



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **63F-1-205**, as last amended by Laws of Utah 2008, Chapters 352 and 382

34 **63G-6-204**, as last amended by Laws of Utah 2008, Chapter 352 and renumbered and  
35 amended by Laws of Utah 2008, Chapter 382

36 **63G-6-301**, as renumbered and amended by Laws of Utah 2008, Chapter 382

37 **63G-6-302**, as last amended by Laws of Utah 2008, Chapter 352 and renumbered and  
38 amended by Laws of Utah 2008, Chapter 382

39 **63G-6-401**, as last amended by Laws of Utah 2009, Chapter 388

40 **63G-6-402**, as renumbered and amended by Laws of Utah 2008, Chapter 382

41 **63G-6-408**, as renumbered and amended by Laws of Utah 2008, Chapter 382

42 ENACTS:

43 **63G-6-304**, Utah Code Annotated 1953



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

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

47 **63F-1-205. Approval of acquisitions of information technology.**

48 (1) (a) Except as provided in Title 63M, Chapter 1, Part 26, Government Procurement  
49 Private Proposal Program, in accordance with Subsection (2), the chief information officer  
50 shall approve the acquisition by an executive branch agency of:

51 (i) information technology equipment;

52 (ii) telecommunications equipment;

53 (iii) software;

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

55 (v) data acquisition.

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

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

62 (d) (i) Notwithstanding any other provision of this section and subject to Subsection  
63 (1)(d)(ii), the chief information officer may not approve or make an acquisition in accordance  
64 with this section unless the chief information officer obtains a written notice from the chief  
65 procurement officer in accordance with Section 63G-6-304.

66 (ii) This Subsection (1)(d)(i) applies to an acquisition requested through:

67 (A) an invitation for bids as defined in Section 63G-6-103 if that invitation for bids is  
68 issued on or after May 10, 2011; or

69 (B) request for proposals as defined in Section 63G-6-103 if that request for proposals  
70 is issued on or after May 10, 2011.

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

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

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

80 (i) the analysis required in Subsection (2)(a) was completed; and

81 (ii) based on the analysis, the proposed purchase, lease, rental, or master contract of  
82 services, products, or supplies is practical, efficient, and economically beneficial to the state  
83 and the executive branch agency or subscriber of services.

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

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

89 (b) for those acquisitions requiring approval, determine whether the acquisition is in

90 compliance with:

- 91 (i) the executive branch strategic plan;
- 92 (ii) the applicable agency information technology plan;
- 93 (iii) the budget for the executive branch agency or department as adopted by the
- 94 Legislature; and
- 95 (iv) Title 63G, Chapter 6, Utah Procurement Code; and
- 96 (c) in accordance with Section 63F-1-207, require coordination of acquisitions between
- 97 two or more executive branch agencies if it is in the best interests of the state.

98 (4) (a) Each executive branch agency shall provide the chief information officer with

99 complete access to all information technology records, documents, and reports:

- 100 (i) at the request of the chief information officer; and
- 101 (ii) related to the executive branch agency's acquisition of any item listed in Subsection
- 102 (1).

103 (b) Beginning July 1, 2006, and in accordance with administrative rules established by

104 the department under Section 63F-1-206, no new technology projects may be initiated by an

105 executive branch agency or the department unless the technology project is described in a

106 formal project plan and the business case analysis has been approved by the chief information

107 officer and agency head. The project plan and business case analysis required by this

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

- 109 (i) a statement of work to be done and existing work to be modified or displaced;
- 110 (ii) total cost of system development and conversion effort, including system analysis
- 111 and programming costs, establishment of master files, testing, documentation, special
- 112 equipment cost and all other costs, including overhead;
- 113 (iii) savings or added operating costs that will result after conversion;
- 114 (iv) other advantages or reasons that justify the work;
- 115 (v) source of funding of the work, including ongoing costs;
- 116 (vi) consistency with budget submissions and planning components of budgets; and
- 117 (vii) whether the work is within the scope of projects or initiatives envisioned when the
- 118 current fiscal year budget was approved.

119 (5) (a) The chief information officer and the Division of Purchasing and General

120 Services shall work cooperatively to establish procedures under which the chief information

121 officer shall monitor and approve acquisitions as provided in this section.

122 (b) The procedures established under this section shall include at least the written  
123 certification required by Subsection 63G-6-204(8)(a)(i).

124 (6) The chief information officer shall provide assistance to the chief procurement  
125 officer in conducting the review required by Section 63G-6-304 as requested by the chief  
126 procurement officer.

127 Section 2. Section **63G-6-204** is amended to read:

128 **63G-6-204. Duties of chief procurement officer.**

129 Except as otherwise specifically provided in this chapter, the chief procurement officer  
130 serves as the central procurement officer of the state and shall:

131 (1) adopt office policies governing the internal functions of the Division of Purchasing  
132 and General Services;

133 (2) procure or supervise the procurement of all supplies, services, and construction  
134 needed by the state;

135 (3) exercise general supervision and control over all inventories or supplies belonging  
136 to the state;

137 (4) establish and maintain programs for the inspection, testing, and acceptance of  
138 supplies, services, and construction;

139 (5) prepare statistical data concerning the procurement and usage of all supplies,  
140 services, and construction;

141 (6) before June 1, 1990, notify all public procurement units of the requirements of  
142 Section 63G-6-406 regarding purchases of recycled paper and recycled paper products,  
143 recycling requirements, and provide guidelines on the availability of recycled paper and paper  
144 products, including the sources of supply and the potential uses of various grades of recycled  
145 paper;

146 (7) before July 1, 1992:

147 (a) establish standards and specifications for determining which supplies are  
148 considered recycled, based upon the chief procurement officer's review of current definitions  
149 and standards employed by national procurement, product recycling, and other relevant  
150 organizations and the federal Environmental Protection Agency;

151 (b) compile and update as necessary the specifications, a list of recycled supplies

152 available on state contract, and sources where the supplies may be obtained;

153 (c) make the compiled information under Subsection (7)(b) available to:

154 (i) all local government entities under Section 11-37-101;

155 (ii) all local health departments under Section 26A-1-108.7;

156 (iii) all procurement officers or other persons responsible for purchasing supplies  
157 within the public school system under Title 53A, State System of Public Education;

158 (iv) all procurement officers or other persons responsible for purchasing supplies  
159 within the state system of higher education under Title 53B, State System of Higher Education;

160 and

161 (v) all procurement officers or other persons responsible for purchasing supplies for all  
162 public procurement units as defined in Section 63G-6-103; and

163 (d) present a written report to the Natural Resources, Agriculture, and Environment  
164 Interim Committee annually prior to November 30 regarding the purchases of recycled goods  
165 on state contracts during the prior fiscal year; ~~and~~

166 (8) ensure that:

167 (a) before approving a purchase, lease, or rental not covered by an existing statewide  
168 contract for information technology or telecommunications supplies or services[-];

169 (i) the chief information officer and the agency have provided in writing to the  
170 division, that the needs analysis required in Section 63F-1-205 was completed, unless the  
171 purchase, lease, or rental is approved in accordance with Title 63M, Chapter 1, Part 26,  
172 Government Procurement Private Proposal Program; and

173 (ii) the chief information officer has obtained a written notice from the chief  
174 procurement officer in accordance with Section 63G-6-304; and

175 (b) the oversight authority required by Subsection (8)(a) is not delegated outside the  
176 Division of Purchasing and General Services[-]; and

177 (9) conduct the review required by Section 63G-6-304.

178 Section 3. Section **63G-6-301** is amended to read:

179 **63G-6-301. Rules for specifications of supplies.**

180 [~~Rules and regulations~~]

181 (1) Administrative rules shall be [~~promulgated~~] issued in accordance with Title 63G,  
182 Chapter 3, Utah Administrative Rulemaking Act, to govern the preparation, maintenance, and

183 content of specifications for supplies, services, ~~[and]~~ construction, and technology required by  
184 the state. ~~[Rules and regulations]~~

185 (2) The administrative rules described in Subsection (1) shall determine the extent to  
186 which a nonemployee who has prepared specifications for use by the state may participate in  
187 any state procurement using such specifications.

188 Section 4. Section **63G-6-302** is amended to read:

189 **63G-6-302. Duty of chief procurement officer in maintaining specifications.**

190 (1) The chief procurement officer shall prepare, issue, revise, maintain, and monitor the  
191 use of specifications for supplies, services, ~~[and]~~ construction, and technology required by the  
192 state.

193 (2) The chief procurement officer shall obtain expert advice and assistance from  
194 personnel of using agencies in the development of specifications and may delegate in writing to  
195 a using agency the authority to prepare and utilize its own specifications.

196 (3) For a procurement process under Title 63M, Chapter 1, Part 26, Government  
197 Procurement Private Proposal Program, any delegation by the chief procurement officer under  
198 this section shall be made to the Governor's Office of Economic Development.

199 Section 5. Section **63G-6-304** is enacted to read:

200 **63G-6-304. Chief procurement officer review of specifications -- Application.**

201 (1) The chief procurement officer shall review a specification before the specification  
202 is included in a purchase description for an invitation for bids or request for proposals.

203 (2) The review shall provide written recommendations as to whether a specification  
204 includes:

205 (a) a state of the art construction item, service, supply, or technology;

206 (b) a new construction item, service, supply, or technology that the using agency does  
207 not currently use but that the chief procurement officer determines to be practical, efficient, or  
208 economically beneficial to the using agency or the state; or

209 (c) future technology that may result in future cost savings or efficiency to the using  
210 agency or the state.

211 (3) The chief procurement officer shall complete the review and provide the written  
212 recommendations required by this section within 30 days after the date the chief procurement  
213 officer begins the review required by this section.

214 (4) The chief procurement officer shall:  
215 (a) issue a written notice containing the recommendations required by this section; and  
216 (b) make the written notice described in Subsection (4)(a) available to a using agency  
217 and to the public.

218 (5) (a) Subject to Subsection (5)(b), the chief procurement officer may not delegate the  
219 requirements of this section to another person.

220 (b) The chief procurement officer may obtain expert advice and assistance from the  
221 chief information officer as defined in Section 63F-1-102 or a using agency in conducting the  
222 review required by this section.

223 (6) This section applies to a specification prepared, issued, or revised on or after May  
224 10, 2011.

225 Section 6. Section **63G-6-401** is amended to read:

226 **63G-6-401. Contracts awarded by sealed bidding -- Procedure.**

227 (1) Contracts shall be awarded by competitive sealed bidding except as otherwise  
228 provided by this chapter.

229 (2) (a) An invitation for bids shall be issued when a contract is to be awarded by  
230 competitive sealed bidding.

231 (b) The invitation shall include a purchase description and all contractual terms and  
232 conditions applicable to the procurement.

233 (3) (a) Public notice of the invitation for bids shall be given a reasonable time before  
234 the date set forth in the invitation for the opening of bids, in accordance with rules.

235 (b) The notice may include:

236 (i) publication in a newspaper of general circulation a reasonable time before bid  
237 opening; and

238 (ii) publication, in accordance with Section 45-1-101, for a reasonable time before bid  
239 opening.

240 (4) (a) Bids shall be opened publicly in the presence of one or more witnesses at the  
241 time and place designated in the invitation for bids.

242 (b) The amount of each bid and any other relevant information specified by rules,  
243 together with the name of each bidder, shall be recorded.

244 (c) The record and each bid shall be open to public inspection.

245 (5) (a) Bids shall be unconditionally accepted without alteration or correction, except  
246 as authorized in this chapter.

247 (b) (i) Bids shall be evaluated based on the requirements set forth in the invitation for  
248 bids, which may include criteria to determine acceptability such as inspection, testing, quality,  
249 workmanship, delivery, and suitability for a particular purpose.

250 (ii) Those criteria that will affect the bid price and be considered in evaluation for  
251 award shall be objectively measurable.

252 (iii) The criteria may include discounts, transportation costs, and total or life cycle  
253 costs.

254 (c) No criteria may be used in bid evaluation that are not set forth in the invitation for  
255 bids.

256 (d) Notwithstanding any other provision of this section, a recommendation provided in  
257 a written notice issued by the chief procurement officer in accordance with Section 63G-6-304  
258 shall be given substantial weight in evaluating a bid.

259 (6) (a) Correction or withdrawal of inadvertently erroneous bids before or after award,  
260 or cancellation of awards or contracts based on the bid mistakes, shall be permitted in  
261 accordance with rules.

262 (b) After bid opening, no changes in bid prices or other provisions of bids prejudicial  
263 to the interest of the state or fair competition may be permitted.

264 (c) Except as otherwise provided by rule, all decisions to permit the correction or  
265 withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by  
266 a written determination made by the chief procurement officer or the head of a purchasing  
267 agency.

268 (7) (a) The contract shall be awarded with reasonable promptness by written notice to  
269 the lowest responsive and responsible bidder whose bid meets the requirements and criteria set  
270 forth in the invitation for bids.

271 (b) (i) If all bids for a construction project exceed available funds as certified by the  
272 appropriate fiscal officer, and the low responsive and responsible bid does not exceed those  
273 funds by more than 5%, the chief procurement officer or the head of a purchasing agency may,  
274 in situations where time or economic considerations preclude resolicitation of work of a  
275 reduced scope, negotiate an adjustment of the bid price, including changes in the bid

276 requirements, with the low responsive and responsible bidder in order to bring the bid within  
277 the amount of available funds.

278 (ii) If the State Building Board establishes alternative procedures by rule under Section  
279 63A-5-103, the Division of Facilities Construction and Management need not comply with the  
280 provisions of this Subsection (7) when a bid meets the requirements of the State Building  
281 Board's rule.

282 (8) When it is considered impractical to prepare initially a purchase description to  
283 support an award based on price, an invitation for bids may be issued requesting the  
284 submission of unpriced offers to be followed by an invitation for bids limited to those bidders  
285 whose offers have been qualified under the criteria set forth in the first solicitation.

286 Section 7. Section **63G-6-402** is amended to read:

287 **63G-6-402. Contracts awarded by reverse auction -- Procedures.**

288 (1) As used in this section, "reverse auction" means a process where:

289 (a) contracts are awarded in an open and interactive environment, which may include  
290 the use of electronic media; and

291 (b) bids are opened and made public immediately, and bidders given opportunity to  
292 submit revised, lower bids, until the bidding process is complete.

293 (2) (a) Notwithstanding the requirements of this chapter, contracts may be awarded  
294 through a reverse auction.

295 (b) The policy board shall make rules, consistent with this chapter, governing a reverse  
296 auction process.

297 (3) A recommendation provided in a written notice issued by the chief procurement  
298 officer in accordance with Section 63G-6-304 shall be given substantial weight in evaluating a  
299 bid made through a reverse auction.

300 Section 8. Section **63G-6-408** is amended to read:

301 **63G-6-408. Use of competitive sealed proposals in lieu of bids -- Procedure.**

302 (1) (a) When, according to rules established by the Procurement Policy Board, the  
303 chief procurement officer, the head of a purchasing agency, or a designee of either officer  
304 above the level of procurement officer determines in writing that the use of competitive sealed  
305 bidding is either not practicable or not advantageous to the state, a contract may be entered into  
306 by competitive sealed proposals.

307 (b) (i) Competitive sealed proposals may be used for the procurement of services of  
308 consultants, professionals, and providers as defined by the policy board by rule, whether or not  
309 the determination described in this subsection has been made.

310 (ii) The policy board shall make rules establishing guidelines to assure maximum  
311 practicable competition in those procurements, including the relative importance, if any, of the  
312 fee to be charged by an offeror.

313 (iii) The rules may provide that it is either not practicable or not advantageous to the  
314 state to procure certain types of supplies, services, or construction by competitive sealed  
315 bidding or competitive sealed proposals.

316 (2) (a) Proposals shall be solicited through a request for proposals.

317 (b) Public notice of the request for proposals shall be given in accordance with policy  
318 board rules.

319 (3) (a) Proposals shall be opened so as to avoid disclosure of contents to competing  
320 offerors during the process of negotiation.

321 (b) A register of proposals shall be prepared in accordance with policy board rules and  
322 shall be open for public inspection after the contract is awarded.

323 (4) The request for proposals shall state the relative importance of price and other  
324 evaluating factors.

325 (5) (a) As provided in the request for proposals and under policy board rules,  
326 discussions may be conducted with responsible offerors who submit proposals for the purpose  
327 of assuring full understanding of, and responsiveness to, solicitation requirements.

328 (b) Offerors shall be accorded fair and equal treatment with respect to any opportunity  
329 for discussion and revision of proposals, and revisions may be permitted after submissions and  
330 before the contract is awarded for the purpose of obtaining best and final offers.

331 (c) In conducting discussions, there shall be no disclosure of any information derived  
332 from proposals submitted by competing offerors.

333 (6) (a) Award shall be made to the responsible offeror whose proposal is determined in  
334 writing to be the most advantageous to the state, taking into consideration price and the  
335 evaluation factors set forth in the request for proposals.

336 ~~[(b) No other factors or criteria shall be used in the evaluation.]~~

337 (b) A recommendation provided in a written notice issued by the chief procurement

338 officer in accordance with Section 63G-6-304 shall be given substantial weight in evaluating an  
339 award procured through a competitive sealed proposal.

340 (c) An evaluation made under this Subsection (6) may not consider a factor, criterion,  
341 or recommendation other than as provided in Subsection (6)(a) or (b).

342 [~~e~~] (d) The contract file shall contain the basis on which the award is made.

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**Legislative Review Note**  
as of 2-25-11 5:38 PM

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 476

SHORT TITLE: Procurement Code Amendments

SPONSOR: Last, B.

2011 GENERAL SESSION, STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill will cost the Department of Administrative Services' Purchasing Division \$200,000 in ongoing General Fund beginning FY 2012. The bill will also cost the Attorney General's Office \$50,000 in ongoing General Fund beginning FY 2012.

### STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue	\$0	\$0	\$0
Expenditure:			
General Fund	\$0	\$250,000	\$250,000
Total Expenditure	\$0	\$250,000	\$250,000
Net Impact, All Funds (Rev.-Exp.)	\$0	(\$250,000)	(\$250,000)
Net Impact, General/Education Funds	\$0	(\$250,000)	(\$250,000)

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.