the fiduciary obligations of the agency;

257 (28) records of an institution within the state system of higher education defined in
258 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
259 retention decisions, and promotions, which could be properly discussed in a meeting closed in
260 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
261 the final decisions about tenure, appointments, retention, promotions, or those students
262 admitted, may not be classified as protected under this section;

263 (29) records of the governor's office, including budget recommendations, legislative
264 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
265 policies or contemplated courses of action before the governor has implemented or rejected
266 those policies or courses of action or made them public;

267 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
268 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
269 recommendations in these areas;

270 (31) records provided by the United States or by a government entity outside the state
271 that are given to the governmental entity with a requirement that they be managed as protected
272 records if the providing entity certifies that the record would not be subject to public disclosure
273 if retained by it;

274 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
275 except as provided in Section 52-4-206;

276 (33) records that would reveal the contents of settlement negotiations but not including
277 final settlements or empirical data to the extent that they are not otherwise exempt from
278 disclosure;

279 (34) memoranda prepared by staff and used in the decision-making process by an
280 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
281 other body charged by law with performing a quasi-judicial function;

282 (35) records that would reveal negotiations regarding assistance or incentives offered
283 by or requested from a governmental entity for the purpose of encouraging a person to expand
284 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
285 person or place the governmental entity at a competitive disadvantage, but this section may not
286 be used to restrict access to a record evidencing a final contract;

287 (36) materials to which access must be limited for purposes of securing or maintaining
288 the governmental entity's proprietary protection of intellectual property rights including patents,
289 copyrights, and trade secrets;

290 (37) the name of a donor or a prospective donor to a governmental entity, including an
291 institution within the state system of higher education defined in Section 53B-1-102, and other
292 information concerning the donation that could reasonably be expected to reveal the identity of
293 the donor, provided that:

294 (a) the donor requests anonymity in writing;

295 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
296 classified protected by the governmental entity under this Subsection (37); and

297 (c) except for an institution within the state system of higher education defined in
298 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
299 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
300 over the donor, a member of the donor's immediate family, or any entity owned or controlled
301 by the donor or the donor's immediate family;

302 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
303 73-18-13;

304 (39) a notification of workers' compensation insurance coverage described in Section
305 34A-2-205;

306 (40) (a) the following records of an institution within the state system of higher

307 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
308 or received by or on behalf of faculty, staff, employees, or students of the institution:

309 (i) unpublished lecture notes;

310 (ii) unpublished notes, data, and information:

311 (A) relating to research; and

312 (B) of:

313 (I) the institution within the state system of higher education defined in Section
314 53B-1-102; or

315 (II) a sponsor of sponsored research;

316 (iii) unpublished manuscripts;

317 (iv) creative works in process;

318 (v) scholarly correspondence; and

319 (vi) confidential information contained in research proposals;

320 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
321 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

322 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

323 (41) (a) records in the custody or control of the Office of Legislative Auditor General

324 that would reveal the name of a particular legislator who requests a legislative audit prior to the
325 date that audit is completed and made public; and

326 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
327 Office of the Legislative Auditor General is a public document unless the legislator asks that
328 the records in the custody or control of the Office of Legislative Auditor General that would
329 reveal the name of a particular legislator who requests a legislative audit be maintained as
330 protected records until the audit is completed and made public;

331 (42) records that provide detail as to the location of an explosive, including a map or
332 other document that indicates the location of:

333 (a) a production facility; or

334 (b) a magazine;

335 (43) information contained in the database described in Section 62A-3-311.1;

336 (44) information contained in the Management Information System and Licensing
337 Information System described in Title 62A, Chapter 4a, Child and Family Services;

338 (45) information regarding National Guard operations or activities in support of the
339 National Guard's federal mission;

340 (46) records provided by any pawn or secondhand business to a law enforcement
341 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
342 Secondhand Merchandise Transaction Information Act;

343 (47) information regarding food security, risk, and vulnerability assessments performed
344 by the Department of Agriculture and Food;

345 (48) except to the extent that the record is exempt from this chapter pursuant to Section
346 63-2-106, records related to an emergency plan or program prepared or maintained by the
347 Division of Homeland Security the disclosure of which would jeopardize:

348 (a) the safety of the general public; or

349 (b) the security of:

350 (i) governmental property;

351 (ii) governmental programs; or

352 (iii) the property of a private person who provides the Division of Homeland Security
353 information;

354 (49) records of the Department of Agriculture and Food relating to the National
355 Animal Identification System or any other program that provides for the identification, tracing,
356 or control of livestock diseases, including any program established under Title 4, Chapter 24,
357 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
358 Quarantine;

359 (50) as provided in Section 26-39-109:

360 (a) information or records held by the Department of Health related to a complaint
361 regarding a child care program or residential child care which the department is unable to
362 substantiate; and

363 (b) information or records related to a complaint received by the Department of Health
364 from an anonymous complainant regarding a child care program or residential child care; ~~and~~

365 (51) unless otherwise classified as public under Section 63-2-301 and except as
366 provided under Section 41-1a-116, an individual's home address, home telephone number, or
367 personal mobile phone number, if:

368 (a) the individual is required to provide the information in order to comply with a law,

369 ordinance, rule, or order of a government entity; and

370 (b) the subject of the record has a reasonable expectation that this information will be
371 kept confidential due to:

372 (i) the nature of the law, ordinance, rule, or order; and

373 (ii) the individual complying with the law, ordinance, rule, or order[-]; and

374 (52) an initial proposal under Title 63M, Chapter 1, Part 24, Government Procurement
375 Private Proposal Program, to the extent not made public by rules made under that chapter.

376 Section 3. Section **63-38f-203** is amended to read:

377 **63-38f-203. Powers and duties of director.**

378 (1) The director, with the approval of the governor, may:

379 (a) by following the procedures and requirements of Title 63, Chapter 38e, Federal
380 Funds Procedures, seek federal grants, loans, or participation in federal programs;

381 (b) enter into lawful contracts or agreements with other states, any chamber of
382 commerce organization, [~~and~~] any service club[~~;~~ ~~and~~], and a private entity pursuant to Section
383 63M-1-2411; and

384 (c) annually prepare and submit to the governor a budget of the office's financial
385 requirements.

386 (2) If any federal program requires the expenditure of state funds as a condition to
387 participation by the state in any fund, property, or service, with the governor's approval, the
388 director shall expend whatever funds are necessary out of the money provided by the
389 Legislature for the use of the office.

390 Section 4. Section **63-56-102** is amended to read:

391 **63-56-102. Application of chapter.**

392 (1) This chapter applies only to contracts solicited or entered into after the effective
393 date of this chapter unless the parties agree to its application to a contract solicited or entered
394 into prior to the effective date.

395 (2) Except as provided in [~~Section~~] Sections 63-56-103 and 63G-6-408.5, this chapter
396 shall apply to every expenditure of public funds irrespective of their source, including federal
397 assistance, by any state agency under any contract.

398 (3) (a) Only the following sections shall apply to local public procurement units:

399 Sections 63-56-103, 63-56-105, 63-56-301, 63-56-303 through 63-56-420, 63-56-422,

400 63-56-501 through 63-56-602, 63-56-801 through 63-56-806, and 63-56-815 through
401 63-56-819; provided, however, that, except as provided in Sections 63-56-906 and 63-56-907,
402 the jurisdiction of the procurement appeals board is limited to matters involving state agencies.

403 (b) Subsections 63-56-208(1)(b), 63-56-503(4), and 63-56-504(2) also apply to local
404 public procurement units.

405 (c) For the purpose of application of those sections and subsections to a local public
406 procurement unit, "state" shall mean "local public procurement unit," "chief procurement
407 officer" or "head of a purchasing agency" shall mean any person conducting procurement for a
408 local public procurement unit, and "rules and regulations" shall mean ordinances and rules and
409 regulations promulgated by a local public procurement unit to implement or supplement those
410 sections.

411 (d) In addition to the sections and subsections listed above and except as provided in
412 Subsection 17B-1-108(3) relating to local districts, each local public procurement unit shall
413 adopt ordinances relating to the procurement of architect-engineer services not inconsistent
414 with the provisions of Part 7, Architect-Engineer Services.

415 (e) Any other section of this chapter, or its implementing regulations, may be adopted
416 by any local public procurement unit.

417 (f) Any other implementing regulations adopted by local public procurement units may
418 not be inconsistent with the provisions of this chapter.

419 (4) Unless otherwise provided by statute, this chapter does not apply to procurement of
420 real property.

421 Section 5. Section **63G-6-408.5** is enacted to read:

422 **63G-6-408.5. Procurement for submitted proposal.**

423 (1) As used in this section:

424 (a) "Affected department" is as defined in Section 63M-1-2403.

425 (b) "Board of Education" means the Utah State Board of Education.

426 (c) "Committee" is as defined in Section 63M-1-2403.

427 (d) "Confidential Information" is as defined in Section 63M-1-2403.

428 (e) "Initial proposal" is a proposal submitted by a private entity under Section
429 63M-1-2406.

430 (f) "Private entity" is as defined in Section 63M-1-2403.

431 (g) "Project" is as defined in Section 63M-1-2403.

432 (h) "Project agreement" is the final, signed agreement for a project, as described in
433 Section 63M-1-2410.

434 (2) Within 30 days following receipt by the chief procurement officer of a copy of an
435 initial proposal from the committee in accordance with Subsection 63M-1-2407(4), including
436 any comment, suggestion, or modification adopted by the committee and incorporated into the
437 initial proposal, the chief procurement officer shall issue an invitation for detailed proposals
438 that includes:

439 (a) a description of the project, including the portions of the initial proposal that are not
440 protected records under Title 63, Chapter 2, Government Records Access and Management
441 Act;

442 (b) submittal requirements;

443 (c) reasonable criteria to be used to evaluate each detailed proposal;

444 (d) the relative weight given to the criteria; and

445 (e) the deadline by which a detailed proposal may be submitted, which may not be
446 more than 60 days after the invitation is issued.

447 (3) The board shall make rules providing for:

448 (a) public notice of the invitation for detailed proposals;

449 (b) amendments to the invitation for detailed proposals; and

450 (c) the preparation of a register of detailed proposals received in response to an
451 invitation for detailed proposals under this section.

452 (4) The chief procurement officer may amend a public notice and invitation for detailed
453 proposals following its issuance to include any comments, suggestions, or modifications to the
454 project that the chief procurement officer and the committee consider beneficial to the
455 invitation for detailed proposals or the project.

456 (5) A qualified private entity that submits a detailed proposal shall acknowledge receipt
457 of an amendment issued under Subsection (4).

458 (6) The register of detailed proposals shall be made available for public inspection after
459 the detailed proposals have been submitted to the committee in accordance with Subsection (9).

460 (7) (a) A private entity shall be accorded fair and equal treatment with respect to any
461 opportunity for discussion and revision of detailed proposals.

462 (b) In conducting discussion under Subsection (7)(a), there shall be no disclosure of
463 any information derived from detailed proposals submitted by competing private entities.

464 (8) Revisions to a detailed proposal may be permitted after submission of the detailed
465 proposal if they occur before the chief procurement officer submits the detailed proposals to the
466 committee under Subsection (9).

467 (9) The chief procurement officer shall:

468 (a) review each detailed proposal; and

469 (b) submit all detailed proposals that meet the guidelines established under Subsection
470 63M-1-2409(1) to the committee for review under Section 63M-1-2410.

471 Section 6. Section **63F-1-205** is amended to read:

472 **63F-1-205. Approval of acquisitions of information technology.**

473 (1) (a) ~~[It]~~ Except as provided in Title 63M, Chapter 1, Part 24, Government
474 Procurement Private Proposal Program, in accordance with Subsection (2), the chief
475 information officer shall approve the acquisition by an executive branch agency of:

476 (i) information technology equipment;

477 (ii) telecommunications equipment;

478 (iii) software;

479 (iv) services related to the items listed in Subsections (1)(a)(i) through (iii); and

480 (v) data acquisition.

481 (b) The chief information officer may negotiate the purchase, lease, or rental of private
482 or public information technology or telecommunication services or facilities in accordance with
483 this section.

484 (c) Where practical, efficient, and economically beneficial, the chief information
485 officer shall use existing private and public information technology or telecommunication
486 resources.

487 (2) Before negotiating a purchase, lease, or rental under Subsection (1) for an amount
488 that exceeds the value established by the chief information officer by rule in accordance with
489 Section 63F-1-206, the chief information officer shall:

490 (a) conduct an analysis of the needs of executive branch agencies and subscribers of
491 services and the ability of the proposed information technology or telecommunications services
492 or supplies to meet those needs; and

493 (b) for purchases, leases, or rentals not covered by an existing statewide contract,
494 provide in writing to the chief procurement officer in the Division of Purchasing and General
495 Services that:

- 496 (i) the analysis required in Subsection (2)(a) was completed; and
- 497 (ii) based on the analysis, the proposed purchase, lease, rental, or master contract of
498 services, products, or supplies is practical, efficient, and economically beneficial to the state
499 and the executive branch agency or subscriber of services.

500 (3) In approving an acquisition described in Subsections (1) and (2), the chief
501 information officer shall:

502 (a) establish by administrative rule, in accordance with Section 63F-1-206, standards
503 under which an agency must obtain approval from the chief information officer before
504 acquiring the items listed in Subsections (1) and (2);

505 (b) for those acquisitions requiring approval, determine whether the acquisition is in
506 compliance with:

- 507 (i) the executive branch strategic plan;
- 508 (ii) the applicable agency information technology plan;
- 509 (iii) the budget for the executive branch agency or department as adopted by the
510 Legislature; and

511 (iv) Title 63, Chapter 56, Utah Procurement Code; and

512 (c) in accordance with Section 63F-1-207, require coordination of acquisitions between
513 two or more executive branch agencies if it is in the best interests of the state.

514 (4) (a) Each executive branch agency shall provide the chief information officer with
515 complete access to all information technology records, documents, and reports:

- 516 (i) at the request of the chief information officer; and
- 517 (ii) related to the executive branch agency's acquisition of any item listed in Subsection
518 (1).

519 (b) Beginning July 1, 2006 and in accordance with administrative rules established by
520 the department under Section 63F-1-206, no new technology projects may be initiated by an
521 executive branch agency or the department unless the technology project is described in a
522 formal project plan and the business case analysis has been approved by the chief information
523 officer and agency head. The project plan and business case analysis required by this

524 Subsection (4) shall be in the form required by the chief information officer, and shall include:

- 525 (i) a statement of work to be done and existing work to be modified or displaced;
- 526 (ii) total cost of system development and conversion effort, including system analysis
- 527 and programming costs, establishment of master files, testing, documentation, special
- 528 equipment cost and all other costs, including overhead;
- 529 (iii) savings or added operating costs that will result after conversion;
- 530 (iv) other advantages or reasons that justify the work;
- 531 (v) source of funding of the work, including ongoing costs;
- 532 (vi) consistency with budget submissions and planning components of budgets; and
- 533 (vii) whether the work is within the scope of projects or initiatives envisioned when the
- 534 current fiscal year budget was approved.

535 (5) (a) The chief information officer and the Division of Purchasing and General
536 Services shall work cooperatively to establish procedures under which the chief information
537 officer shall monitor and approve acquisitions as provided in this section.

538 (b) The procedures established under this section shall include at least the written
539 certification required by Subsection 63-56-204(8).

540 Section 7. Section **63M-1-2401** is enacted to read:

541 **Part 24. Government Procurement Private Proposal Program**

542 **63M-1-2401. Title.**

543 This part is known as "Government Procurement Private Proposal Program."

544 Section 8. Section **63M-1-2402** is enacted to read:

545 **63M-1-2402. Legislative findings.**

546 The Legislature finds that:

547 (1) there is a public need for timely and efficient acquisition, design, construction,
548 improvement, renovation, expansion, equipping, maintenance, operation, implementation, or
549 installation of information technology and telecommunications products and services and
550 education facilities;

551 (2) the public need for information technology and telecommunications products and
552 services, or for construction of and improvements to education facilities, may not be wholly
553 satisfied by existing methods of procurement in which qualifying projects are acquired,
554 designed, constructed, improved, renovated, expanded, equipped, maintained, operated,

555 implemented, or installed by the state;

556 (3) principles that produce efficient projects in the private sector are equally applicable
557 to projects within the public sector;

558 (4) there exists, in the private sector, favorable alternative methods for providing
559 information technology and telecommunications products and services, and construction and
560 improvements to school sites, buildings, equipment, and furniture that are currently being
561 provided by the state; and

562 (5) authorizing the private sector to develop, operate, or provide one or more qualifying
563 projects may result in the development, operation, or provision of products and services to the
564 public in a more timely, more efficient, or less costly fashion, thereby benefitting the state.

565 Section 9. Section **63M-1-2403** is enacted to read:

566 **63M-1-2403. Definitions.**

567 As used in this part:

568 (1) "Affected department" means, as applicable, the Board of Education or the
569 Department of Technology Services.

570 (2) "Board" means the Board of Business and Economic Development created under
571 Section 63M-1-301.

572 (3) "Board of Education" means the Utah State Board of Education.

573 (4) "Chief procurement officer" means the chief procurement officer appointed under
574 Section 63-56-203.

575 (5) "Committee" means the proposal review committee created under Section
576 63M-1-2405.

577 (6) "Construction" is as defined in Section 63-56-105.

578 (7) "Day" means a calendar day.

579 (8) "Director" is as defined in Section 63-38f-102.

580 (9) "Education Facilities" includes a school site, building, equipment, and furnishings.

581 (10) "Executive Appropriations Committee" means the Legislature's Executive
582 Appropriations Committee.

583 (11) "Information technology" is as defined in Section 63F-1-102.

584 (12) "Office" means the Governor's Office of Economic Development created under
585 Section 63-38f-201.

586 (13) "Private entity" means a person submitting a proposal under this part for the
587 purpose of entering into a project.

588 (14) "Project" means the subject of a proposal or an agreement for the procurement or
589 disposal of:

590 (a) information technology or telecommunications products or services;

591 (b) improvements to or construction of educational facilities; or

592 (c) supplies, services, or construction for or on behalf of the Department of Technology
593 Services or the Board of Education.

594 (15) "Proposal" means an unsolicited offer by a private entity to undertake a project,
595 including an initial proposal under Section 63M-1-2406 and a detailed proposal under Section
596 63M-1-2409.

597 (16) "School" means a public school.

598 (17) "Services" is as defined in Section 63-56-105.

599 (18) "Supplies" is as defined in Section 63-56-105.

600 (19) "Telecommunications" is as defined in Section 63F-1-102.

601 Section 10. Section **63M-1-2404** is enacted to read:

602 **63M-1-2404. Government Procurement Private Proposal Program -- Proposals --**
603 **Rulemaking.**

604 (1) There is created within the office the Government Procurement Private Proposal
605 Program.

606 (2) In accordance with this part, the board may:

607 (a) accept a proposal for a project;

608 (b) solicit comments, suggestions, and modifications to a project in accordance with
609 Section 63G-6-408.5; and

610 (c) make rules in accordance with Title 63, Chapter 46a, Utah Administrative
611 Rulemaking Act, establishing requirements for the procurement of a project.

612 Section 11. Section **63M-1-2405** is enacted to read:

613 **63M-1-2405. Committee for reviewing proposals -- Appointment -- Accepting or**
614 **rejecting proposal.**

615 (1) The director shall appoint a committee composed of members of the board to
616 review and evaluate a proposal submitted in accordance with this part.

617 (2) The director shall determine the number of board members that constitute a
618 committee.

619 (3) The committee shall, at all times, consist of less than a quorum of the members of
620 the board, as established under Section 63M-1-302.

621 (4) A committee member shall serve on the committee until:

622 (a) replaced by the director; or

623 (b) the committee member ceases to be a member of the board.

624 (5) The director may fill a vacancy on the committee.

625 (6) The committee shall include the following nonvoting members in addition to the
626 members appointed under Subsection (1):

627 (a) a member of the Senate, appointed by the president of the Senate; and

628 (b) a member of the House of Representatives, appointed by the speaker of the House
629 of Representatives.

630 (7) A committee member is subject to Title 67, Chapter 16, Utah Public Officers' and
631 Employees' Ethics Act, and any additional requirement established by the board in accordance
632 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

633 (8) The committee shall inform a private entity of the committee's decision to approve
634 or reject a proposal in writing.

635 (9) If the committee, in its sole discretion, accepts a proposal, the proposal shall be
636 evaluated under this part.

637 (10) If the committee, in its sole discretion, rejects a proposal, the committee shall
638 notify the private entity of the reason for the rejection and shall return any remaining portion of
639 the fee required under Section 63M-1-2413.

640 Section 12. Section **63M-1-2406** is enacted to read:

641 **63M-1-2406. Initial proposal -- Requirements.**

642 (1) In accordance with this part, a private entity may at any time submit to the
643 committee an initial proposal for a project.

644 (2) An initial proposal shall include:

645 (a) a conceptual description of the project;

646 (b) a description of the economic benefit of the project to the state and the affected
647 department;

648 (c) information concerning the information technology and telecommunications
649 products and services, or educational facilities currently owned by, or being provided by, the
650 state that are similar to the project, if applicable;

651 (d) an estimate of the following costs associated with the project:

652 (i) design;

653 (ii) construction;

654 (iii) implementation;

655 (iv) operation and maintenance; and

656 (v) any other related project cost; and

657 (e) the name and address of a person who may be contacted for further information
658 concerning the initial proposal.

659 (3) A private entity submitting an initial proposal under this section shall pay the fee
660 required by Section 63M-1-2413 when the initial proposal is submitted.

661 (4) An initial proposal submitted under this section is a protected record under Title 63,
662 Chapter 2, Government Records Access and Management Act, until the chief procurement
663 officer issues an invitation for detailed proposals in accordance with Section 63G-6-408.5.

664 (5) The committee shall make rules in accordance with Title 63, Chapter 46a, Utah
665 Administrative Rulemaking Act, detailing the portions of an initial proposal that remain
666 protected after the chief procurement officer issues an invitation for detailed proposals.

667 Section 13. Section **63M-1-2407** is enacted to read:

668 **63M-1-2407. Review of initial proposal -- Affected department review.**

669 (1) The committee shall review and evaluate an initial proposal submitted in
670 accordance with:

671 (a) this part; and

672 (b) any rule established by the board under Subsection 63M-1-2404(2)(c).

673 (2) If, within 15 days after receipt of an initial proposal, the committee, in its sole
674 discretion, determines to proceed with the initial proposal, the committee shall submit a copy
675 of the initial proposal to the affected department.

676 (3) An affected department receiving a copy of the initial proposal under Subsection
677 (2) shall review the initial proposal and provide the committee with any comment, suggestion,
678 or modification to the project no later than 15 days after the day on which the committee

679 submits the initial proposal to the affected department.

680 (4) If, within 30 days after receipt of the affected department's review of the initial
681 proposal under Subsection (3), the committee determines to accept an initial proposal, the
682 committee shall submit a copy of the initial proposal, including any comment, suggestion, or
683 modification adopted by the committee and incorporated into the initial proposal, to:

684 (a) the chief procurement officer in accordance with Section 63G-6-408.5; and

685 (b) the Executive Appropriations Committee.

686 (5) Before taking any action under Subsection (4), the committee shall consider:

687 (a) any comment, suggestion, or modification to the initial proposal submitted by the
688 affected department in accordance with Subsection (3);

689 (b) the extent to which the project is practical, efficient, and economically beneficial to
690 the state and the affected department; and

691 (c) any other reasonable factor identified by the committee or required by the board by
692 rule.

693 Section 14. Section **63M-1-2408** is enacted to read:

694 **63M-1-2408. Acceptance of initial proposal -- Invitation for detailed proposals.**

695 If an initial proposal is accepted under Section 63M-1-2407, the chief procurement
696 officer shall:

697 (1) take action under Section 63G-6-408.5 to issue an invitation for detailed proposals
698 that includes the portions of the initial proposal that are not protected records under Title 63,
699 Chapter 2, Government Records and Access Management Act; and

700 (2) submit all detailed proposals that meet the guidelines established under Subsection
701 63M-1-2409(1) to:

702 (a) the committee; and

703 (b) the Governor's Office of Planning and Budget.

704 Section 15. Section **63M-1-2409** is enacted to read:

705 **63M-1-2409. Detailed proposal -- Requirements -- Cooperation of affected**
706 **department.**

707 (1) A detailed proposal submitted in response to an invitation for detailed proposals
708 under Section 63M-1-2408 shall include:

709 (a) a conceptual description of the project, including the scope of the work;

710 (b) a description of the economic benefit of the project to the state and the affected
711 department;

712 (c) an estimate of the design, construction, implementation, operation, maintenance, or
713 other costs associated with the project;

714 (d) a topographic map indicating the location of the project, if applicable;

715 (e) plans and specifications for the project, if applicable;

716 (f) information concerning the information technology or telecommunication product
717 and service, educational facility or other supply, service, or construction currently provided by
718 the state that is similar to the project being proposed, if applicable;

719 (g) a list of any major permit and approval required for the project from a local, state,
720 or federal agency and a projected schedule for obtaining the permit and approval;

721 (h) a list of any public utility facility that will be impacted by the project and a
722 statement of the plans of the private entity to accommodate the public utility facility;

723 (i) a statement setting forth the private entity's general plan for financing the project,
724 including any appropriation by the Legislature or other public monies and, if applicable, the
725 sources of the private entity's funds and identification of any dedicated revenue source or
726 proposed debt or equity investment on behalf of the private entity;

727 (j) the name and address of the person who may be contacted for further information
728 concerning the detailed proposal;

729 (k) a statement describing the private entity's experience with other similar projects and
730 a description of why the public entity is best qualified for the project; and

731 (l) any other information:

732 (i) reasonably requested by the affected department or the committee, or required by
733 the board by rule; or

734 (ii) that the private entity considers necessary or appropriate to complete or describe
735 the detailed proposal.

736 (2) To assist each private entity in preparing a detailed proposal:

737 (a) the affected department shall provide each private entity with access to all
738 information, records, documents, and reports related to the proposal and the project that are
739 designated public records under Title 63, Chapter 2, Government Records Access and
740 Management Act; and

741 (b) the affected department and the committee shall cooperate with each private entity
742 to assist the private entity in the development of a detailed proposal that is:

743 (i) practical;

744 (ii) efficient; and

745 (iii) economically beneficial to the state and the affected department.

746 (3) The committee or any private entity may choose to terminate the development of
747 the detailed proposal at any time before the submission of the detailed proposal to the chief
748 procurement officer under Section 63G-6-408.5.

749 Section 16. Section **63M-1-2410** is enacted to read:

750 **63M-1-2410. Receipt of detailed proposals -- Economic feasibility report --**

751 **Acceptance of a detailed proposal.**

752 (1) If the committee, in its sole discretion, determines that the proposal does not
753 substantially meet the guidelines established under Subsection 63M-1-2409(1), the committee
754 may elect not to review a detailed proposal.

755 (2) Within 30 days after the day on which it receives a detailed proposal, the
756 Governor's Office of Planning and Budget shall prepare an economic feasibility report
757 containing:

758 (a) a report concerning the economic feasibility and effectiveness of the project based
759 upon competent evidence;

760 (b) a dollar amount representing the total estimated fiscal impact of the project to the
761 affected department and the state; and

762 (c) any other matter the committee requests or is required by the board by rule.

763 (3) In determining whether to reject or accept a detailed proposal, the committee shall
764 consider the following factors:

765 (a) any comment, suggestion, or modification offered by the affected department in
766 accordance with Subsection 63M-1-2407(3);

767 (b) the economic feasibility report prepared in accordance with Subsection (2)(a);

768 (c) the source of funding and any resulting constraint necessitated by the funding
769 source;

770 (d) any alternative funding proposal;

771 (e) the extent to which the project is practical, efficient, and economically beneficial to

772 the state and the affected department; and

773 (f) any other reasonable factor identified by the committee or required by the board by
774 rule.

775 (4) If, within 30 days after the day on which the committee receives the economic
776 feasibility report prepared under Subsection (2), the committee accepts a detailed proposal, the
777 accepted detailed proposal shall be submitted to the board for approval.

778 Section 17. Section **63M-1-2411** is enacted to read:

779 **63M-1-2411. Project agreement.**

780 (1) If, within 30 days after the day on which the committee accepts a detailed proposal
781 under Section 63M-1-2410, the board accepts the detailed proposal, the director shall:

782 (a) prepare a project agreement; and

783 (b) enter into the project agreement with the private entity.

784 (2) A project agreement shall be signed by the director and the private entity within 30
785 days after the day on which the board approves the detailed proposal under Subsection (1).

786 (3) A project agreement shall include provisions concerning:

787 (a) the scope of the project;

788 (b) the pricing method of the project;

789 (c) the director's or the state's ability to terminate for convenience or for default, and
790 any termination compensation to be paid to the private entity, if applicable;

791 (d) the ability to monitor performance under the contract;

792 (e) the appropriate limits of liability;

793 (f) the appropriate transition of services, if applicable;

794 (g) the exceptions from applicable rules and procedures for the implementation and
795 administration of the project by the affected department; if any;

796 (h) the clauses and remedies applicable to state contracts under Title 63, Chapter 56,
797 Part 6, Contract Clauses; and

798 (i) any other matter reasonably requested by the committee or required by the board by
799 rule.

800 (4) A copy of the signed project agreement shall be submitted to:

801 (a) the affected department; and

802 (b) the Executive Appropriations Committee.

803 (5) The affected department shall implement and administer the project agreement in
804 accordance with rules made under Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
805 except as modified by the project agreement under Subsection (3)(g).

806 Section 18. Section **63M-1-2412** is enacted to read:

807 **63M-1-2412. Advisory committee.**

808 (1) The director may appoint an advisory committee comprised of:

809 (a) representatives of:

810 (i) the affected department for the proposal;

811 (ii) the Department of Human Resource Management; and

812 (iii) the Division of Risk Management;

813 (b) members of the public; and

814 (c) other members.

815 (2) Members of an advisory committee shall receive no compensation or benefits for
816 their services, but may receive per diem and expenses incurred in the performance of the
817 members' official duties at the rates established by the Division of Finance under Sections
818 63A-3-106 and 63A-3-107.

819 (3) Members of an advisory committee may decline to receive per diem and expenses
820 for their service.

821 (4) An advisory committee appointed in accordance with Subsection (1) may not
822 participate in the final decision-making of the committee or the board.

823 (5) The staff, any outside consultant, and any advisory subcommittee shall:

824 (a) provide the committee and the board with professional services, including
825 architectural, engineering, legal, and financial services, to develop rules and guidelines to
826 implement the program described in this part; and

827 (b) assist the committee and the board in:

828 (i) reviewing and commenting on initial proposals;

829 (ii) reviewing and commenting on detailed proposals; and

830 (iii) preparing and negotiating the terms of any project agreement.

831 Section 19. Section **63M-1-2413** is enacted to read:

832 **63M-1-2413. Private Proposal Restricted Account -- Fees.**

833 (1) There is created a restricted account within the General Fund called the Private

834 Proposal Restricted Account.

835 (2) Monies collected from the payment of a fee required by this part shall be deposited
836 in the Private Proposal Restricted Account.

837 (3) The board or the committee may use the monies in the Private Proposal Restricted
838 Account to offset the expense of hiring staff and engaging any outside consultant.

839 (4) The board shall establish a fee in accordance with Section 63-38-3.2 for:

840 (a) reviewing an initial proposal;

841 (b) reviewing any detailed proposal; and

842 (c) preparing any project agreement.

843 (5) The board may waive the fee established under Subsection (4) if the board
844 determines that it is:

845 (a) reasonable; and

846 (b) in the best interest of the state.

Legislative Review Note
as of 2-8-08 1:30 PM

Office of Legislative Research and General Counsel

H.B. 426 - Government Procurement - Private Proposals

Fiscal Note

2008 General Session
State of Utah

State Impact

Enactment of this bill will require \$20,000 ongoing for a 0.25 FTE economist position for the Governor's Office of Planning and Budget. Additional staff and/or outside consultants may also be required for the advisory committee, though provisions of this bill allow for the collection of fees to cover those costs.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$20,000	\$20,000	\$0	\$0	\$0
Total	\$0	\$20,000	\$20,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs for individuals, businesses, or local governments; though businesses and individuals may benefit from increased opportunities to provide services to the State.