

**PROCUREMENT REVISIONS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Scott K. Jenkins**

House Sponsor: Brad L. Dee

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**LONG TITLE**

**General Description:**

This bill amends and makes corrections, modifications, and recodification changes to Title 63G, Chapter 6a, Utah Procurement Code.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ relocates and makes corrections to definitions;
- ▶ makes corrections in the use of terms;
- ▶ subject to specified exceptions, designates as protected:
  - certain records that would impair governmental procurement proceedings or give an unfair advantage to a potential contractor; and
  - records submitted in response to a request for information;
- ▶ describes the applicability of, and exceptions to, the Utah Procurement Code;
- ▶ describes the procurement units that have independent procurement authority;
- ▶ clarifies the prequalification process for potential bidders, offerors, or contractors;
- ▶ modifies public notice provisions;
- ▶ changes small purchase requirements;
- ▶ modifies provisions relating to a cost-benefit analysis and the publication of scores awarded by an evaluation committee;
- ▶ provides that a public transit district may contract with a county or municipality to fund a transportation project without going through a standard procurement process or an exception to a standard procurement process;

- 30           ▶ changes the date by which a person responsible for procurements in a procurement
- 31 unit in the executive branch is required to complete training on making small
- 32 purchases;
- 33           ▶ repeals a section relating to interest rates and reenacts the language into another
- 34 section relating to interest rates;
- 35           ▶ subject to certain exceptions, prohibits a person with an outstanding tax lien from
- 36 submitting a quote, bid, or offer to, or contracting with, a procurement unit;
- 37           ▶ describes contract types that are permitted and, subject to certain exceptions,
- 38 contract types that are prohibited;
- 39           ▶ describes contract requirements and grants rulemaking authority relating to contract
- 40 requirements;
- 41           ▶ describes requirements relating to installment payments and leases;
- 42           ▶ modifies procurement appeal provisions;
- 43           ▶ modifies provisions relating to agreements and cooperation between procurement
- 44 units;
- 45           ▶ addresses cooperative purchasing, purchasing under a contract held by another
- 46 procurement unit, and purchasing directly from another government entity;
- 47           ▶ repeals Part 22, Ethical Requirements;
- 48           ▶ modifies criminal provisions and addresses additional unlawful activity relating to
- 49 the Utah Procurement Code; and
- 50           ▶ makes technical and conforming changes.

51 **Money Appropriated in this Bill:**

52           None

53 **Other Special Clauses:**

54           If approved by two-thirds of all members elected to each house, this bill takes effect on

55 May 1, 2013.

56 **Utah Code Sections Affected:**

57 AMENDS:

58           **10-3-1304 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 347  
 59           **10-3-1305 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 347  
 60           **10-8-2**, as last amended by Laws of Utah 2010, Chapter 90  
 61           **17-16a-4 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 347  
 62           **17-50-302**, as last amended by Laws of Utah 2010, Chapter 385  
 63           **17B-1-106**, as last amended by Laws of Utah 2009, Chapter 188  
 64           **31A-31-104**, as last amended by Laws of Utah 2008, Chapter 382  
 65           **53-5-708**, as last amended by Laws of Utah 2010, Chapter 62  
 66           **53A-2-123**, as last amended by Laws of Utah 2009, Chapter 188  
 67           **54-3-28**, as last amended by Laws of Utah 2008, Chapter 382  
 68           **62A-16-204**, as enacted by Laws of Utah 2010, Chapter 239  
 69           **63C-4-102**, as last amended by Laws of Utah 2012, Chapters 324 and 377  
 70           **63G-2-201**, as last amended by Laws of Utah 2012, Chapter 377  
 71           **63G-2-202**, as last amended by Laws of Utah 2012, Chapter 377  
 72           **63G-2-301**, as last amended by Laws of Utah 2012, Chapter 377  
 73           **63G-2-305**, as last amended by Laws of Utah 2012, Chapters 331 and 377  
 74           **63G-2-309**, as last amended by Laws of Utah 2012, Chapter 377  
 75           **63G-2-403**, as last amended by Laws of Utah 2012, Chapter 377  
 76           **63G-2-406**, as enacted by Laws of Utah 2012, Chapter 377  
 77           **63G-6a-103 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 235  
 78           and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended  
 79           by Coordination Clause, Laws of Utah 2012, Chapter 347  
 80           **63G-6a-105 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91  
 81           and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended  
 82           by Coordination Clause, Laws of Utah 2012, Chapter 347  
 83           **63G-6a-106 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
 84           Chapter 347  
 85           **63G-6a-107 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,

86 Chapter 347

87 **63G-6a-108 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

88 **63G-6a-201 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

89 **63G-6a-203 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91

90 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended

91 by Coordination Clause, Laws of Utah 2012, Chapter 347

92 **63G-6a-204 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,

93 Chapter 347

94 **63G-6a-302 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,

95 Chapter 347

96 **63G-6a-303 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,

97 Chapter 347

98 **63G-6a-305 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,

99 Chapter 347

100 **63G-6a-402 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

101 **63G-6a-403 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

102 **63G-6a-404 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

103 **63G-6a-406 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

104 **63G-6a-407 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,

105 Chapter 347

106 **63G-6a-408 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

107 **63G-6a-503 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

108 **63G-6a-602 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

109 **63G-6a-603 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

110 **63G-6a-604 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

111 **63G-6a-605 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

112 **63G-6a-606 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

113 **63G-6a-607 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

- 114           **63G-6a-608 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 115           **63G-6a-609 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 116           **63G-6a-610 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 117           **63G-6a-611 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 118           **63G-6a-612 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 119           **63G-6a-702 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 120           **63G-6a-703 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 121           **63G-6a-704 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 122           **63G-6a-705 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 123           **63G-6a-707 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 124           **63G-6a-708 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 125           **63G-6a-709 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 126           **63G-6a-710 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 127           **63G-6a-711 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,
- 128 Chapter 347
- 129           **63G-6a-802 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,
- 130 Chapter 347
- 131           **63G-6a-804 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,
- 132 Chapter 347
- 133           **63G-6a-805 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,
- 134 Chapter 347
- 135           **63G-6a-902 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,
- 136 Chapter 347
- 137           **63G-6a-903 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,
- 138 Chapter 347
- 139           **63G-6a-904 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,
- 140 Chapter 347
- 141           **63G-6a-1002 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,

142 Chapter 347  
143           **63G-6a-1003 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
144 Chapter 347  
145           **63G-6a-1102 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
146 Chapter 347  
147           **63G-6a-1103 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
148 Chapter 347  
149           **63G-6a-1202 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter  
150 330 and renumbered and amended by Laws of Utah 2012, Chapter 347  
151           **63G-6a-1203 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
152 Chapter 347  
153           **63G-6a-1204 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347  
154           **63G-6a-1205 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
155 Chapter 347  
156           **63G-6a-1206 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
157 Chapter 347  
158           **63G-6a-1302 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter  
159 330 and renumbered and amended by Laws of Utah 2012, Chapter 347  
160           **63G-6a-1303 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
161 Chapter 347  
162           **63G-6a-1502 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
163 Chapter 347  
164           **63G-6a-1503 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
165 Chapter 347  
166           **63G-6a-1506 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
167 Chapter 347  
168           **63G-6a-1603 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91  
169 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended

170 by Coordination Clause, Laws of Utah 2012, Chapter 347  
171           **63G-6a-1702 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
172 Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter  
173 347  
174           **63G-6a-1703 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
175 Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter  
176 347  
177           **63G-6a-1704 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91  
178 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended  
179 by Coordination Clause, Laws of Utah 2012, Chapter 347  
180           **63G-6a-1802 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
181 Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter  
182 347  
183           **63G-6a-1902 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
184 Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter  
185 347  
186           **63G-6a-1903 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91  
187 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended  
188 by Coordination Clause, Laws of Utah 2012, Chapter 347  
189           **63G-6a-1904 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91  
190 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended  
191 by Coordination Clause, Laws of Utah 2012, Chapter 347  
192           **63G-6a-1905 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91  
193 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended  
194 by Coordination Clause, Laws of Utah 2012, Chapter 347  
195           **63G-6a-1910 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
196 Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter  
197 347

198           **63G-6a-1911 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
199 Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter  
200 347

201           **63G-6a-2002 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
202 Chapter 347

203           **63G-6a-2003 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
204 Chapter 347

205           **63G-6a-2004 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
206 Chapter 347

207           **63G-6a-2101 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

208           **63G-6a-2102 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
209 Chapter 347

210           **63G-6a-2103 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
211 Chapter 347

212           **63G-6a-2104 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
213 Chapter 347

214           **63G-6a-2105 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
215 Chapter 347

216           **63G-6a-2302 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
217 Chapter 347

218           **63G-6a-2305 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

219           **63G-6a-2306 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

220           **63G-6a-2307 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

221           **67-16-4 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapters 202,  
222 202, and 347

223           **67-16-5 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 347

224           **67-16-5.3 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 347

225           **67-16-5.6**, as enacted by Laws of Utah 2000, Chapter 108



226           **67-16-6 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 347  
227           **77-38-3**, as last amended by Laws of Utah 2011, Chapter 131  
228           **78A-4-106**, as last amended by Laws of Utah 2012, Chapter 377

229 ENACTS:

230           **63G-6a-505**, Utah Code Annotated 1953  
231           **63G-6a-709.5**, Utah Code Annotated 1953  
232           **63G-6a-806**, Utah Code Annotated 1953  
233           **63G-6a-905**, Utah Code Annotated 1953  
234           **63G-6a-1208**, Utah Code Annotated 1953  
235           **63G-6a-1209**, Utah Code Annotated 1953  
236           **63G-6a-1210**, Utah Code Annotated 1953  
237           **63G-6a-2304.5**, Utah Code Annotated 1953  
238           **63G-6a-2308**, Utah Code Annotated 1953

239 REPEALS AND REENACTS:

240           **63G-6a-104 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347 and  
241 last amended by Coordination Clause, Laws of Utah 2012, Chapter 347

242 RENUMBERS AND AMENDS:

243           **63G-6a-1204.5 (Effective 05/01/13)**, (Renumbered from 63G-6a-405 (Effective  
244 05/01/13), as enacted by Laws of Utah 2012, Chapter 347)

245 REPEALS:

246           **63G-6-506.5**, as enacted by Laws of Utah 2012, Chapter 330  
247           **63G-6a-1908 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
248 Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter  
249 347  
250           **63G-6a-2201 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347  
251           **63G-6a-2202 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347  
252           **63G-6a-2303 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347  
253           **63G-6a-2304 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

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

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Section 1. Section **10-3-1304 (Effective 05/01/13)** is amended to read:

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**10-3-1304 (Effective 05/01/13). Use of office for personal benefit prohibited.**

258

(1) As used in this section, "economic benefit tantamount to a gift" includes:

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(a) a loan at an interest rate that is substantially lower than the commercial rate then

260

currently prevalent for similar loans; and

261

(b) compensation received for private services rendered at a rate substantially

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exceeding the fair market value of the services.

263

(2) ~~[It]~~ Except as provided in Subsection (4), it is an offense for an elected or appointed

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officer or municipal employee~~[-, under circumstances not amounting to a violation of Section~~

265

~~63G-6a-2304 or 76-8-105;]~~ to:

266

(a) disclose or improperly use private, controlled, or protected information acquired by

267

reason of the officer's or employee's official position or in the course of official duties in order

268

to further substantially the officer's or employee's personal economic interest or to secure

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special privileges or exemptions for the officer or employee or for others;

270

(b) use or attempt to use the officer's or employee's official position to:

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(i) further substantially the officer's or employee's personal economic interest; or

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(ii) secure special privileges for the officer or employee or for others; or

273

(c) knowingly receive, accept, take, seek, or solicit, directly or indirectly, for the officer

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or employee or for another, a gift of substantial value or a substantial economic benefit

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tantamount to a gift that:

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(i) would tend improperly to influence a reasonable person in the person's position to

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depart from the faithful and impartial discharge of the person's public duties; or

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(ii) the person knows or that a reasonable person in that position should know under

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the circumstances is primarily for the purpose of rewarding the person for official action taken.

280

(3) Subsection (2)(c) does not apply to:

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(a) an occasional nonpecuniary gift having a value of less than \$50;

282 (b) an award publicly presented in recognition of public services;

283 (c) any bona fide loan made in the ordinary course of business; or

284 (d) a political campaign contribution.

285 (4) This section does not apply to an elected or appointed officer or municipal  
286 employee who engages in conduct that constitutes a violation of this section to the extent that  
287 the elected or appointed officer or municipal employee is chargeable, for the same conduct,  
288 under Section 76-8-105.

289 Section 2. Section **10-3-1305 (Effective 05/01/13)** is amended to read:

290 **10-3-1305 (Effective 05/01/13). Compensation for assistance in transaction**  
291 **involving municipality -- Public disclosure and filing required.**

292 (1) As used in this section, "municipal body" means any public board, commission,  
293 committee, or other public group organized to make public policy decisions or to advise  
294 persons who make public policy decisions.

295 (2) ~~[It]~~ Except as provided in Subsection (6), it is an offense for an elected officer, or  
296 an appointed officer, who is a member of a public body~~[, under circumstances not amounting to~~  
297 ~~a violation of Section 63G-6a-2304 or 76-8-105,]~~ to receive or agree to receive compensation  
298 for assisting any person or business entity in any transaction involving the municipality in  
299 which the member is an officer unless the member:

300 (a) files with the mayor a sworn statement giving the information required by this  
301 section; and

302 (b) discloses the information required by Subsection (5) in an open meeting to the  
303 members of the body of which the officer is a member immediately before the discussion.

304 (3) It is an offense for an appointed officer who is not a member of a public body or a  
305 municipal employee to receive or agree to receive compensation for assisting any person or  
306 business entity in any transaction involving the municipality by which the person is employed  
307 unless the officer or employee:

308 (a) files with the mayor a sworn statement giving the information required by this  
309 section; and

310 (b) discloses the information required by Subsection (5) to:

311 (i) the officer or employee's immediate supervisor; and

312 (ii) any other municipal officer or employee who may rely upon the employee's  
313 representations in evaluating or approving the transaction.

314 (4) (a) The officer or employee shall file the statement required to be filed by this  
315 section 10 days before the date of any agreement between the elected or appointed officer or  
316 municipal employee and the person or business entity being assisted or 10 days before the  
317 receipt of compensation by the officer or employee, whichever is earlier.

318 (b) The statement is public information and shall be available for examination by the  
319 public.

320 (5) The statement and disclosure shall contain:

321 (a) the name and address of the officer or municipal employee;

322 (b) the name and address of the person or business entity being or to be assisted or in  
323 which the appointed or elected official or municipal employee has a substantial interest; and

324 (c) a brief description of the transaction as to which service is rendered or is to be  
325 rendered and of the nature of the service performed or to be performed.

326 (6) This section does not apply to an elected officer, or an appointed officer, who is a  
327 member of a public body and who engages in conduct that constitutes a violation of this section  
328 to the extent that the elected officer or appointed officer is chargeable, for the same conduct,  
329 under Section 76-8-105.

330 Section 3. Section **10-8-2** is amended to read:

331 **10-8-2. Appropriations -- Acquisition and disposal of property -- Municipal**  
332 **authority -- Corporate purpose -- Procedure -- Notice of intent to acquire real property.**

333 (1) (a) A municipal legislative body may:

334 (i) appropriate money for corporate purposes only;

335 (ii) provide for payment of debts and expenses of the corporation;

336 (iii) subject to Subsections (4) and (5), purchase, receive, hold, sell, lease, convey, and  
337 dispose of real and personal property for the benefit of the municipality, whether the property is

338 within or without the municipality's corporate boundaries, if the action is in the public interest  
339 and complies with other law;

340 (iv) improve, protect, and do any other thing in relation to this property that an  
341 individual could do; and

342 (v) subject to Subsection (2) and after first holding a public hearing, authorize  
343 municipal services or other nonmonetary assistance to be provided to or waive fees required to  
344 be paid by a nonprofit entity, whether or not the municipality receives consideration in return.

345 (b) A municipality may:

346 (i) furnish all necessary local public services within the municipality;

347 (ii) purchase, hire, construct, own, maintain and operate, or lease public utilities  
348 located and operating within and operated by the municipality; and

349 (iii) subject to Subsection (1)(c), acquire by eminent domain, or otherwise, property  
350 located inside or outside the corporate limits of the municipality and necessary for any of the  
351 purposes stated in Subsections (1)(b)(i) and (ii), subject to restrictions imposed by Title 78B,  
352 Chapter 6, Part 5, Eminent Domain, and general law for the protection of other communities.

353 (c) Each municipality that intends to acquire property by eminent domain under  
354 Subsection (1)(b) shall, upon the first contact with the owner of the property sought to be  
355 acquired, deliver to the owner a copy of a booklet or other materials provided by the Office of  
356 the Property Rights Ombudsman, created under Section 13-43-201, dealing with the property  
357 owner's rights in an eminent domain proceeding.

358 (d) Subsection (1)(b) may not be construed to diminish any other authority a  
359 municipality may claim to have under the law to acquire by eminent domain property located  
360 inside or outside the municipality.

361 (2) (a) Services or assistance provided pursuant to Subsection (1)(a)(v) is not subject to  
362 the provisions of Subsection (3).

363 (b) The total amount of services or other nonmonetary assistance provided or fees  
364 waived under Subsection (1)(a)(v) in any given fiscal year may not exceed 1% of the  
365 municipality's budget for that fiscal year.

366 (3) It is considered a corporate purpose to appropriate money for any purpose that, in  
367 the judgment of the municipal legislative body, provides for the safety, health, prosperity,  
368 moral well-being, peace, order, comfort, or convenience of the inhabitants of the municipality  
369 subject to the following:

370 (a) The net value received for any money appropriated shall be measured on a  
371 project-by-project basis over the life of the project.

372 (b) The criteria for a determination under this Subsection (3) shall be established by the  
373 municipality's legislative body. A determination of value received, made by the municipality's  
374 legislative body, shall be presumed valid unless it can be shown that the determination was  
375 arbitrary, capricious, or illegal.

376 (c) The municipality may consider intangible benefits received by the municipality in  
377 determining net value received.

378 (d) (i) Prior to the municipal legislative body making any decision to appropriate any  
379 funds for a corporate purpose under this section, a public hearing shall be held.

380 (ii) Notice of the hearing described in Subsection (3)(d)(i) shall be published:

381 (A) (I) in a newspaper of general circulation at least 14 days before the date of the  
382 hearing; or

383 (II) if there is no newspaper of general circulation, by posting notice in at least three  
384 conspicuous places within the municipality for the same time period; and

385 (B) on the Utah Public Notice Website created in Section 63F-1-701, at least 14 days  
386 before the date of the hearing.

387 (e) A study shall be performed before notice of the public hearing is given and shall be  
388 made available at the municipality for review by interested parties at least 14 days immediately  
389 prior to the public hearing, setting forth an analysis and demonstrating the purpose for the  
390 appropriation. In making the study, the following factors shall be considered:

391 (i) what identified benefit the municipality will receive in return for any money or  
392 resources appropriated;

393 (ii) the municipality's purpose for the appropriation, including an analysis of the way

394 the appropriation will be used to enhance the safety, health, prosperity, moral well-being,  
395 peace, order, comfort, or convenience of the inhabitants of the municipality; and

396 (iii) whether the appropriation is necessary and appropriate to accomplish the  
397 reasonable goals and objectives of the municipality in the area of economic development, job  
398 creation, affordable housing, blight elimination, job preservation, the preservation of historic  
399 structures and property, and any other public purpose.

400 (f) (i) An appeal may be taken from a final decision of the municipal legislative body,  
401 to make an appropriation.

402 (ii) The appeal shall be filed within 30 days after the date of that decision, to the  
403 district court.

404 (iii) Any appeal shall be based on the record of the proceedings before the legislative  
405 body.

406 (iv) A decision of the municipal legislative body shall be presumed to be valid unless  
407 the appealing party shows that the decision was arbitrary, capricious, or illegal.

408 (g) The provisions of this Subsection (3) apply only to those appropriations made after  
409 May 6, 2002.

410 (h) This section applies only to appropriations not otherwise approved pursuant to Title  
411 10, Chapter 5, Uniform Fiscal Procedures Act for Utah Towns, or Title 10, Chapter 6, Uniform  
412 Fiscal Procedures Act for Utah Cities.

413 (4) (a) Before a municipality may dispose of a significant parcel of real property, the  
414 municipality shall:

415 (i) provide reasonable notice of the proposed disposition at least 14 days before the  
416 opportunity for public comment under Subsection (4)(a)(ii); and

417 (ii) allow an opportunity for public comment on the proposed disposition.

418 (b) Each municipality shall, by ordinance, define what constitutes:

419 (i) a significant parcel of real property for purposes of Subsection (4)(a); and

420 (ii) reasonable notice for purposes of Subsection (4)(a)(i).

421 (5) (a) Except as provided in Subsection (5)(d), each municipality intending to acquire

422 real property for the purpose of expanding the municipality's infrastructure or other facilities  
423 used for providing services that the municipality offers or intends to offer shall provide written  
424 notice, as provided in this Subsection (5), of its intent to acquire the property if:

425 (i) the property is located:

426 (A) outside the boundaries of the municipality; and

427 (B) in a county of the first or second class; and

428 (ii) the intended use of the property is contrary to:

429 (A) the anticipated use of the property under the general plan of the county in whose  
430 unincorporated area or the municipality in whose boundaries the property is located; or

431 (B) the property's current zoning designation.

432 (b) Each notice under Subsection (5)(a) shall:

433 (i) indicate that the municipality intends to acquire real property;

434 (ii) identify the real property; and

435 (iii) be sent to:

436 (A) each county in whose unincorporated area and each municipality in whose  
437 boundaries the property is located; and

438 (B) each affected entity.

439 (c) A notice under this Subsection (5) is a protected record as provided in Subsection  
440 63G-2-305[~~(7)~~](8).

441 (d) (i) The notice requirement of Subsection (5)(a) does not apply if the municipality  
442 previously provided notice under Section 10-9a-203 identifying the general location within the  
443 municipality or unincorporated part of the county where the property to be acquired is located.

444 (ii) If a municipality is not required to comply with the notice requirement of  
445 Subsection (5)(a) because of application of Subsection (5)(d)(i), the municipality shall provide  
446 the notice specified in Subsection (5)(a) as soon as practicable after its acquisition of the real  
447 property.

448 Section 4. Section **17-16a-4 (Effective 05/01/13)** is amended to read:

449 **17-16a-4 (Effective 05/01/13). Prohibited use of official position -- Exception.**



450 (1) Except as provided in Subsection (3) or (4), it is an offense for an elected or  
451 appointed officer[~~-, under circumstances not amounting to a violation of Section 63G-6a-2304~~  
452 ~~or 76-8-105,~~] to:

453 (a) disclose confidential information acquired by reason of the officer's official position  
454 or use that information to secure special privileges or exemptions for himself or others;

455 (b) use or attempt to use the officer's official position to secure special privileges for  
456 the officer or for others; or

457 (c) knowingly receive, accept, take, seek or solicit, directly or indirectly, any gift or  
458 loan for the officer or for another, if the gift or loan tends to influence the officer in the  
459 discharge of the officer's official duties.

460 (2) This section is inapplicable to:

461 (a) an occasional nonpecuniary gift having a value of less than \$50;

462 (b) an award publicly presented;

463 (c) any bona fide loan made in the ordinary course of business; or

464 (d) political campaign contributions actually used in a political campaign.

465 (3) A member of a county legislative body who is also a member of the governing  
466 board of a provider of mental health or substance abuse services under contract with the county  
467 does not commit an offense under Subsection (1)(a) or (b) by discharging, in good faith, the  
468 duties and responsibilities of each position, if the county legislative body member does not  
469 participate in the process of selecting the mental health or substance abuse service provider.

470 (4) This section does not apply to an elected or appointed officer who engages in  
471 conduct that constitutes a violation of this section to the extent that the elected or appointed  
472 officer is chargeable, for the same conduct, under Section 76-8-105.

473 Section 5. Section **17-50-302** is amended to read:

474 **17-50-302. General county powers.**

475 (1) (a) Except as provided in Subsection (1)(b), a county may:

476 (i) as prescribed by statute:

477 (A) levy a tax;

- 478 (B) perform an assessment;
- 479 (C) collect a tax;
- 480 (D) borrow money; or
- 481 (E) levy and collect a special assessment for a conferred benefit; or
- 482 (ii) provide a service, exercise a power, or perform a function that is reasonably related
- 483 to the safety, health, morals, and welfare of county inhabitants, except as limited or prohibited
- 484 by statute.

485 (b) A county or a governmental instrumentality of a county may not perform an action

486 described in Subsection (1)(a)(i) or provide a service, exercise a power, or perform a function

487 described in Subsection (1)(a)(ii) in another county or a municipality within the other county

488 without first entering into an agreement under Title 11, Chapter 13, Interlocal Cooperation Act,

489 or other contract with the other county to perform the action, provide the service, exercise the

490 power, or perform the function.

491 (2) (a) A county may:

- 492 (i) sue and be sued;
- 493 (ii) subject to Subsection (2)(c), acquire real property by tax sale, purchase, lease,
- 494 contract, or gift, and hold the real property as necessary and proper for county purposes;
- 495 (iii) (A) subject to Subsection (2)(b), acquire real property by condemnation, as
- 496 provided in Title 78B, Chapter 6, Part 5, Eminent Domain; and

497 (B) hold the real property as necessary and proper for county purposes;

498 (iv) as may be necessary to the exercise of its powers, acquire personal property by

499 purchase, lease, contract, or gift, and hold such personal property; and

500 (v) manage and dispose of its property as the interests of its inhabitants may require.

501 (b) (i) For purposes of Subsection (2)(a)(iii), water rights that are not appurtenant to

502 land do not constitute real property that may be acquired by the county through condemnation.

503 (ii) Nothing in Subsection (2)(a)(iii) may be construed to authorize a county to acquire

504 by condemnation the rights to water unless the land to which those water rights are appurtenant

505 is acquired by condemnation.

506 (c) (i) Except as provided in Subsection (2)(c)(iv), each county intending to acquire  
507 real property for the purpose of expanding the county's infrastructure or other facilities used for  
508 providing services that the county offers or intends to offer shall provide written notice, as  
509 provided in this Subsection (2)(c), of its intent to acquire the property if:

510 (A) the property is located:

511 (I) outside the boundaries of the unincorporated area of the county; and

512 (II) in a county of the first or second class; and

513 (B) the intended use of the property is contrary to:

514 (I) the anticipated use of the property under the general plan of the county in whose  
515 unincorporated area or the municipality in whose boundaries the property is located; or

516 (II) the property's current zoning designation.

517 (ii) Each notice under Subsection (2)(c)(i) shall:

518 (A) indicate that the county intends to acquire real property;

519 (B) identify the real property; and

520 (C) be sent to:

521 (I) each county in whose unincorporated area and each municipality in whose  
522 boundaries the property is located; and

523 (II) each affected entity.

524 (iii) A notice under this Subsection (2)(c) is a protected record as provided in  
525 Subsection 63G-2-305[~~(7)~~](8).

526 (iv) (A) The notice requirement of Subsection (2)(c)(i) does not apply if the county  
527 previously provided notice under Section 17-27a-203 identifying the general location within  
528 the municipality or unincorporated part of the county where the property to be acquired is  
529 located.

530 (B) If a county is not required to comply with the notice requirement of Subsection  
531 (2)(c)(i) because of application of Subsection (2)(c)(iv)(A), the county shall provide the notice  
532 specified in Subsection (2)(c)(i) as soon as practicable after its acquisition of the real property.

533 Section 6. Section **17B-1-106** is amended to read:

534           **17B-1-106. Notice before preparing or amending a long-range plan or acquiring**  
535 **certain property.**

536           (1) As used in this section:

537           (a) (i) "Affected entity" means each county, municipality, local district under this title,  
538 special service district, school district, interlocal cooperation entity established under Title 11,  
539 Chapter 13, Interlocal Cooperation Act, and specified public utility:

540           (A) whose services or facilities are likely to require expansion or significant  
541 modification because of an intended use of land; or

542           (B) that has filed with the local district a copy of the general or long-range plan of the  
543 county, municipality, local district, school district, interlocal cooperation entity, or specified  
544 public utility.

545           (ii) "Affected entity" does not include the local district that is required under this  
546 section to provide notice.

547           (b) "Specified public utility" means an electrical corporation, gas corporation, or  
548 telephone corporation, as those terms are defined in Section 54-2-1.

549           (2) (a) If a local district under this title located in a county of the first or second class  
550 prepares a long-range plan regarding its facilities proposed for the future or amends an already  
551 existing long-range plan, the local district shall, before preparing a long-range plan or  
552 amendments to an existing long-range plan, provide written notice, as provided in this section,  
553 of its intent to prepare a long-range plan or to amend an existing long-range plan.

554           (b) Each notice under Subsection (2)(a) shall:

555           (i) indicate that the local district intends to prepare a long-range plan or to amend a  
556 long-range plan, as the case may be;

557           (ii) describe or provide a map of the geographic area that will be affected by the  
558 long-range plan or amendments to a long-range plan;

559           (iii) be:

560           (A) sent to each county in whose unincorporated area and each municipality in whose  
561 boundaries is located the land on which the proposed long-range plan or amendments to a

562 long-range plan are expected to indicate that the proposed facilities will be located;  
563 (B) sent to each affected entity;  
564 (C) sent to the Automated Geographic Reference Center created in Section 63F-1-506;  
565 (D) sent to each association of governments, established pursuant to an interlocal  
566 agreement under Title 11, Chapter 13, Interlocal Cooperation Act, of which a county or  
567 municipality described in Subsection (2)(b)(iii)(A) is a member; and  
568 (E) (I) placed on the Utah Public Notice Website created under Section 63F-1-701, if  
569 the local district:  
570 (Aa) is required under Subsection 52-4-203(3) to use that website to provide public  
571 notice of a meeting; or  
572 (Bb) voluntarily chooses to place notice on that website despite not being required to  
573 do so under Subsection (2)(b)(iii)(E)(I)(Aa); or  
574 (II) the state planning coordinator appointed under Section 63J-4-202, if the local  
575 district does not provide notice on the Utah Public Notice Website under Subsection  
576 (2)(b)(iii)(E)(I);  
577 (iv) with respect to the notice to counties and municipalities described in Subsection  
578 (2)(b)(iii)(A) and affected entities, invite them to provide information for the local district to  
579 consider in the process of preparing, adopting, and implementing the long-range plan or  
580 amendments to a long-range plan concerning:  
581 (A) impacts that the use of land proposed in the proposed long-range plan or  
582 amendments to a long-range plan may have on the county, municipality, or affected entity; and  
583 (B) uses of land that the county, municipality, or affected entity is planning or  
584 considering that may conflict with the proposed long-range plan or amendments to a long-range  
585 plan; and  
586 (v) include the address of an Internet website, if the local district has one, and the name  
587 and telephone number of a person where more information can be obtained concerning the  
588 local district's proposed long-range plan or amendments to a long-range plan.  
589 (3) (a) Except as provided in Subsection (3)(d), each local district intending to acquire

590 real property in a county of the first or second class for the purpose of expanding the district's  
591 infrastructure or other facilities used for providing the services that the district is authorized to  
592 provide shall provide written notice, as provided in this Subsection (3), of its intent to acquire  
593 the property if the intended use of the property is contrary to:

594 (i) the anticipated use of the property under the county or municipality's general plan;

595 or

596 (ii) the property's current zoning designation.

597 (b) Each notice under Subsection (3)(a) shall:

598 (i) indicate that the local district intends to acquire real property;

599 (ii) identify the real property; and

600 (iii) be sent to:

601 (A) each county in whose unincorporated area and each municipality in whose  
602 boundaries the property is located; and

603 (B) each affected entity.

604 (c) A notice under this Subsection (3) is a protected record as provided in Subsection  
605 63G-2-305[~~(7)~~](8).

606 (d) (i) The notice requirement of Subsection (3)(a) does not apply if the local district  
607 previously provided notice under Subsection (2) identifying the general location within the  
608 municipality or unincorporated part of the county where the property to be acquired is located.

609 (ii) If a local district is not required to comply with the notice requirement of  
610 Subsection (3)(a) because of application of Subsection (3)(d)(i), the local district shall provide  
611 the notice specified in Subsection (3)(a) as soon as practicable after its acquisition of the real  
612 property.

613 Section 7. Section **31A-31-104** is amended to read:

614 **31A-31-104. Disclosure of information.**

615 (1) (a) Subject to Subsection (2), upon written request by an insurer to an authorized  
616 agency, the authorized agency may release to the insurer information or evidence that is  
617 relevant to any suspected insurance fraud.

618 (b) Upon written request by an authorized agency to an insurer, the insurer or an agent  
619 authorized by the insurer to act on the insurer's behalf shall release to the authorized agency  
620 information or evidence that is relevant to any suspected insurance fraud.

621 (2) (a) Any information or evidence furnished to an authorized agency under this  
622 section may be classified as a protected record in accordance with Subsection  
623 63G-2-305[~~(9)~~](10).

624 (b) Any information or evidence furnished to an insurer under this section is not  
625 subject to discovery in a civil proceeding unless, after reasonable notice to any insurer, agent,  
626 or any authorized agency that has an interest in the information and subsequent hearing, a court  
627 determines that the public interest and any ongoing criminal investigation will not be  
628 jeopardized by the disclosure.

629 (c) An insurer shall report to the department agency terminations based upon a  
630 violation of this chapter.

631 Section 8. Section **53-5-708** is amended to read:

632 **53-5-708. Permit -- Names private.**

633 (1) (a) The bureau shall maintain a record in its office of any permit issued under this  
634 part.

635 (b) Notwithstanding the requirements of Subsection 63G-2-301(2)(b), the names,  
636 addresses, telephone numbers, dates of birth, and Social Security numbers of persons receiving  
637 permits are protected records under Subsection 63G-2-305[~~(10)~~](11).

638 (2) The bureau shall immediately file a copy of each permit it issues under this part.

639 Section 9. Section **53A-2-123** is amended to read:

640 **53A-2-123. Notice before preparing or amending a long-range plan or acquiring**  
641 **certain property.**

642 (1) As used in this section:

643 (a) "Affected entity" means each county, municipality, local district under Title 17B,  
644 Limited Purpose Local Government Entities - Local Districts, special service district under  
645 Title 17D, Chapter 1, Special Service District Act, interlocal cooperation entity established

646 under Title 11, Chapter 13, Interlocal Cooperation Act, and specified public utility:

647 (i) whose services or facilities are likely to require expansion or significant  
648 modification because of an intended use of land; or

649 (ii) that has filed with the school district a copy of the general or long-range plan of the  
650 county, municipality, local district, special service district, school district, interlocal  
651 cooperation entity, or specified public utility.

652 (b) "Specified public utility" means an electrical corporation, gas corporation, or  
653 telephone corporation, as those terms are defined in Section 54-2-1.

654 (2) (a) If a school district located in a county of the first or second class prepares a  
655 long-range plan regarding its facilities proposed for the future or amends an already existing  
656 long-range plan, the school district shall, before preparing a long-range plan or amendments to  
657 an existing long-range plan, provide written notice, as provided in this section, of its intent to  
658 prepare a long-range plan or to amend an existing long-range plan.

659 (b) Each notice under Subsection (2)(a) shall:

660 (i) indicate that the school district intends to prepare a long-range plan or to amend a  
661 long-range plan, as the case may be;

662 (ii) describe or provide a map of the geographic area that will be affected by the  
663 long-range plan or amendments to a long-range plan;

664 (iii) be:

665 (A) sent to each county in whose unincorporated area and each municipality in whose  
666 boundaries is located the land on which the proposed long-range plan or amendments to a  
667 long-range plan are expected to indicate that the proposed facilities will be located;

668 (B) sent to each affected entity;

669 (C) sent to the Automated Geographic Reference Center created in Section 63F-1-506;

670 (D) sent to each association of governments, established pursuant to an interlocal  
671 agreement under Title 11, Chapter 13, Interlocal Cooperation Act, of which a county or  
672 municipality described in Subsection (2)(b)(iii)(A) is a member; and

673 (E) placed on the Utah Public Notice Website created under Section 63F-1-701;



674 (iv) with respect to the notice to counties and municipalities described in Subsection  
675 (2)(b)(iii)(A) and affected entities, invite them to provide information for the school district to  
676 consider in the process of preparing, adopting, and implementing the long-range plan or  
677 amendments to a long-range plan concerning:

678 (A) impacts that the use of land proposed in the proposed long-range plan or  
679 amendments to a long-range plan may have on the county, municipality, or affected entity; and

680 (B) uses of land that the county, municipality, or affected entity is planning or  
681 considering that may conflict with the proposed long-range plan or amendments to a long-range  
682 plan; and

683 (v) include the address of an Internet website, if the school district has one, and the  
684 name and telephone number of a person where more information can be obtained concerning  
685 the school district's proposed long-range plan or amendments to a long-range plan.

686 (3) (a) Except as provided in Subsection (3)(d), each school district intending to  
687 acquire real property in a county of the first or second class for the purpose of expanding the  
688 district's infrastructure or other facilities shall provide written notice, as provided in this  
689 Subsection (3), of its intent to acquire the property if the intended use of the property is  
690 contrary to:

691 (i) the anticipated use of the property under the county or municipality's general plan;

692 or

693 (ii) the property's current zoning designation.

694 (b) Each notice under Subsection (3)(a) shall:

695 (i) indicate that the school district intends to acquire real property;

696 (ii) identify the real property; and

697 (iii) be sent to:

698 (A) each county in whose unincorporated area and each municipality in whose  
699 boundaries the property is located; and

700 (B) each affected entity.

701 (c) A notice under this Subsection (3) is a protected record as provided in Subsection

702 63G-2-305[(7)](8).

703 (d) (i) The notice requirement of Subsection (3)(a) does not apply if the school district  
704 previously provided notice under Subsection (2) identifying the general location within the  
705 municipality or unincorporated part of the county where the property to be acquired is located.

706 (ii) If a school district is not required to comply with the notice requirement of  
707 Subsection (3)(a) because of application of Subsection (3)(d)(i), the school district shall  
708 provide the notice specified in Subsection (3)(a) as soon as practicable after its acquisition of  
709 the real property.

710 Section 10. Section **54-3-28** is amended to read:

711 **54-3-28. Notice required of certain public utilities before preparing or amending**  
712 **a long-range plan or acquiring certain property.**

713 (1) As used in this section:

714 (a) (i) "Affected entity" means each county, municipality, local district under Title 17B,  
715 Limited Purpose Local Government Entities - Local Districts, special service district, school  
716 district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal  
717 Cooperation Act, and specified public utility:

718 (A) whose services or facilities are likely to require expansion or significant  
719 modification because of expected uses of land under a proposed long-range plan or under  
720 proposed amendments to a long-range plan; or

721 (B) that has filed with the specified public utility a copy of the general or long-range  
722 plan of the county, municipality, local district, special service district, school district, interlocal  
723 cooperation entity, or specified public utility.

724 (ii) "Affected entity" does not include the specified public utility that is required under  
725 Subsection (2) to provide notice.

726 (b) "Specified public utility" means an electrical corporation, gas corporation, or  
727 telephone corporation, as those terms are defined in Section 54-2-1.

728 (2) (a) If a specified public utility prepares a long-range plan regarding its facilities  
729 proposed for the future in a county of the first or second class or amends an already existing

730 long-range plan, the specified public utility shall, before preparing a long-range plan or  
731 amendments to an existing long-range plan, provide written notice, as provided in this section,  
732 of its intent to prepare a long-range plan or to amend an existing long-range plan.

733 (b) Each notice under Subsection (2) shall:

734 (i) indicate that the specified public utility intends to prepare a long-range plan or to  
735 amend a long-range plan, as the case may be;

736 (ii) describe or provide a map of the geographic area that will be affected by the  
737 long-range plan or amendments to a long-range plan;

738 (iii) be sent to:

739 (A) each county in whose unincorporated area and each municipality in whose  
740 boundaries is located the land on which the proposed long-range plan or amendments to a  
741 long-range plan are expected to indicate that the proposed facilities will be located;

742 (B) each affected entity;

743 (C) the Automated Geographic Reference Center created in Section 63F-1-506;

744 (D) each association of governments, established pursuant to an interlocal agreement  
745 under Title 11, Chapter 13, Interlocal Cooperation Act, of which a county or municipality  
746 described in Subsection (2)(b)(iii)(A) is a member; and

747 (E) the state planning coordinator appointed under Section 63J-4-202;

748 (iv) with respect to the notice to counties and municipalities described in Subsection  
749 (2)(b)(iii)(A) and affected entities, invite them to provide information for the specified public  
750 utility to consider in the process of preparing, adopting, and implementing the long-range plan  
751 or amendments to a long-range plan concerning:

752 (A) impacts that the use of land proposed in the proposed long-range plan or  
753 amendments to a long-range plan may have on the county, municipality, or affected entity; and

754 (B) uses of land that the county, municipality, or affected entity is planning or  
755 considering that may conflict with the proposed long-range plan or amendments to a long-range  
756 plan; and

757 (v) include the address of an Internet website, if the specified public utility has one, and

758 the name and telephone number of a person where more information can be obtained  
759 concerning the specified public utility's proposed long-range plan or amendments to a  
760 long-range plan.

761 (3) (a) Except as provided in Subsection (3)(d), each specified public utility intending  
762 to acquire real property in a county of the first or second class for the purpose of expanding its  
763 infrastructure or other facilities used for providing the services that the specified public utility  
764 is authorized to provide shall provide written notice, as provided in this Subsection (3), of its  
765 intent to acquire the property if the intended use of the property is contrary to:

766 (i) the anticipated use of the property under the county or municipality's general plan;

767 or

768 (ii) the property's current zoning designation.

769 (b) Each notice under Subsection (3)(a) shall:

770 (i) indicate that the specified public utility intends to acquire real property;

771 (ii) identify the real property; and

772 (iii) be sent to:

773 (A) each county in whose unincorporated area and each municipality in whose  
774 boundaries the property is located; and

775 (B) each affected entity.

776 (c) A notice under this Subsection (3) is a protected record as provided in Subsection  
777 63G-2-305[~~(7)~~](8).

778 (d) (i) The notice requirement of Subsection (3)(a) does not apply if the specified  
779 public utility previously provided notice under Subsection (2) identifying the general location  
780 within the municipality or unincorporated part of the county where the property to be acquired  
781 is located.

782 (ii) If a specified public utility is not required to comply with the notice requirement of  
783 Subsection (3)(a) because of application of Subsection (3)(d)(i), the specified public utility  
784 shall provide the notice specified in Subsection (3)(a) as soon as practicable after its acquisition  
785 of the real property.

786 Section 11. Section **62A-16-204** is amended to read:

787 **62A-16-204. Fatality Review Committee Proceedings.**

788 (1) A majority vote of committee members present constitutes the action of the  
789 committee.

790 (2) The department shall give the committee access to all reports, records, and other  
791 documents that are relevant to the fatality under investigation, including:

792 (a) narrative reports;

793 (b) case files;

794 (c) autopsy reports; and

795 (d) police reports, unless the report is protected from disclosure under Subsection  
796 63G-2-305~~(9)~~ or (10) or (11).

797 (3) The Utah State Hospital and the Utah State Developmental Center shall provide  
798 protected health information to the committee if requested by a fatality review coordinator.

799 (4) A committee shall convene its first meeting within 14 days after the day on which a  
800 formal fatality review is ordered under Subsection 62A-16-201(6), unless this time is extended,  
801 for good cause, by the director of the Office of Services Review.

802 (5) A committee may interview a staff member, a provider, or any other person who  
803 may have knowledge or expertise that is relevant to the fatality review.

804 (6) A committee shall render an advisory opinion regarding:

805 (a) whether the provisions of law, rule, policy, and procedure relating to the deceased  
806 individual and the deceased individual's family were complied with;

807 (b) whether the fatality was responded to properly;

808 (c) whether to recommend that a law, rule, policy, or procedure be changed; and

809 (d) whether additional training is needed.

810 Section 12. Section **63C-4-102** is amended to read:

811 **63C-4-102. Duties.**

812 (1) The Constitutional Defense Council is a council to assist the governor and the  
813 Legislature on the following types of issues:

- 814 (a) the constitutionality of federal mandates;
- 815 (b) when making recommendations to challenge the federal mandates and regulations
- 816 described in Subsections (1)(f)(i) through (v), the rationale for and effectiveness of those
- 817 federal mandates or regulations;
- 818 (c) legal and policy issues surrounding state and local government rights under R.S.
- 819 2477;
- 820 (d) legal issues relating to the rights of the School and Institutional Trust Lands
- 821 Administration and its beneficiaries;
- 822 (e) a disagreement with another state regarding the use or ownership of water; and
- 823 (f) the advisability, feasibility, estimated cost, and likelihood of success of challenging:
- 824 (i) federal court rulings that:
- 825 (A) hinder the management of the state's prison system and place undue financial
- 826 hardship on the state's taxpayers;
- 827 (B) impact a power or a right reserved to the state or its citizens by the United States
- 828 Constitution, Amendment IX or X; or
- 829 (C) expand or grant a power to the United States government beyond the limited,
- 830 enumerated powers granted by the United States Constitution;
- 831 (ii) federal laws or regulations that reduce or negate water rights or the rights of owners
- 832 of private property, or the rights and interest of state and local governments, including
- 833 sovereignty interests and the power to provide for the health, safety, and welfare, and promote
- 834 the prosperity of their inhabitants;
- 835 (iii) conflicting federal regulations or policies in land management on federal land;
- 836 (iv) federal intervention that would damage the state's mining, timber, and ranching
- 837 industries;
- 838 (v) the authority of the Environmental Protection Agency and Congress to mandate
- 839 local air quality standards and penalties; and
- 840 (vi) other issues that are relevant to this Subsection (1).
- 841 (2) The council shall:

842 (a) provide advice to the governor, state planning coordinator, and the public lands  
843 policy coordinator concerning coordination of:

844 (i) state and local government rights under R.S. 2477; and

845 (ii) other public lands issues;

846 (b) approve a plan for R.S. 2477 rights developed in accordance with Section  
847 63C-4-104; and

848 (c) review, at least quarterly:

849 (i) financial statements concerning implementation of the plan for R.S. 2477 rights;

850 and

851 (ii) financial and other reports from the Public Lands Policy Coordinating Office  
852 concerning its activities.

853 (3) The council chair may require the attorney general or a designee to provide  
854 testimony on potential legal actions that would enhance the state's sovereignty or authority on  
855 issues affecting Utah and the well-being of its citizens.

856 (4) The council chair may direct the attorney general to initiate and prosecute any  
857 action that the council determines will further its purposes, including an action described in  
858 Section 67-5-29.

859 (5) (a) Subject to the provisions of this section, the council may select and employ  
860 attorneys to implement the purposes and duties of the council.

861 (b) The council chair may, in consultation with the council, direct any council attorney  
862 in any manner considered appropriate by the attorney general to best serve the purposes of the  
863 council.

864 (c) The attorney general shall negotiate a contract for services with any attorney  
865 selected and approved for employment under this section.

866 (6) The council chair may, only with the concurrence of the council, review and  
867 approve all claims for payments for:

868 (a) legal services that are submitted to the council;

869 (b) an action filed in accordance with Section 67-5-29; and

870 (c) costs related to a constitutional defense plan approved in accordance with Section  
871 63C-4-104 that are submitted by:

- 872 (i) the Public Lands Policy Coordinating Office;
- 873 (ii) the School and Institutional Trust Lands Administration; or
- 874 (iii) the Office of the Attorney General.

875 (7) Within five business days' notice, the council chair may, with the concurrence of  
876 the council, order the attorney general or an attorney employed by the council to cease work to  
877 be charged to the fund.

878 (8) (a) At least 20 calendar days before the state submits comments on the draft  
879 environmental impact statement or environmental assessment for a proposed land management  
880 plan of any federal land management agency, the governor shall make those documents  
881 available to:

- 882 (i) members of the council; and
- 883 (ii) any county executive, county council member, or county commissioner of a county  
884 that is covered by the management plan and that has established formal cooperating agency  
885 status with the relevant federal land management agency regarding the proposed plan.

886 (b) (i) Council members or local government officials receiving the documents may  
887 make recommendations to the governor or the governor's designee concerning changes to the  
888 documents before they are submitted to the federal land management agency.

889 (ii) Council members or local government officials shall submit recommendations to  
890 the governor or the governor's designee no later than 10 calendar days after receiving the  
891 documents under Subsection (8)(a).

892 (c) Documents transmitted or received under this Subsection (8) are drafts and are  
893 protected records pursuant to Subsection 63G-2-305[~~(21)~~](22).

894 (9) The council shall submit a report on December 1 of each year by electronic mail  
895 that summarizes the council's activities to each legislator.

896 Section 13. Section **63G-2-201** is amended to read:

897 **63G-2-201. Right to inspect records and receive copies of records.**



898 (1) Every person has the right to inspect a public record free of charge, and the right to  
899 take a copy of a public record during normal working hours, subject to Sections 63G-2-203 and  
900 63G-2-204.

901 (2) A record is public unless otherwise expressly provided by statute.

902 (3) The following records are not public:

903 (a) a record that is private, controlled, or protected under Sections 63G-2-302,  
904 63G-2-303, 63G-2-304, and 63G-2-305; and

905 (b) a record to which access is restricted pursuant to court rule, another state statute,  
906 federal statute, or federal regulation, including records for which access is governed or  
907 restricted as a condition of participation in a state or federal program or for receiving state or  
908 federal funds.

909 (4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or  
910 63G-2-305 may be classified private, controlled, or protected.

911 (5) (a) A governmental entity may not disclose a record that is private, controlled, or  
912 protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section  
913 63G-2-202, 63G-2-206, or 63G-2-303.

914 (b) A governmental entity may disclose a record that is private under Subsection  
915 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in  
916 Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee,  
917 determines that:

918 (i) there is no interest in restricting access to the record; or

919 (ii) the interests favoring access are greater than or equal to the interest favoring  
920 restriction of access.

921 (c) In addition to the disclosure under Subsection (5)(b), a governmental entity may  
922 disclose a record that is protected under Subsection 63G-2-305[~~(50)~~](51) if:

923 (i) the head of the governmental entity, or a designee, determines that the disclosure:

924 (A) is mutually beneficial to:

925 (I) the subject of the record;

926 (II) the governmental entity; and

927 (III) the public; and

928 (B) serves a public purpose related to:

929 (I) public safety; or

930 (II) consumer protection; and

931 (ii) the person who receives the record from the governmental entity agrees not to use  
932 or allow the use of the record for advertising or solicitation purposes.

933 (6) (a) The disclosure of a record to which access is governed or limited pursuant to  
934 court rule, another state statute, federal statute, or federal regulation, including a record for  
935 which access is governed or limited as a condition of participation in a state or federal program  
936 or for receiving state or federal funds, is governed by the specific provisions of that statute,  
937 rule, or regulation.

938 (b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter  
939 is not inconsistent with the statute, rule, or regulation.

940 (7) A governmental entity shall provide a person with a certified copy of a record if:

941 (a) the person requesting the record has a right to inspect it;

942 (b) the person identifies the record with reasonable specificity; and

943 (c) the person pays the lawful fees.

944 (8) (a) In response to a request, a governmental entity is not required to:

945 (i) create a record;

946 (ii) compile, format, manipulate, package, summarize, or tailor information;

947 (iii) provide a record in a particular format, medium, or program not currently  
948 maintained by the governmental entity;

949 (iv) fulfill a person's records request if the request unreasonably duplicates prior  
950 records requests from that person; or

951 (v) fill a person's records request if:

952 (A) the record requested is accessible in the identical physical form and content in a  
953 public publication or product produced by the governmental entity receiving the request;

954 (B) the governmental entity provides the person requesting the record with the public  
955 publication or product; and

956 (C) the governmental entity specifies where the record can be found in the public  
957 publication or product.

958 (b) Upon request, a governmental entity may provide a record in a particular form  
959 under Subsection (8)(a)(ii) or (iii) if:

960 (i) the governmental entity determines it is able to do so without unreasonably  
961 interfering with the governmental entity's duties and responsibilities; and

962 (ii) the requester agrees to pay the governmental entity for providing the record in the  
963 requested form in accordance with Section 63G-2-203.

964 (9) (a) A governmental entity may allow a person requesting more than 50 pages of  
965 records to copy the records if:

966 (i) the records are contained in files that do not contain records that are exempt from  
967 disclosure, or the records may be segregated to remove private, protected, or controlled  
968 information from disclosure; and

969 (ii) the governmental entity provides reasonable safeguards to protect the public from  
970 the potential for loss of a public record.

971 (b) When the requirements of Subsection (9)(a) are met, the governmental entity may:

972 (i) provide the requester with the facilities for copying the requested records and  
973 require that the requester make the copies; or

974 (ii) allow the requester to provide the requester's own copying facilities and personnel  
975 to make the copies at the governmental entity's offices and waive the fees for copying the  
976 records.

977 (10) (a) A governmental entity that owns an intellectual property right and that offers  
978 the intellectual property right for sale or license may control by ordinance or policy the  
979 duplication and distribution of the material based on terms the governmental entity considers to  
980 be in the public interest.

981 (b) Nothing in this chapter shall be construed to limit or impair the rights or protections

982 granted to the governmental entity under federal copyright or patent law as a result of its  
983 ownership of the intellectual property right.

984 (11) A governmental entity may not use the physical form, electronic or otherwise, in  
985 which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and  
986 receive a copy of a record under this chapter.

987 (12) Subject to the requirements of Subsection (8), a governmental entity shall provide  
988 access to an electronic copy of a record in lieu of providing access to its paper equivalent if:

989 (a) the person making the request requests or states a preference for an electronic copy;

990 (b) the governmental entity currently maintains the record in an electronic format that  
991 is reproducible and may be provided without reformatting or conversion; and

992 (c) the electronic copy of the record:

993 (i) does not disclose other records that are exempt from disclosure; or

994 (ii) may be segregated to protect private, protected, or controlled information from  
995 disclosure without the undue expenditure of public resources or funds.

996 Section 14. Section **63G-2-202** is amended to read:

997 **63G-2-202. Access to private, controlled, and protected documents.**

998 (1) Upon request, and except as provided in Subsection (11)(a), a governmental entity  
999 shall disclose a private record to:

1000 (a) the subject of the record;

1001 (b) the parent or legal guardian of an unemancipated minor who is the subject of the  
1002 record;

1003 (c) the legal guardian of a legally incapacitated individual who is the subject of the  
1004 record;

1005 (d) any other individual who:

1006 (i) has a power of attorney from the subject of the record;

1007 (ii) submits a notarized release from the subject of the record or the individual's legal  
1008 representative dated no more than 90 days before the date the request is made; or

1009 (iii) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a

1010 health care provider, as defined in Section 26-33a-102, if releasing the record or information in  
1011 the record is consistent with normal professional practice and medical ethics; or

1012 (e) any person to whom the record must be provided pursuant to:

1013 (i) court order as provided in Subsection (7); or

1014 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena  
1015 Powers.

1016 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:

1017 (i) a physician, psychologist, certified social worker, insurance provider or producer, or  
1018 a government public health agency upon submission of:

1019 (A) a release from the subject of the record that is dated no more than 90 days prior to  
1020 the date the request is made; and

1021 (B) a signed acknowledgment of the terms of disclosure of controlled information as  
1022 provided by Subsection (2)(b); and

1023 (ii) any person to whom the record must be disclosed pursuant to:

1024 (A) a court order as provided in Subsection (7); or

1025 (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena  
1026 Powers.

1027 (b) A person who receives a record from a governmental entity in accordance with  
1028 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,  
1029 including the subject of the record.

1030 (3) If there is more than one subject of a private or controlled record, the portion of the  
1031 record that pertains to another subject shall be segregated from the portion that the requester is  
1032 entitled to inspect.

1033 (4) Upon request, and except as provided in Subsection (10) or (11)(b), a governmental  
1034 entity shall disclose a protected record to:

1035 (a) the person who submitted the record;

1036 (b) any other individual who:

1037 (i) has a power of attorney from all persons, governmental entities, or political

1038 subdivisions whose interests were sought to be protected by the protected classification; or  
1039           (ii) submits a notarized release from all persons, governmental entities, or political  
1040 subdivisions whose interests were sought to be protected by the protected classification or from  
1041 their legal representatives dated no more than 90 days prior to the date the request is made;  
1042           (c) any person to whom the record must be provided pursuant to:  
1043           (i) a court order as provided in Subsection (7); or  
1044           (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena  
1045 Powers; or  
1046           (d) the owner of a mobile home park, subject to the conditions of Subsection  
1047 41-1a-116(5).  
1048           (5) A governmental entity may disclose a private, controlled, or protected record to  
1049 another governmental entity, political subdivision, another state, the United States, or a foreign  
1050 government only as provided by Section 63G-2-206.  
1051           (6) Before releasing a private, controlled, or protected record, the governmental entity  
1052 shall obtain evidence of the requester's identity.  
1053           (7) A governmental entity shall disclose a record pursuant to the terms of a court order  
1054 signed by a judge from a court of competent jurisdiction, provided that:  
1055           (a) the record deals with a matter in controversy over which the court has jurisdiction;  
1056           (b) the court has considered the merits of the request for access to the record;  
1057           (c) the court has considered and, where appropriate, limited the requester's use and  
1058 further disclosure of the record in order to protect:  
1059           (i) privacy interests in the case of private or controlled records;  
1060           (ii) business confidentiality interests in the case of records protected under Subsection  
1061 63G-2-305(1), (2), [~~39~~] (40)(a)(ii), or [~~39~~] (40)(a)(vi); and  
1062           (iii) privacy interests or the public interest in the case of other protected records;  
1063           (d) to the extent the record is properly classified private, controlled, or protected, the  
1064 interests favoring access, considering limitations thereon, are greater than or equal to the  
1065 interests favoring restriction of access; and

1066 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection  
1067 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

1068 (8) (a) A governmental entity may disclose or authorize disclosure of private or  
1069 controlled records for research purposes if the governmental entity:

1070 (i) determines that the research purpose cannot reasonably be accomplished without  
1071 use or disclosure of the information to the researcher in individually identifiable form;

1072 (ii) determines that:

1073 (A) the proposed research is bona fide; and

1074 (B) the value of the research is greater than or equal to the infringement upon personal  
1075 privacy;

1076 (iii) (A) requires the researcher to assure the integrity, confidentiality, and security of  
1077 the records; and

1078 (B) requires the removal or destruction of the individual identifiers associated with the  
1079 records as soon as the purpose of the research project has been accomplished;

1080 (iv) prohibits the researcher from:

1081 (A) disclosing the record in individually identifiable form, except as provided in  
1082 Subsection (8)(b); or

1083 (B) using the record for purposes other than the research approved by the governmental  
1084 entity; and

1085 (v) secures from the researcher a written statement of the researcher's understanding of  
1086 and agreement to the conditions of this Subsection (8) and the researcher's understanding that  
1087 violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution  
1088 under Section 63G-2-801.

1089 (b) A researcher may disclose a record in individually identifiable form if the record is  
1090 disclosed for the purpose of auditing or evaluating the research program and no subsequent use  
1091 or disclosure of the record in individually identifiable form will be made by the auditor or  
1092 evaluator except as provided by this section.

1093 (c) A governmental entity may require indemnification as a condition of permitting

1094 research under this Subsection (8).

1095 (9) (a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity  
1096 may disclose to persons other than those specified in this section records that are:

1097 (i) private under Section 63G-2-302; or

1098 (ii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for  
1099 business confidentiality has been made under Section 63G-2-309.

1100 (b) Under Subsection 63G-2-403(11)(b), the records committee may require the  
1101 disclosure to persons other than those specified in this section of records that are:

1102 (i) private under Section 63G-2-302;

1103 (ii) controlled under Section 63G-2-304; or

1104 (iii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for  
1105 business confidentiality has been made under Section 63G-2-309.

1106 (c) Under Subsection 63G-2-404(8), the court may require the disclosure of records  
1107 that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected  
1108 under Section 63G-2-305 to persons other than those specified in this section.

1109 (10) A record contained in the Management Information System, created in Section  
1110 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be  
1111 disclosed to any person except the person who is alleged in the report to be a perpetrator of  
1112 abuse, neglect, or dependency.

1113 (11) (a) A private record described in Subsection 63G-2-302(2)(f) may only be  
1114 disclosed as provided in Subsection (1)(e).

1115 (b) A protected record described in Subsection 63G-2-305[~~(42)~~](43) may only be  
1116 disclosed as provided in Subsection (4)(c) or Section 62A-3-312.

1117 (12) (a) A private, protected, or controlled record described in Section 62A-16-301  
1118 shall be disclosed as required under:

1119 (i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and

1120 (ii) Subsections 62A-16-302(1) and (6).

1121 (b) A record disclosed under Subsection (12)(a) shall retain its character as private,



1122 protected, or controlled.

1123 Section 15. Section **63G-2-301** is amended to read:

1124 **63G-2-301. Records that must be disclosed.**

1125 (1) As used in this section:

1126 (a) "Business address" means a single address of a governmental agency designated for  
1127 the public to contact an employee or officer of the governmental agency.

1128 (b) "Business email address" means a single email address of a governmental agency  
1129 designated for the public to contact an employee or officer of the governmental agency.

1130 (c) "Business telephone number" means a single telephone number of a governmental  
1131 agency designated for the public to contact an employee or officer of the governmental agency.

1132 (2) The following records are public except to the extent they contain information  
1133 expressly permitted to be treated confidentially under the provisions of Subsections  
1134 63G-2-201(3)(b) and (6)(a):

1135 (a) laws;

1136 (b) the name, gender, gross compensation, job title, job description, business address,  
1137 business email address, business telephone number, number of hours worked per pay period,  
1138 dates of employment, and relevant education, previous employment, and similar job  
1139 qualifications of a current or former employee or officer of the governmental entity, excluding:

1140 (i) undercover law enforcement personnel; and

1141 (ii) investigative personnel if disclosure could reasonably be expected to impair the  
1142 effectiveness of investigations or endanger any individual's safety;

1143 (c) final opinions, including concurring and dissenting opinions, and orders that are  
1144 made by a governmental entity in an administrative, adjudicative, or judicial proceeding except  
1145 that if the proceedings were properly closed to the public, the opinion and order may be  
1146 withheld to the extent that they contain information that is private, controlled, or protected;

1147 (d) final interpretations of statutes or rules by a governmental entity unless classified as  
1148 protected as provided in Subsection 63G-2-305[~~(16)~~ or (17) or (18)];

1149 (e) information contained in or compiled from a transcript, minutes, or report of the

1150 open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open  
1151 and Public Meetings Act, including the records of all votes of each member of the  
1152 governmental entity;

1153 (f) judicial records unless a court orders the records to be restricted under the rules of  
1154 civil or criminal procedure or unless the records are private under this chapter;

1155 (g) unless otherwise classified as private under Section 63G-2-303, records or parts of  
1156 records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning  
1157 commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust  
1158 Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or  
1159 other governmental entities that give public notice of:

1160 (i) titles or encumbrances to real property;

1161 (ii) restrictions on the use of real property;

1162 (iii) the capacity of persons to take or convey title to real property; or

1163 (iv) tax status for real and personal property;

1164 (h) records of the Department of Commerce that evidence incorporations, mergers,  
1165 name changes, and uniform commercial code filings;

1166 (i) data on individuals that would otherwise be private under this chapter if the  
1167 individual who is the subject of the record has given the governmental entity written  
1168 permission to make the records available to the public;

1169 (j) documentation of the compensation that a governmental entity pays to a contractor  
1170 or private provider;

1171 (k) summary data;

1172 (l) voter registration records, including an individual's voting history, except for those  
1173 parts of the record that are classified as private in Subsection 63G-2-302(1)(i);

1174 (m) for an elected official, as defined in Section 11-47-102, a telephone number, if  
1175 available, and email address, if available, where that elected official may be reached as required  
1176 in Title 11, Chapter 47, Access to Elected Officials;

1177 (n) for a school community council member, a telephone number, if available, and

1178 email address, if available, where that elected official may be reached directly as required in  
1179 Section 53A-1a-108; and

1180 (o) annual audited financial statements of the Utah Educational Savings Plan described  
1181 in Section 53B-8a-111.

1182 (3) The following records are normally public, but to the extent that a record is  
1183 expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b),  
1184 Section 63G-2-302, 63G-2-304, or 63G-2-305:

1185 (a) administrative staff manuals, instructions to staff, and statements of policy;

1186 (b) records documenting a contractor's or private provider's compliance with the terms  
1187 of a contract with a governmental entity;

1188 (c) records documenting the services provided by a contractor or a private provider to  
1189 the extent the records would be public if prepared by the governmental entity;

1190 (d) contracts entered into by a governmental entity;

1191 (e) any account, voucher, or contract that deals with the receipt or expenditure of funds  
1192 by a governmental entity;

1193 (f) records relating to government assistance or incentives publicly disclosed,  
1194 contracted for, or given by a governmental entity, encouraging a person to expand or relocate a  
1195 business in Utah, except as provided in Subsection 63G-2-305[~~(34)~~](35);

1196 (g) chronological logs and initial contact reports;

1197 (h) correspondence by and with a governmental entity in which the governmental entity  
1198 determines or states an opinion upon the rights of the state, a political subdivision, the public,  
1199 or any person;

1200 (i) empirical data contained in drafts if:

1201 (i) the empirical data is not reasonably available to the requester elsewhere in similar  
1202 form; and

1203 (ii) the governmental entity is given a reasonable opportunity to correct any errors or  
1204 make nonsubstantive changes before release;

1205 (j) drafts that are circulated to anyone other than:

- 1206 (i) a governmental entity;
- 1207 (ii) a political subdivision;
- 1208 (iii) a federal agency if the governmental entity and the federal agency are jointly  
1209 responsible for implementation of a program or project that has been legislatively approved;
- 1210 (iv) a government-managed corporation; or
- 1211 (v) a contractor or private provider;
- 1212 (k) drafts that have never been finalized but were relied upon by the governmental  
1213 entity in carrying out action or policy;
- 1214 (l) original data in a computer program if the governmental entity chooses not to  
1215 disclose the program;
- 1216 (m) arrest warrants after issuance, except that, for good cause, a court may order  
1217 restricted access to arrest warrants prior to service;
- 1218 (n) search warrants after execution and filing of the return, except that a court, for good  
1219 cause, may order restricted access to search warrants prior to trial;
- 1220 (o) records that would disclose information relating to formal charges or disciplinary  
1221 actions against a past or present governmental entity employee if:
  - 1222 (i) the disciplinary action has been completed and all time periods for administrative  
1223 appeal have expired; and
  - 1224 (ii) the charges on which the disciplinary action was based were sustained;
- 1225 (p) records maintained by the Division of Forestry, Fire, and State Lands, the School  
1226 and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that  
1227 evidence mineral production on government lands;
- 1228 (q) final audit reports;
- 1229 (r) occupational and professional licenses;
- 1230 (s) business licenses; and
- 1231 (t) a notice of violation, a notice of agency action under Section 63G-4-201, or similar  
1232 records used to initiate proceedings for discipline or sanctions against persons regulated by a  
1233 governmental entity, but not including records that initiate employee discipline.

1234 (4) The list of public records in this section is not exhaustive and should not be used to  
1235 limit access to records.

1236 Section 16. Section **63G-2-305** is amended to read:

1237 **63G-2-305. Protected records.**

1238 The following records are protected if properly classified by a governmental entity:

1239 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret  
1240 has provided the governmental entity with the information specified in Section 63G-2-309;

1241 (2) commercial information or nonindividual financial information obtained from a  
1242 person if:

1243 (a) disclosure of the information could reasonably be expected to result in unfair  
1244 competitive injury to the person submitting the information or would impair the ability of the  
1245 governmental entity to obtain necessary information in the future;

1246 (b) the person submitting the information has a greater interest in prohibiting access  
1247 than the public in obtaining access; and

1248 (c) the person submitting the information has provided the governmental entity with  
1249 the information specified in Section 63G-2-309;

1250 (3) commercial or financial information acquired or prepared by a governmental entity  
1251 to the extent that disclosure would lead to financial speculations in currencies, securities, or  
1252 commodities that will interfere with a planned transaction by the governmental entity or cause  
1253 substantial financial injury to the governmental entity or state economy;

1254 (4) records, the disclosure of which could cause commercial injury to, or confer a  
1255 competitive advantage upon a potential or actual competitor of, a commercial project entity as  
1256 defined in Subsection 11-13-103(4);

1257 (5) test questions and answers to be used in future license, certification, registration,  
1258 employment, or academic examinations;

1259 (6) records, the disclosure of which would impair governmental procurement  
1260 proceedings or give an unfair advantage to any person proposing to enter into a contract or  
1261 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this

1262 Subsection (6) does not restrict the right of a person to have access to, ~~[once]~~ after the contract  
1263 or grant has been awarded and signed by all parties, a bid, proposal, ~~[or]~~ application, or other  
1264 information submitted to or by a governmental entity in response to:

1265 (a) ~~[a request]~~ an invitation for bids;

1266 (b) a request for proposals;

1267 (c) a request for quotes;

1268 ~~[(c)]~~ (d) a grant; or

1269 ~~[(d)]~~ (e) other similar document;

1270 (7) information submitted to or by a governmental entity in response to a request for  
1271 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict  
1272 the right of a person to have access to the information, after:

1273 (a) a contract directly relating to the subject of the request for information has been  
1274 awarded and signed by all parties; or

1275 (b) (i) a final determination is made not to enter into a contract that relates to the  
1276 subject of the request for information; and

1277 (ii) at least two years have passed after the day on which the request for information is  
1278 issued;

1279 ~~[(7)]~~ (8) records that would identify real property or the appraisal or estimated value of  
1280 real or personal property, including intellectual property, under consideration for public  
1281 acquisition before any rights to the property are acquired unless:

1282 (a) public interest in obtaining access to the information is greater than or equal to the  
1283 governmental entity's need to acquire the property on the best terms possible;

1284 (b) the information has already been disclosed to persons not employed by or under a  
1285 duty of confidentiality to the entity;

1286 (c) in the case of records that would identify property, potential sellers of the described  
1287 property have already learned of the governmental entity's plans to acquire the property;

1288 (d) in the case of records that would identify the appraisal or estimated value of  
1289 property, the potential sellers have already learned of the governmental entity's estimated value

1290 of the property; or

1291 (e) the property under consideration for public acquisition is a single family residence  
1292 and the governmental entity seeking to acquire the property has initiated negotiations to acquire  
1293 the property as required under Section 78B-6-505;

1294 [~~8~~] 9 records prepared in contemplation of sale, exchange, lease, rental, or other  
1295 compensated transaction of real or personal property including intellectual property, which, if  
1296 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value  
1297 of the subject property, unless:

1298 (a) the public interest in access is greater than or equal to the interests in restricting  
1299 access, including the governmental entity's interest in maximizing the financial benefit of the  
1300 transaction; or

1301 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of  
1302 the value of the subject property have already been disclosed to persons not employed by or  
1303 under a duty of confidentiality to the entity;

1304 [~~9~~] 10 records created or maintained for civil, criminal, or administrative  
1305 enforcement purposes or audit purposes, or for discipline, licensing, certification, or  
1306 registration purposes, if release of the records:

1307 (a) reasonably could be expected to interfere with investigations undertaken for  
1308 enforcement, discipline, licensing, certification, or registration purposes;

1309 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement  
1310 proceedings;

1311 (c) would create a danger of depriving a person of a right to a fair trial or impartial  
1312 hearing;

1313 (d) reasonably could be expected to disclose the identity of a source who is not  
1314 generally known outside of government and, in the case of a record compiled in the course of  
1315 an investigation, disclose information furnished by a source not generally known outside of  
1316 government if disclosure would compromise the source; or

1317 (e) reasonably could be expected to disclose investigative or audit techniques,

1318 procedures, policies, or orders not generally known outside of government if disclosure would  
1319 interfere with enforcement or audit efforts;

1320       ~~[(10)]~~ (11) records the disclosure of which would jeopardize the life or safety of an  
1321 individual;

1322       ~~[(11)]~~ (12) records the disclosure of which would jeopardize the security of  
1323 governmental property, governmental programs, or governmental recordkeeping systems from  
1324 damage, theft, or other appropriation or use contrary to law or public policy;

1325       ~~[(12)]~~ (13) records that, if disclosed, would jeopardize the security or safety of a  
1326 correctional facility, or records relating to incarceration, treatment, probation, or parole, that  
1327 would interfere with the control and supervision of an offender's incarceration, treatment,  
1328 probation, or parole;

1329       ~~[(13)]~~ (14) records that, if disclosed, would reveal recommendations made to the Board  
1330 of Pardons and Parole by an employee of or contractor for the Department of Corrections, the  
1331 Board of Pardons and Parole, or the Department of Human Services that are based on the  
1332 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's  
1333 jurisdiction;

1334       ~~[(14)]~~ (15) records and audit workpapers that identify audit, collection, and operational  
1335 procedures and methods used by the State Tax Commission, if disclosure would interfere with  
1336 audits or collections;

1337       ~~[(15)]~~ (16) records of a governmental audit agency relating to an ongoing or planned  
1338 audit until the final audit is released;

1339       ~~[(16)]~~ (17) records that are subject to the attorney client privilege;

1340       ~~[(17)]~~ (18) records prepared for or by an attorney, consultant, surety, indemnitor,  
1341 insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a  
1342 judicial, quasi-judicial, or administrative proceeding;

1343       ~~[(18)]~~ (19) (a) (i) personal files of a state legislator, including personal correspondence  
1344 to or from a member of the Legislature; and

1345       (ii) notwithstanding Subsection ~~[(18)]~~ (19)(a)(i), correspondence that gives notice of



1346 legislative action or policy may not be classified as protected under this section; and  
1347       (b) (i) an internal communication that is part of the deliberative process in connection  
1348 with the preparation of legislation between:  
1349       (A) members of a legislative body;  
1350       (B) a member of a legislative body and a member of the legislative body's staff; or  
1351       (C) members of a legislative body's staff; and  
1352       (ii) notwithstanding Subsection [~~(18)~~] (19)(b)(i), a communication that gives notice of  
1353 legislative action or policy may not be classified as protected under this section;  
1354       [~~(19)~~] (20) (a) records in the custody or control of the Office of Legislative Research  
1355 and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated  
1356 legislation or contemplated course of action before the legislator has elected to support the  
1357 legislation or course of action, or made the legislation or course of action public; and  
1358       (b) notwithstanding Subsection [~~(19)~~] (20)(a), the form to request legislation submitted  
1359 to the Office of Legislative Research and General Counsel is a public document unless a  
1360 legislator asks that the records requesting the legislation be maintained as protected records  
1361 until such time as the legislator elects to make the legislation or course of action public;  
1362       [~~(20)~~] (21) research requests from legislators to the Office of Legislative Research and  
1363 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared  
1364 in response to these requests;  
1365       [~~(21)~~] (22) drafts, unless otherwise classified as public;  
1366       [~~(22)~~] (23) records concerning a governmental entity's strategy about:  
1367       (a) collective bargaining; or  
1368       (b) imminent or pending litigation;  
1369       [~~(23)~~] (24) records of investigations of loss occurrences and analyses of loss  
1370 occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance  
1371 Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;  
1372       [~~(24)~~] (25) records, other than personnel evaluations, that contain a personal  
1373 recommendation concerning an individual if disclosure would constitute a clearly unwarranted

1374 invasion of personal privacy, or disclosure is not in the public interest;

1375           ~~[(25)]~~ (26) records that reveal the location of historic, prehistoric, paleontological, or  
1376 biological resources that if known would jeopardize the security of those resources or of  
1377 valuable historic, scientific, educational, or cultural information;

1378           ~~[(26)]~~ (27) records of independent state agencies if the disclosure of the records would  
1379 conflict with the fiduciary obligations of the agency;

1380           ~~[(27)]~~ (28) records of an institution within the state system of higher education defined  
1381 in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,  
1382 retention decisions, and promotions, which could be properly discussed in a meeting closed in  
1383 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of  
1384 the final decisions about tenure, appointments, retention, promotions, or those students  
1385 admitted, may not be classified as protected under this section;

1386           ~~[(28)]~~ (29) records of the governor's office, including budget recommendations,  
1387 legislative proposals, and policy statements, that if disclosed would reveal the governor's  
1388 contemplated policies or contemplated courses of action before the governor has implemented  
1389 or rejected those policies or courses of action or made them public;

1390           ~~[(29)]~~ (30) records of the Office of the Legislative Fiscal Analyst relating to budget  
1391 analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final  
1392 recommendations in these areas;

1393           ~~[(30)]~~ (31) records provided by the United States or by a government entity outside the  
1394 state that are given to the governmental entity with a requirement that they be managed as  
1395 protected records if the providing entity certifies that the record would not be subject to public  
1396 disclosure if retained by it;

1397           ~~[(31)]~~ (32) transcripts, minutes, or reports of the closed portion of a meeting of a public  
1398 body except as provided in Section 52-4-206;

1399           ~~[(32)]~~ (33) records that would reveal the contents of settlement negotiations but not  
1400 including final settlements or empirical data to the extent that they are not otherwise exempt  
1401 from disclosure;

1402            [~~(33)~~] (34) memoranda prepared by staff and used in the decision-making process by  
1403 an administrative law judge, a member of the Board of Pardons and Parole, or a member of any  
1404 other body charged by law with performing a quasi-judicial function;

1405            [~~(34)~~] (35) records that would reveal negotiations regarding assistance or incentives  
1406 offered by or requested from a governmental entity for the purpose of encouraging a person to  
1407 expand or locate a business in Utah, but only if disclosure would result in actual economic  
1408 harm to the person or place the governmental entity at a competitive disadvantage, but this  
1409 section may not be used to restrict access to a record evidencing a final contract;

1410            [~~(35)~~] (36) materials to which access must be limited for purposes of securing or  
1411 maintaining the governmental entity's proprietary protection of intellectual property rights  
1412 including patents, copyrights, and trade secrets;

1413            [~~(36)~~] (37) the name of a donor or a prospective donor to a governmental entity,  
1414 including an institution within the state system of higher education defined in Section  
1415 53B-1-102, and other information concerning the donation that could reasonably be expected to  
1416 reveal the identity of the donor, provided that:

1417            (a) the donor requests anonymity in writing;

1418            (b) any terms, conditions, restrictions, or privileges relating to the donation may not be  
1419 classified protected by the governmental entity under this Subsection [~~(36)~~] (37); and

1420            (c) except for an institution within the state system of higher education defined in  
1421 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged  
1422 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority  
1423 over the donor, a member of the donor's immediate family, or any entity owned or controlled  
1424 by the donor or the donor's immediate family;

1425            [~~(37)~~] (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
1426 73-18-13;

1427            [~~(38)~~] (39) a notification of workers' compensation insurance coverage described in  
1428 Section 34A-2-205;

1429            [~~(39)~~] (40) (a) the following records of an institution within the state system of higher

1430 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,  
1431 or received by or on behalf of faculty, staff, employees, or students of the institution:

1432 (i) unpublished lecture notes;

1433 (ii) unpublished notes, data, and information:

1434 (A) relating to research; and

1435 (B) of:

1436 (I) the institution within the state system of higher education defined in Section  
1437 53B-1-102; or

1438 (II) a sponsor of sponsored research;

1439 (iii) unpublished manuscripts;

1440 (iv) creative works in process;

1441 (v) scholarly correspondence; and

1442 (vi) confidential information contained in research proposals;

1443 (b) Subsection [~~(39)~~] (40)(a) may not be construed to prohibit disclosure of public  
1444 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

1445 (c) Subsection [~~(39)~~] (40)(a) may not be construed to affect the ownership of a record;

1446 [~~(40)~~] (41) (a) records in the custody or control of the Office of Legislative Auditor

1447 General that would reveal the name of a particular legislator who requests a legislative audit  
1448 prior to the date that audit is completed and made public; and

1449 (b) notwithstanding Subsection [~~(40)~~] (41)(a), a request for a legislative audit

1450 submitted to the Office of the Legislative Auditor General is a public document unless the

1451 legislator asks that the records in the custody or control of the Office of Legislative Auditor

1452 General that would reveal the name of a particular legislator who requests a legislative audit be  
1453 maintained as protected records until the audit is completed and made public;

1454 [~~(41)~~] (42) records that provide detail as to the location of an explosive, including a

1455 map or other document that indicates the location of:

1456 (a) a production facility; or

1457 (b) a magazine;

1458            [~~(42)~~] (43) information:

1459            (a) contained in the statewide database of the Division of Aging and Adult Services

1460            created by Section 62A-3-311.1; or

1461            (b) received or maintained in relation to the Identity Theft Reporting Information

1462            System (IRIS) established under Section 67-5-22;

1463            [~~(43)~~] (44) information contained in the Management Information System and

1464            Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

1465            [~~(44)~~] (45) information regarding National Guard operations or activities in support of

1466            the National Guard's federal mission;

1467            [~~(45)~~] (46) records provided by any pawn or secondhand business to a law enforcement

1468            agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and

1469            Secondhand Merchandise Transaction Information Act;

1470            [~~(46)~~] (47) information regarding food security, risk, and vulnerability assessments

1471            performed by the Department of Agriculture and Food;

1472            [~~(47)~~] (48) except to the extent that the record is exempt from this chapter pursuant to

1473            Section 63G-2-106, records related to an emergency plan or program, a copy of which is

1474            provided to or prepared or maintained by the Division of Emergency Management, and the

1475            disclosure of which would jeopardize:

1476            (a) the safety of the general public; or

1477            (b) the security of:

1478            (i) governmental property;

1479            (ii) governmental programs; or

1480            (iii) the property of a private person who provides the Division of Emergency

1481            Management information;

1482            [~~(48)~~] (49) records of the Department of Agriculture and Food that provides for the

1483            identification, tracing, or control of livestock diseases, including any program established under

1484            Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Control of

1485            Animal Disease;

1486            [~~(49)~~] (50) as provided in Section 26-39-501:

1487            (a) information or records held by the Department of Health related to a complaint  
1488 regarding a child care program or residential child care which the department is unable to  
1489 substantiate; and

1490            (b) information or records related to a complaint received by the Department of Health  
1491 from an anonymous complainant regarding a child care program or residential child care;

1492            [~~(50)~~] (51) unless otherwise classified as public under Section 63G-2-301 and except  
1493 as provided under Section 41-1a-116, an individual's home address, home telephone number,  
1494 or personal mobile phone number, if:

1495            (a) the individual is required to provide the information in order to comply with a law,  
1496 ordinance, rule, or order of a government entity; and

1497            (b) the subject of the record has a reasonable expectation that this information will be  
1498 kept confidential due to:

1499            (i) the nature of the law, ordinance, rule, or order; and

1500            (ii) the individual complying with the law, ordinance, rule, or order;

1501            [~~(51)~~] (52) the name, home address, work addresses, and telephone numbers of an  
1502 individual that is engaged in, or that provides goods or services for, medical or scientific  
1503 research that is:

1504            (a) conducted within the state system of higher education, as defined in Section  
1505 53B-1-102; and

1506            (b) conducted using animals;

1507            [~~(52)~~] (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government  
1508 Procurement Private Proposal Program, to the extent not made public by rules made under that  
1509 chapter;

1510            [~~(53)~~] (54) in accordance with Section 78A-12-203, any record of the Judicial  
1511 Performance Evaluation Commission concerning an individual commissioner's vote on  
1512 whether or not to recommend that the voters retain a judge;

1513            [~~(54)~~] (55) information collected and a report prepared by the Judicial Performance

1514 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter  
1515 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,  
1516 the information or report;

1517        [~~(55)~~] (56) records contained in the Management Information System created in  
1518 Section 62A-4a-1003;

1519        [~~(56)~~] (57) records provided or received by the Public Lands Policy Coordinating  
1520 Office in furtherance of any contract or other agreement made in accordance with Section  
1521 63J-4-603;

1522        [~~(57)~~] (58) information requested by and provided to the Utah State 911 Committee  
1523 under Section 53-10-602;

1524        [~~(58)~~] (59) recorded Children's Justice Center investigative interviews, both video and  
1525 audio, the release of which are governed by Section 77-37-4;

1526        [~~(59)~~] (60) in accordance with Section 73-10-33:

1527        (a) a management plan for a water conveyance facility in the possession of the Division  
1528 of Water Resources or the Board of Water Resources; or

1529        (b) an outline of an emergency response plan in possession of the state or a county or  
1530 municipality;

1531        [~~(60)~~] (61) the following records in the custody or control of the Office of Inspector  
1532 General of Medicaid Services, created in Section 63J-4a-201:

1533        (a) records that would disclose information relating to allegations of personal  
1534 misconduct, gross mismanagement, or illegal activity of a person if the information or  
1535 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services  
1536 through other documents or evidence, and the records relating to the allegation are not relied  
1537 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation  
1538 report or final audit report;

1539        (b) records and audit workpapers to the extent they would disclose the identity of a  
1540 person who, during the course of an investigation or audit, communicated the existence of any  
1541 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or

1542 regulation adopted under the laws of this state, a political subdivision of the state, or any  
1543 recognized entity of the United States, if the information was disclosed on the condition that  
1544 the identity of the person be protected;

1545 (c) before the time that an investigation or audit is completed and the final  
1546 investigation or final audit report is released, records or drafts circulated to a person who is not  
1547 an employee or head of a governmental entity for the person's response or information;

1548 (d) records that would disclose an outline or part of any investigation, audit survey  
1549 plan, or audit program; or

1550 (e) requests for an investigation or audit, if disclosure would risk circumvention of an  
1551 investigation or audit;

1552 [~~(61)~~] (62) records that reveal methods used by the Office of Inspector General of  
1553 Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud,  
1554 waste, or abuse;

1555 [~~(62)~~] (63) information provided to the Department of Health or the Division of  
1556 Occupational and Professional Licensing under Subsection 58-68-304(3) or (4); and

1557 [~~(63)~~] (64) a record described in Section 63G-12-210.

1558 Section 17. Section **63G-2-309** is amended to read:

1559 **63G-2-309. Confidentiality claims.**

1560 (1) (a) (i) Any person who provides to a governmental entity a record that the person  
1561 believes should be protected under Subsection 63G-2-305(1) or (2) or both Subsections  
1562 63G-2-305(1) and (2) shall provide with the record:

1563 (A) a written claim of business confidentiality; and

1564 (B) a concise statement of reasons supporting the claim of business confidentiality.

1565 (ii) Any of the following who provides to an institution within the state system of  
1566 higher education defined in Section 53B-1-102 a record that the person or governmental entity  
1567 believes should be protected under Subsection 63G-2-305[~~(39)~~](40)(a)(ii) or (vi) or both  
1568 Subsections 63G-2-305[~~(39)~~](40)(a)(ii) and (vi) shall provide the institution within the state  
1569 system of higher education a written claim of business confidentiality in accordance with



1570 Section 53B-16-304:

1571 (A) a person;

1572 (B) a federal governmental entity;

1573 (C) a state governmental entity; or

1574 (D) a local governmental entity.

1575 (b) A person or governmental entity who complies with this Subsection (1) shall be  
1576 notified by the governmental entity to whom the request for a record is made if:

1577 (i) a record claimed to be protected under one of the following is classified public:

1578 (A) Subsection 63G-2-305(1);

1579 (B) Subsection 63G-2-305(2);

1580 (C) Subsection 63G-2-305[~~(39)~~](40)(a)(ii);

1581 (D) Subsection 63G-2-305[~~(39)~~](40)(a)(vi); or

1582 (E) a combination of the provisions described in Subsections (1)(b)(i)(A) through (D);

1583 or

1584 (ii) the governmental entity to whom the request for a record is made determines that  
1585 the record claimed to be protected under a provision listed in Subsection (1)(b)(i) should be  
1586 released after balancing interests under Subsection 63G-2-201(5)(b) or 63G-2-401(6).

1587 (2) Except as provided by court order, the governmental entity to whom the request for  
1588 a record is made may not disclose a record claimed to be protected under a provision listed in  
1589 Subsection (1)(b)(i) but which the governmental entity or records committee determines should  
1590 be disclosed until the period in which to bring an appeal expires or the end of the appeals  
1591 process, including judicial appeal. This Subsection (2) does not apply where the claimant, after  
1592 notice, has waived the claim by not appealing or intervening before the records committee.

1593 (3) Disclosure or acquisition of information under this chapter does not constitute  
1594 misappropriation under Subsection 13-24-2(2).

1595 Section 18. Section **63G-2-403** is amended to read:

1596 **63G-2-403. Appeals to the records committee.**

1597 (1) A petitioner, including an aggrieved person who did not participate in the appeal to

1598 the governmental entity's chief administrative officer, may appeal to the records committee by  
1599 filing a notice of appeal with the executive secretary no later than:

1600 (a) 30 days after the day on which the chief administrative officer of the governmental  
1601 entity grants or denies the record request in whole or in part, including a denial under  
1602 Subsection 63G-2-204(8);

1603 (b) 45 days after the day on which the original request for a record is made if:

1604 (i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and

1605 (ii) the chief administrative officer failed to make a determination under Section  
1606 63G-2-401.

1607 (2) The notice of appeal shall contain the following information:

1608 (a) the petitioner's name, mailing address, and daytime telephone number;

1609 (b) a copy of any denial of the record request; and

1610 (c) the relief sought.

1611 (3) The petitioner:

1612 (a) shall, on the day on which the petitioner files an appeal to the records committee,  
1613 serve a copy of the appeal on the government entity, described in Subsection (1), to which the  
1614 appeal relates; and

1615 (b) may file a short statement of facts, reasons, and legal authority in support of the  
1616 appeal.

1617 (4) (a) Except as provided in Subsection (4)(b), no later than five business days after  
1618 receiving a notice of appeal, the executive secretary of the records committee shall:

1619 (i) schedule a hearing for the records committee to discuss the appeal at the next  
1620 regularly scheduled committee meeting falling at least 14 days after the date the notice of  
1621 appeal is filed but no longer than 52 calendar days after the date the notice of appeal was filed  
1622 except that the records committee may schedule an expedited hearing upon application of the  
1623 petitioner and good cause shown;

1624 (ii) send a copy of the notice of hearing to the petitioner; and

1625 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing

1626 to:

1627 (A) each member of the records committee;

1628 (B) the records officer and the chief administrative officer of the governmental entity  
1629 from which the appeal originated;

1630 (C) any person who made a business confidentiality claim under Section 63G-2-309 for  
1631 a record that is the subject of the appeal; and

1632 (D) all persons who participated in the proceedings before the governmental entity's  
1633 chief administrative officer.

1634 (b) (i) The executive secretary of the records committee may decline to schedule a  
1635 hearing if the record series that is the subject of the appeal has been found by the committee in  
1636 a previous hearing involving the same government entity to be appropriately classified as  
1637 private, controlled, or protected.

1638 (ii) (A) If the executive secretary of the records committee declines to schedule a  
1639 hearing, the executive secretary of the records committee shall send a notice to the petitioner  
1640 indicating that the request for hearing has been denied and the reason for the denial.

1641 (B) The committee shall make rules to implement this section as provided by Title  
1642 63G, Chapter 3, Utah Administrative Rulemaking Act.

1643 (5) (a) A written statement of facts, reasons, and legal authority in support of the  
1644 governmental entity's position must be submitted to the executive secretary of the records  
1645 committee not later than five business days before the hearing.

1646 (b) The governmental entity shall send a copy of the written statement to the petitioner  
1647 by first class mail, postage prepaid. The executive secretary shall forward a copy of the written  
1648 statement to each member of the records committee.

1649 (6) (a) No later than 10 business days after the notice of appeal is sent by the executive  
1650 secretary, a person whose legal interests may be substantially affected by the proceeding may  
1651 file a request for intervention before the records committee.

1652 (b) Any written statement of facts, reasons, and legal authority in support of the  
1653 intervener's position shall be filed with the request for intervention.

1654 (c) The person seeking intervention shall provide copies of the statement described in  
1655 Subsection (6)(b) to all parties to the proceedings before the records committee.

1656 (7) The records committee shall hold a hearing within the period of time described in  
1657 Subsection (4).

1658 (8) At the hearing, the records committee shall allow the parties to testify, present  
1659 evidence, and comment on the issues. The records committee may allow other interested  
1660 persons to comment on the issues.

1661 (9) (a) The records committee may review the disputed records. However, if the  
1662 committee is weighing the various interests under Subsection (11), the committee must review  
1663 the disputed records. The review shall be in camera.

1664 (b) Members of the records committee may not disclose any information or record  
1665 reviewed by the committee in camera unless the disclosure is otherwise authorized by this  
1666 chapter.

1667 (10) (a) Discovery is prohibited, but the records committee may issue subpoenas or  
1668 other orders to compel production of necessary evidence.

1669 (b) When the subject of a records committee subpoena disobeys or fails to comply with  
1670 the subpoena, the records committee may file a motion for an order to compel obedience to the  
1671 subpoena with the district court.

1672 (c) The records committee's review shall be de novo.

1673 (11) (a) No later than seven business days after the hearing, the records committee shall  
1674 issue a signed order either granting the petition in whole or in part or upholding the  
1675 determination of the governmental entity in whole or in part.

1676 (b) Except as provided in Section 63G-2-406, the records committee may, upon  
1677 consideration and weighing of the various interests and public policies pertinent to the  
1678 classification and disclosure or nondisclosure, order the disclosure of information properly  
1679 classified as private, controlled, or protected if the public interest favoring access is greater  
1680 than or equal to the interest favoring restriction of access.

1681 (c) In making a determination under Subsection (11)(b), the records committee shall

1682 consider and, where appropriate, limit the requester's use and further disclosure of the record in  
1683 order to protect:

- 1684 (i) privacy interests in the case of a private or controlled record;
- 1685 (ii) business confidentiality interests in the case of a record protected under Subsection  
1686 63G-2-305(1), (2), [~~39~~] (40)(a)(ii), or [~~39~~] (40)(a)(vi); and
- 1687 (iii) privacy interests or the public interest in the case of other protected records.

1688 (12) The order of the records committee shall include:

1689 (a) a statement of reasons for the decision, including citations to this chapter, court rule  
1690 or order, another state statute, federal statute, or federal regulation that governs disclosure of  
1691 the record, provided that the citations do not disclose private, controlled, or protected  
1692 information;

1693 (b) a description of the record or portions of the record to which access was ordered or  
1694 denied, provided that the description does not disclose private, controlled, or protected  
1695 information or information exempt from disclosure under Subsection 63G-2-201(3)(b);

1696 (c) a statement that any party to the proceeding before the records committee may  
1697 appeal the records committee's decision to district court; and

1698 (d) a brief summary of the appeals process, the time limits for filing an appeal, and a  
1699 notice that in order to protect its rights on appeal, the party may wish to seek advice from an  
1700 attorney.

1701 (13) If the records committee fails to issue a decision within 57 calendar days of the  
1702 filing of the notice of appeal, that failure shall be considered the equivalent of an order denying  
1703 the appeal. The petitioner shall notify the records committee in writing if the petitioner  
1704 considers the appeal denied.

1705 (14) (a) Unless a notice of intent to appeal is filed under Subsection (14)(b), each party  
1706 to the proceeding shall comply with the order of the records committee.

1707 (b) If a party disagrees with the order of the records committee, that party may file a  
1708 notice of intent to appeal the order of the records committee.

1709 (c) If the records committee orders the governmental entity to produce a record and no

1710 appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a  
1711 record, the governmental entity shall:

1712 (i) produce the record; and

1713 (ii) file a notice of compliance with the records committee.

1714 (d) (i) If the governmental entity that is ordered to produce a record fails to file a notice  
1715 of compliance or a notice of intent to appeal, the records committee may do either or both of  
1716 the following:

1717 (A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or

1718 (B) send written notice of the governmental entity's noncompliance to:

1719 (I) the governor for executive branch entities;

1720 (II) the Legislative Management Committee for legislative branch entities; and

1721 (III) the Judicial Council for judicial branch agencies entities.

1722 (ii) In imposing a civil penalty, the records committee shall consider the gravity and  
1723 circumstances of the violation, including whether the failure to comply was due to neglect or  
1724 was willful or intentional.

1725 Section 19. Section **63G-2-406** is amended to read:

1726 **63G-2-406. Evidentiary standards for release of certain enforcement and**  
1727 **litigation records.**

1728 (1) A record that is classified as protected under Subsection 63G-2-305[~~(9), (16), (17),~~  
1729 ~~(22), (23), or (32)](10), (17), (18), (23), (24), or (33) may be ordered to be disclosed under the  
1730 provisions of Subsection 63G-2-401(6), 63G-2-403(11)(b), or 63G-2-404(8)(a) only if the  
1731 person or party seeking disclosure of the record has established, by a preponderance of the  
1732 evidence, that the public interest favoring access is equal to or greater than the interest favoring  
1733 restriction of access.~~

1734 (2) A record that is classified as protected under Subsection 63G-2-305[~~(10)~~](11) may  
1735 be ordered to be disclosed under the provisions of Subsection 63G-2-401(6),  
1736 63G-2-403(11)(b), or 63G-2-404(8) only if the person or party seeking disclosure of the record  
1737 has established, by clear and convincing evidence, that the public interest favoring access is

1738 equal to or greater than the interest favoring restriction of access.

1739 Section 20. Section **63G-6a-103 (Effective 05/01/13)** is amended to read:

1740 **63G-6a-103 (Effective 05/01/13). Definitions.**

1741 As used in this chapter:

1742 [~~(1) "Appeals board" means:]~~

1743 [~~(a) the Procurement Appeals Board created under Subsection 63G-6a-1702(1); or]~~

1744 [~~(b) a board created under Subsection 63G-6a-1702(5);]~~

1745 [~~(2) "Applicable rulemaking authority" means:]~~

1746 [~~(a) as it relates to the state legislative branch, the Legislative Management Committee,~~

1747 ~~except to the extent that the Legislature passes a rule that supercedes or conflicts with a rule~~

1748 ~~made by the Legislative Management Committee;]~~

1749 [~~(b) as it relates to the state judicial branch, the Judicial Council;]~~

1750 [~~(c) as it relates to a local public procurement unit, other than a local public~~

1751 ~~procurement unit described in Subsections (2)(d) through (h), the board; or]~~

1752 [~~(d) as it relates to a municipality or county that adopts this chapter, the legislative~~

1753 ~~body of the municipality or county, not as a delegation of authority from the Legislature, but~~

1754 ~~under the municipality's or county's own legislative authority;]~~

1755 [~~(e) as it relates to a school district or a public school, the Procurement Policy Board,~~

1756 ~~except to the extent that a school district makes its own non-administrative rules, with respect~~

1757 ~~to a particular subject, that do not conflict with the provisions of this chapter;]~~

1758 [~~(f) as it relates to a state institution of higher education, the State Board of Regents;]~~

1759 [~~(g) as it relates to a public transit district organized under Title 17B, Chapter 2a, Part~~

1760 ~~8, Public Transit District Act, the governing board of the public transit district;]~~

1761 [~~(h) as it relates to a local district or a special service district, the board, except to the~~

1762 ~~extent that the local district or special service district enacts its own rules;]~~

1763 [~~(i) with respect to a subject addressed by board rules; or]~~

1764 [~~(ii) that are in addition to board rules;]~~

1765 [~~(i) as it relates to the following entities, but only to the extent that the rules relate to~~

1766 ~~procurement authority expressly granted to the entity by statute:]~~  
1767       ~~[(i) the State Building Board, created in Section 63A-5-101;]~~  
1768       ~~[(ii) the Division of Facilities Construction and Management created in Section~~  
1769 ~~63A-5-201;]~~  
1770       ~~[(iii) the attorney general's office; or]~~  
1771       ~~[(iv) the Department of Transportation, created in Section 72-1-201;]~~  
1772       ~~[(j) as it relates to the state executive branch and all public procurement units other~~  
1773 ~~than those described in Subsections (2)(a) through (h), the board; or]~~  
1774       ~~[(k) as it relates to an entity described in Subsection (2)(i), except to the extent that the~~  
1775 ~~rules relate to procurement authority expressly granted to the entity by statute, the board.]~~  
1776       ~~[(3)] (1) "Architect-engineer services" means:~~  
1777       (a) professional services within the scope of the practice of architecture as defined in  
1778 Section 58-3a-102; or  
1779       (b) professional engineering as defined in Section 58-22-102.  
1780       ~~[(4)] (2) "Bidder" means a person who responds to an invitation for bids.~~  
1781       ~~[(5) "Board" means the Utah State Procurement Policy Board, created in Section~~  
1782 ~~63G-6a-202.]~~  
1783       ~~[(6) "Building board" means the State Building Board created in Section 63A-5-101.]~~  
1784       ~~[(7)] (3) "Change [~~order~~] directive" means[~~:(a)~~] a written order signed by the~~  
1785 ~~procurement officer that directs the contractor to suspend work or make changes, as authorized~~  
1786 ~~by contract, without the consent of the contractor[~~;~~ or].~~  
1787       ~~[(b)] (4) "Change order" means~~ a written alteration in specifications, delivery point,  
1788 rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon  
1789 mutual agreement of the parties to the contract.  
1790       ~~[(8)] (5) "Chief procurement officer" means the chief procurement officer appointed~~  
1791 ~~under Subsection 63G-6a-302(1).~~  
1792       ~~[(9)] (6) (a) "Construction" means the process of building, renovating, altering,~~  
1793 ~~improving, or repairing a public building or public work.~~



1794 (b) "Construction" does not include the routine operation, routine repair, or routine  
1795 maintenance of an existing structure, building, or real property.

1796 ~~[(10)]~~ (7) (a) "Construction manager/general contractor" means a contractor who enters  
1797 into a contract for the management of a construction project when the contract allows the  
1798 contractor to subcontract for additional labor and materials that are not included in the  
1799 contractor's cost proposal submitted at the time of the procurement of the contractor's services.

1800 (b) "Construction manager/general contractor" does not include a contractor whose  
1801 only subcontract work not included in the contractor's cost proposal submitted as part of the  
1802 procurement of the contractor's services is to meet subcontracted portions of change orders  
1803 approved within the scope of the project.

1804 ~~[(11)]~~ (8) "Contract" means an agreement for the procurement or disposal of a  
1805 procurement item.

1806 ~~[(12)]~~ (9) "Contractor" means a person who is awarded a contract with a ~~[public]~~  
1807 procurement unit.

1808 ~~[(13)]~~ (10) "Cooperative ~~[purchasing]~~ procurement" means procurement conducted by,  
1809 or on behalf of, more than one ~~[public]~~ procurement unit, or by a ~~[public]~~ procurement unit and  
1810 an external procurement unit.

1811 (11) "Cost-plus-a-percentage-of-cost contract" means a contract where the contractor is  
1812 paid a percentage over and above the contractor's actual expenses or costs.

1813 ~~[(14)]~~ (12) "Cost-reimbursement contract" means a contract under which a contractor  
1814 is reimbursed for costs which are allowed and allocated in accordance with the contract terms  
1815 and the provisions of this chapter, and a fee, if any.

1816 ~~[(15)]~~ (13) "Days" means calendar days, unless expressly provided otherwise.

1817 (14) "Definite quantity contract" means a fixed price contract that provides for the  
1818 supply of a specified amount of goods over a specified period, with deliveries scheduled  
1819 according to a specified schedule.

1820 ~~[(16)]~~ (15) "Design-build" means the procurement of architect-engineer services and  
1821 construction by the use of a single contract with the design-build provider.

1822           ~~[(17)]~~ (16) "Director" means the director of the division.

1823           ~~[(18) "Division" means the Division of Purchasing and General Services.]~~

1824           ~~[(19)]~~ (17) "Established catalogue price" means the price included in a catalogue, price

1825 list, schedule, or other form that:

1826           (a) is regularly maintained by a manufacturer or contractor;

1827           (b) is either published or otherwise available for inspection by customers; and

1828           (c) states prices at which sales are currently or were last made to a significant number

1829 of any category of buyers or buyers constituting the general buying public for the supplies or

1830 services involved.

1831           (18) "Fixed price contract" means a contract that provides a price, for each

1832 procurement item obtained under the contract, that is not subject to adjustment except to the

1833 extent that:

1834           (a) the contract provides, under circumstances specified in the contract, for an

1835 adjustment in price that is not based on cost to the contractor; or

1836           (b) an adjustment is required by law.

1837           (19) "Fixed price contract with price adjustment" means a fixed price contract that

1838 provides for an upward or downward revision of price, precisely described in the contract, that:

1839           (a) is based on the consumer price index or another commercially acceptable index,

1840 source, or formula; and

1841           (b) is not based on a percentage of the cost to the contractor.

1842           (20) (a) "Grant" means furnishing, by a public entity or by any other public or private

1843 source, financial or other assistance to a person to support a program authorized by law.

1844           (b) "Grant" does not include:

1845           (i) an award whose primary purpose is to procure an end product or procurement item;

1846 or

1847           (ii) a contract that is awarded as a result of a procurement or a procurement process.

1848           (21) "Head of a ~~[public]~~ procurement unit" means:

1849           (a) as it relates to ~~[the state legislative branch]~~ a legislative procurement unit, any

- 1850 person designated by rule made by the applicable rulemaking authority;
- 1851 (b) as it relates to ~~[the state executive branch]~~ an executive branch procurement unit:
- 1852 (i) the director of a division; or
- 1853 (ii) any other person designated by the board, by rule;
- 1854 (c) as it relates to ~~[the state judicial branch]~~ a judicial procurement unit:
- 1855 (i) the Judicial Council; or
- 1856 (ii) any other person designated by the Judicial Council, by rule;
- 1857 ~~[(d) as it relates to a local public procurement unit, other than a local public~~
- 1858 ~~procurement unit described in Subsections (21)(e) through (i):]~~
- 1859 ~~[(i) the appointed or elected head of the local public procurement unit; or]~~
- 1860 ~~[(ii) any other person designated by the board, by rule;]~~
- 1861 ~~[(e)]~~ (d) as it relates to a local ~~[public]~~ government procurement unit ~~[that is a~~
- 1862 ~~municipality or a county]:~~
- 1863 (i) the legislative body of the ~~[municipality or county]~~ local government procurement
- 1864 unit; or
- 1865 (ii) any other person designated by the ~~[municipality or county]~~ local government
- 1866 procurement unit;
- 1867 (e) as it relates to a local district, the board of trustees of the local district or a designee
- 1868 of the board of trustees;
- 1869 (f) as it relates to a special service district, the governing body of the special service
- 1870 district or a designee of the governing body;
- 1871 (g) as it relates to a local building authority, the board of directors of the local building
- 1872 authority or a designee of the board of directors;
- 1873 (h) as it relates to a conservation district, the board of supervisors of the conservation
- 1874 district or a designee of the board of supervisors;
- 1875 (i) as it relates to a public corporation, the board of directors of the public corporation
- 1876 or a designee of the board of directors;
- 1877 ~~[(f)]~~ (j) as it relates to a school district or any school or entity within a school district,

1878 the board of the school district, or the board's designee;

1879       ~~[(g)]~~ (k) as it relates to a charter school, the individual or body with executive authority

1880 over the charter school, or the individual's or body's designee;

1881       ~~[(h)]~~ (l) as it relates to an institution of higher education of the state, the president of

1882 the institution of higher education, or the president's designee; or

1883       ~~[(i) as it relates to a local district or a special service district, the governing body of the~~

1884 ~~local district or special service district.]~~

1885       ~~[(22) "Head of an authorized purchasing entity" means:]~~

1886       ~~[(a) as it relates to the division, the chief procurement officer;]~~

1887       ~~[(b) to the extent that the entities have express statutory authority to engage in a~~

1888 ~~procurement without the involvement of the division:]~~

1889       ~~[(i) as it relates to the State Building Board, created in Section 63A-5-101, the State~~

1890 ~~Building Board;]~~

1891       ~~[(ii) as it relates to the Division of Facilities Construction and Management created in~~

1892 ~~Section 63A-5-201, the director of the Division of Facilities Construction and Management;]~~

1893       ~~[(iii) as it relates to the attorney general's office, the attorney general;]~~

1894       ~~[(iv) as it relates to the Department of Transportation, created in Section 72-1-201, the~~

1895 ~~executive director of the Department of Transportation; or]~~

1896       ~~[(v) as it relates to a district court, a person designated by the Judicial Council, by~~

1897 ~~rule;]~~

1898       ~~[(e) as it relates to an institution of higher education of the state, the president of the~~

1899 ~~institution of higher education of the state;]~~

1900       ~~[(d) as it relates to a school district, the board of the school district;]~~

1901       ~~[(e) as it relates to a public school, including a local school board, the board of the~~

1902 ~~school district;]~~

1903       ~~[(f) as it relates to a charter school, a person designated by the charter school;]~~

1904       ~~[(g) as it relates to a non-executive state procurement unit, a person designated by the~~

1905 ~~applicable rulemaking authority; or]~~

1906 ~~[(h) as it relates to a local district or a special service district, the governing body of the~~  
1907 ~~local district or special service district.]~~

1908 (m) as it relates to a public transit district, the board of trustees or a designee of the  
1909 board of trustees.

1910 (22) "Indefinite quantity contract" means a fixed price contract that:

1911 (a) is for an indefinite amount of procurement items to be supplied as ordered by a  
1912 procurement unit; and

1913 (b) (i) does not require a minimum purchase amount; or

1914 (ii) provides a maximum purchase limit.

1915 (23) "Independent procurement authority" means authority granted to a procurement  
1916 unit, under Subsection 63G-6a-108(2), to engage in a procurement without oversight or control  
1917 of the division.

1918 ~~[(23)]~~ (24) "Invitation for bids" includes all documents, including documents that are  
1919 attached or incorporated by reference, used for soliciting bids to provide a procurement item to  
1920 a [public] procurement unit.

1921 (25) "Issuing procurement unit" means:

1922 (a) the division, if the division issues the invitation for bids or the request for  
1923 proposals; or

1924 (b) the procurement unit, with independent procurement authority, that issues the  
1925 invitation for bids or the request for proposals.

1926 (26) "Labor hour contract" is a contract where:

1927 (a) the supplies and materials are not provided by, or through, the contractor; and

1928 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and  
1929 profit for a specified number of labor hours or days.

1930 ~~[(24)]~~ (27) "Multiple award contracts" means the award of a contract for an indefinite  
1931 quantity of a procurement item to more than one bidder or offeror.

1932 ~~[(25)]~~ (28) "Multiyear contract" means a contract that extends beyond a one-year  
1933 period, including a contract that permits renewal of the contract, without competition, beyond

1934 the first year of the contract.

1935 ~~[(26)]~~ (29) "Municipality" means a city or a town.

1936 ~~[(27)]~~ (30) "Offeror" means a person who responds to a request for proposals.

1937 ~~[(28)]~~ (31) "Preferred bidder" means a bidder that is entitled to receive a reciprocal  
1938 preference under the requirements of this chapter.

1939 ~~[(29)]~~ (32) (a) "Procure" or "procurement" means buying, purchasing, renting, leasing,  
1940 leasing with an option to purchase, or otherwise acquiring a procurement item.

1941 (b) "Procure" or "procurement" includes all functions that pertain to the obtaining of a  
1942 procurement item, including:

1943 (i) the description of requirements;

1944 (ii) the selection process;

1945 (iii) solicitation of sources;

1946 (iv) the preparation for soliciting a procurement item;

1947 (v) the award of a contract; and

1948 (vi) all phases of contract administration.

1949 ~~[(30)]~~ (33) "Procurement item" means a supply, a service, construction, or technology.

1950 ~~[(31) "Procurement officer" means:]~~

1951 ~~[(a) as it relates to the state legislative branch, the head of a public procurement unit in~~  
1952 ~~the legislative branch;]~~

1953 ~~[(b) as it relates to the state judicial branch, the head of a public procurement unit in~~  
1954 ~~the state judicial branch;]~~

1955 ~~[(c) as it relates to the state executive branch, the chief procurement officer;]~~

1956 ~~[(d) as it relates to a local public procurement unit other than a local public~~  
1957 ~~procurement unit described in Subsection (31)(e) or (f), the chief procurement officer;]~~

1958 ~~[(e) as it relates to a municipality or county that adopts this chapter, the legislative~~  
1959 ~~body of the municipality or county; or]~~

1960 ~~[(f) as it relates to a state purchasing unit, the head of the state purchasing unit, or a~~  
1961 ~~designee of the head of the state purchasing unit.]~~

- 1962            (34) "Procurement officer" means:
- 1963            (a) as it relates to a procurement unit with independent procurement authority:
- 1964            (i) the head of the procurement unit;
- 1965            (ii) a designee of the head of the procurement unit; or
- 1966            (iii) a person designated by rule made by the applicable rulemaking authority; or
- 1967            (b) as it relates to the division or a procurement unit without independent procurement
- 1968 authority, the chief procurement officer.
- 1969            ~~[(32)]~~ (35) "Professional service" means a service that requires a high degree of
- 1970 specialized knowledge and discretion in the performance of the service, including:
- 1971            (a) legal services;
- 1972            (b) consultation services;
- 1973            (c) architectural services;
- 1974            (d) engineering;
- 1975            (e) design;
- 1976            (f) underwriting;
- 1977            (g) bond counsel;
- 1978            (h) financial advice; [~~or~~]
- 1979            (i) construction management[~~-~~];
- 1980            ~~[(33) "Protest officer" means:]~~
- 1981            ~~[(a) as it relates to a state purchasing unit, the head of the state purchasing unit or a~~
- 1982 ~~designee of the head of the state purchasing unit;]~~
- 1983            ~~[(b) as it relates to a local public procurement unit, the purchasing officer or the~~
- 1984 ~~governing body of the local public procurement unit, or a designee of either; or]~~
- 1985            ~~[(c) as it relates to a public procurement unit other than a public procurement unit~~
- 1986 ~~described in Subsection (1)(a) or (b), the chief procurement officer or the chief procurement~~
- 1987 ~~officer's designee;]~~
- 1988            (j) medical services;
- 1989            (k) psychiatric services; or

1990            (l) counseling services.

1991            (36) "Protest officer" means:

1992            (a) as it relates to the division or a procurement unit with independent procurement

1993 authority:

1994            (i) the head of the procurement unit;

1995            (ii) a designee of the head of the procurement unit; or

1996            (iii) a person designated by rule made by the applicable rulemaking authority; or

1997            (b) as it relates to a procurement unit without independent procurement authority, the

1998 chief procurement officer or the chief procurement officer's designee.

1999            [~~34~~] (37) "Request for information" means a nonbinding process where a [public]

2000 procurement unit requests information relating to a procurement item.

2001            [~~35~~] (38) "Request for proposals" includes all documents, including documents that

2002 are attached or incorporated by reference, used for soliciting proposals to provide a

2003 procurement item to a [public] procurement unit.

2004            (39) "Requirements contract" means a contract:

2005            (a) where a contractor agrees to provide a procurement unit's entire requirements for

2006 certain procurement items at prices specified in the contract during the contract period; and

2007            (b) that:

2008            (i) does not require a minimum purchase amount; or

2009            (ii) provides a maximum purchase limit.

2010            [~~36~~] (40) "Responsible" means that a bidder or offeror:

2011            (a) is capable, in all respects, to fully perform the contract requirements solicited in an

2012 invitation for bids or a request for proposals; and

2013            (b) has the integrity and reliability to ensure good faith performance.

2014            [~~37~~] (41) "Responsive" means that a bidder or offeror submits a response to an

2015 invitation for bids or a request for proposals that conforms in all material respects to the

2016 invitation for bids or request for proposals.

2017            [~~38~~] (42) "Sealed" means manually or electronically sealed and submitted bids or



2018 proposals.

2019 ~~[(39)]~~ (43) (a) "Services" means the furnishing of labor, time, or effort by a contractor,  
2020 not involving the delivery of a specific end product other than a report that is incidental to the  
2021 required performance.

2022 (b) "Services" does not include an employment agreement or a collective bargaining  
2023 agreement.

2024 ~~[(40)]~~ (44) "Specification" means any description of the physical or functional  
2025 characteristics, or nature of a procurement item included in an invitation for bids or a request  
2026 for proposals, or otherwise specified or agreed to by a [public] procurement unit, including a  
2027 description of:

2028 (a) a requirement for inspecting or testing a procurement item; or

2029 (b) preparing a procurement item for delivery.

2030 ~~[(41)]~~ (45) "Standard procurement process" means one of the following methods of  
2031 obtaining a procurement item:

2032 (a) bidding, as described in Part 6, Bidding;

2033 (b) request for proposals, as described in Part 7, Request for Proposals; or

2034 (c) small purchases, in accordance with the requirements established under Section  
2035 63G-6a-408.

2036 (46) "State cooperative contract" means a contract awarded by the division.

2037 ~~[(42)]~~ (47) (a) "Subcontractor" means a person under contract with a contractor or  
2038 another subcontractor to provide services or labor for design or construction.

2039 (b) "Subcontractor" includes a trade contractor or specialty contractor.

2040 (c) "Subcontractor" does not include a supplier who provides only materials,  
2041 equipment, or supplies to a contractor or subcontractor.

2042 ~~[(43)]~~ (48) "Supplies" means all property, including equipment, materials, and printing.

2043 ~~[(44)]~~ (49) "Tie bid" means that the lowest responsive and responsible bids are  
2044 identical in price.

2045 (50) "Time and materials contract" means a contract where the contractor is paid:

- 2046 (a) the actual cost of direct labor at specified hourly rates;
- 2047 (b) the actual cost of materials and equipment usage; and
- 2048 (c) an additional amount, expressly described in the contract, to cover overhead and
- 2049 profit, that is not based on a percentage of the cost to the contractor.

2050 Section 21. Section **63G-6a-104 (Effective 05/01/13)** is repealed and reenacted to  
2051 read:

2052 **63G-6a-104 (Effective 05/01/13). Definitions of government entities.**

2053 As used in this chapter:

2054 (1) "Applicable rulemaking authority" means:

2055 (a) as it relates to a legislative procurement unit, the Legislative Management  
2056 Committee, which shall adopt a policy establishing requirements applicable to a legislative  
2057 procurement unit;

2058 (b) as it relates to a judicial procurement unit, the Judicial Council;

2059 (c) as it relates to an executive branch procurement unit, except to the extent provided  
2060 in Subsections (1)(d) through (g), the board;

2061 (d) as it relates to the State Building Board, created in Section 63A-5-101, the State  
2062 Building Board, but only to the extent that the rules relate to procurement authority expressly  
2063 granted to the State Building Board by statute;

2064 (e) as it relates to the Division of Facilities Construction and Management, created in  
2065 Section 63A-5-201, the director of the Division of Facilities Construction and Management,  
2066 but only to the extent that the rules relate to procurement authority expressly granted to the  
2067 Division of Facilities Construction and Management by statute;

2068 (f) as it relates to the Office of the Attorney General, the attorney general, but only to  
2069 the extent that the rules relate to procurement authority expressly granted to the attorney  
2070 general by statute;

2071 (g) as it relates to the Department of Transportation, created in Section 72-1-201, the  
2072 executive director of the Department of Transportation, but only to the extent that the rules  
2073 relate to procurement authority expressly granted to the Department of Transportation by

2074 statute;

2075 (h) as it relates to a local government procurement unit, the legislative body of the local  
2076 government procurement unit, not as a delegation of authority from the Legislature, but under  
2077 the local government procurement unit's own legislative authority;

2078 (i) as it relates to a school district or a public school, the Utah State Procurement Policy  
2079 Board, except to the extent that a school district makes its own nonadministrative rules, with  
2080 respect to a particular subject, that do not conflict with the provisions of this chapter;

2081 (j) as it relates to a state institution of higher education, the State Board of Regents;

2082 (k) as it relates to a public transit district, the chief executive of the public transit  
2083 district;

2084 (l) as it relates to a local district or a special service district:

2085 (i) before May 13, 2014, the board of trustees of the local district or the governing body  
2086 of the special service district; or

2087 (ii) on or after May 13, 2014, the board, except to the extent that the board of trustees  
2088 of the local district or the governing body of the special service district makes its own rules:

2089 (A) with respect to a subject addressed by board rules; or

2090 (B) that are in addition to board rules; or

2091 (m) as it relates to a procurement unit, other than a procurement unit described in  
2092 Subsections (1)(a) through (l), the board.

2093 (2) "Board" means the Utah State Procurement Policy Board, created in Section  
2094 63G-6a-202.

2095 (3) "Building board" means the State Building Board created in Section 63A-5-101.

2096 (4) "Conservation district" is as defined in Section 17D-3-102.

2097 (5) "Division" means the Division of Purchasing and General Services.

2098 (6) "Educational procurement unit" means:

2099 (a) a school district;

2100 (b) a public school, including a local school board or a charter school;

2101 (c) Utah Schools for the Deaf and Blind;

- 2102           (d) the Utah Education Network; or
- 2103           (e) an institution of higher education of the state.
- 2104           (7) "Executive branch procurement unit" means each department, division, office,
- 2105 bureau, agency, or other organization within the state executive branch, including the division
- 2106 and the attorney general's office.
- 2107           (8) "External procurement unit" means:
- 2108           (a) a buying organization not located in this state which, if located in this state, would
- 2109 qualify as a procurement unit; or
- 2110           (b) an agency of the United States.
- 2111           (9) "Judicial procurement unit" means:
- 2112           (a) the Utah Supreme Court;
- 2113           (b) the Utah Court of Appeals;
- 2114           (c) the Judicial Council;
- 2115           (d) a state judicial district; or
- 2116           (e) each office, committee, subcommittee, or other organization within the state
- 2117 judicial branch.
- 2118           (10) "Legislative procurement unit" means:
- 2119           (a) the Legislature;
- 2120           (b) the Senate;
- 2121           (c) the House of Representatives;
- 2122           (d) a staff office of an entity described in Subsection (10)(a), (b), or (c); or
- 2123           (e) each office, committee, subcommittee, or other organization within the state
- 2124 legislative branch.
- 2125           (11) "Local building authority" is as defined in Section 17D-2-102.
- 2126           (12) "Local district" is as defined in Section 17B-1-102.
- 2127           (13) "Local government procurement unit" means:
- 2128           (a) a county or municipality, and each office or agency of the county or municipality,
- 2129 unless the county or municipality adopts its own procurement code by ordinance;

2130 (b) a county or municipality, and each office or agency of the county or municipality,  
2131 that has adopted this entire chapter by ordinance; or

2132 (c) a county or municipality, and each office or agency of the county or municipality,  
2133 that has adopted a portion of this chapter by ordinance, to the extent that the term is used in the  
2134 adopted portion of this chapter.

2135 (14) (a) "Procurement unit" means:

2136 (i) a legislative procurement unit;  
2137 (ii) an executive branch procurement unit;  
2138 (iii) a judicial procurement unit;  
2139 (iv) an educational procurement unit;  
2140 (v) a local government procurement unit;  
2141 (vi) a local district;  
2142 (vii) a special service district;  
2143 (viii) a local building authority;  
2144 (ix) a conservation district;  
2145 (x) a public corporation; or  
2146 (xi) a public transit district.

2147 (b) "Procurement unit" does not include a political subdivision created under Title 11,  
2148 Chapter 13, Interlocal Cooperation Act.

2149 (15) "Public corporation" is as defined in Section 63E-1-102.

2150 (16) "Public entity" means any state government entity or a political subdivision of the  
2151 state, including:

2152 (a) a procurement unit;  
2153 (b) a municipality or county, regardless of whether the municipality or county has  
2154 adopted this chapter or any part of this chapter; and  
2155 (c) any other government entity located in Utah that expends public funds.

2156 (17) "Public transit district" means a public transit district organized under Title 17B,  
2157 Chapter 2a, Part 8, Public Transit District Act.

2158 (18) "Special service district" is as defined in Section 17D-1-102.

2159 Section 22. Section **63G-6a-105 (Effective 05/01/13)** is amended to read:

2160 **63G-6a-105 (Effective 05/01/13). Application of chapter.**

2161 (1) The provisions of this chapter that are enacted on [~~July 1, 2012~~] May 1, 2013, apply  
2162 only to a procurement advertised, or begun on or after [~~July 1, 2012~~] May 1, 2013, unless the  
2163 parties agree to have the provisions apply with respect to a procurement that was advertised or  
2164 begun before [~~July 1, 2012~~] May 1, 2013, but is not completed before [~~July 1, 2012~~] May 1,  
2165 2013.

2166 (2) (a) Except as provided in Section 63G-6a-107, this chapter shall apply to every  
2167 expenditure of public funds irrespective of the source of the funds, including federal assistance,  
2168 by any [~~public~~] procurement unit, under any contract.

2169 (b) The provisions of this chapter do not apply to a public entity that is not a [~~public~~]  
2170 procurement unit.

2171 (3) Except as provided in Subsection 17B-1-108(3) relating to local districts, [~~each~~  
2172 ~~local public procurement unit~~] the following procurement units shall adopt ordinances or  
2173 resolutions relating to the procurement of architect-engineer services not inconsistent with the  
2174 provisions of Part 15, Architect-Engineer Services[-:];

2175 (a) an educational procurement unit;

2176 (b) a conservation district;

2177 (c) a local building authority;

2178 (d) a local district;

2179 (e) a public corporation; or

2180 (f) a special service district.

2181 (4) Any section of this chapter, or its implementing regulations, may be adopted by  
2182 [~~any local government unit.~~];

2183 (a) a county;

2184 (b) a municipality; or

2185 (c) the Utah Housing Corporation.

2186 (5) Rules adopted under this chapter shall be consistent with the provisions of this  
2187 chapter.

2188 (6) ~~[A state purchasing unit]~~ An applicable rulemaking authority or a [public]  
2189 procurement unit may not adopt rules, policies, or regulations that are inconsistent with this  
2190 chapter.

2191 (7) Unless otherwise provided by statute, this chapter does not apply to procurement of  
2192 real property.

2193 Section 23. Section **63G-6a-106 (Effective 05/01/13)** is amended to read:

2194 **63G-6a-106 (Effective 05/01/13). Specific statutory authority -- Limitations on**  
2195 **authority of chief procurement officer and division.**

2196 (1) The procurement authority given to a [public] procurement unit under the following  
2197 provisions shall be retained, and shall be applied only to the extent described in those  
2198 provisions:

2199 (a) Title 53B, State System of Higher Education;

2200 (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction  
2201 and Management;

2202 (c) Title 67, Chapter 5, Attorney General;

2203 (d) Title 72, Transportation Code; and

2204 (e) Title 78A, Chapter 5, District Courts.

2205 (2) Except as otherwise provided in Sections 63G-6a-105 and 63G-6a-107, a [public]  
2206 procurement unit shall conduct a procurement in accordance with this chapter.

2207 (3) (a) The Department of Transportation may make rules governing the procurement  
2208 of highway construction or improvement.

2209 (b) The applicable rulemaking authority for a public transit district may make rules  
2210 governing the procurement of a transit construction project or a transit improvement project.

2211 ~~(b)~~ (c) This Subsection (3) supersedes Subsections (1) and (2).

2212 (4) Except to the extent otherwise agreed to in a memorandum of understanding  
2213 between the division and the following entities, the authority of the chief procurement officer

2214 and of the division does not extend to[~~±~~] a procurement unit with independent procurement  
2215 authority.

2216 [~~(a) a non-executive state procurement unit;~~]

2217 [~~(b) a local government unit; or~~]

2218 [~~(c) a state purchasing unit, other than the division.~~]

2219 (5) An entity described in Subsection (4) [~~or a state purchasing unit, other than the~~  
2220 ~~division,~~] may, without supervision, interference, or involvement by the chief procurement  
2221 officer or the division, but consistent with the requirements of this chapter:

2222 (a) engage in a standard procurement process;

2223 (b) procure an item under an exception, as provided in this chapter, to the requirement  
2224 to use a standard procurement process; or

2225 (c) otherwise engage in an act authorized or required by this chapter.

2226 (6) The attorney general may, in accordance with the provisions of this chapter, but  
2227 without involvement by the division or the chief procurement officer:

2228 (a) retain outside counsel; or

2229 (b) procure litigation support services, including retaining an expert witness.

2230 (7) [~~A public procurement unit, or a state purchasing unit,~~] An entity described in  
2231 Subsection (4) that is not represented by the attorney general's office may, in accordance with  
2232 the provisions of this chapter, but without involvement by the division or the chief procurement  
2233 officer:

2234 (a) retain outside counsel; or

2235 (b) procure litigation support services, including retaining an expert witness.

2236 (8) The state auditor's office may, in accordance with the provisions of this chapter, but  
2237 without involvement by the division or the chief procurement officer, procure audit services.

2238 (9) The state treasurer may, in accordance with the provisions of this chapter, but  
2239 without involvement by the division or the chief procurement officer, procure:

2240 (a) deposit and investment services; and

2241 (b) services related to issuing bonds.



2242 Section 24. Section **63G-6a-107 (Effective 05/01/13)** is amended to read:  
 2243 **63G-6a-107 (Effective 05/01/13). Exemptions from chapter -- Compliance with**  
 2244 **federal law.**

2245 (1) Except for Part 23, Unlawful Conduct and Penalties, the provisions of this chapter  
 2246 are not applicable to:

2247 (a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art  
 2248 Act;

2249 (b) grants awarded by the state or contracts between the state and ~~[a local public~~  
 2250 ~~procurement unit, except as provided in Part 21, Intergovernmental Relations; or]~~ any of the  
 2251 following:

2252 (i) an educational procurement unit;

2253 (ii) a conservation district;

2254 (iii) a local building authority;

2255 (iv) a local district;

2256 (v) a public corporation;

2257 (vi) a special service district;

2258 (vii) a public transit district; or

2259 (viii) two or more of the entities described in Subsections (1)(b)(i) through (vii), acting  
 2260 under legislation that authorizes intergovernmental cooperation;

2261 (c) medical supplies or medical equipment, including service agreements for medical  
 2262 equipment, obtained through a purchasing consortium by the Utah State Hospital, the Utah  
 2263 State Developmental Center, the University of Utah Hospital, or any other hospital owned by  
 2264 the state or a political subdivision of the state, if:

2265 (i) the consortium uses a competitive procurement process; and

2266 (ii) the chief administrative officer of the hospital makes a written finding that the  
 2267 prices for purchasing medical supplies and medical equipment through the consortium are  
 2268 competitive with market prices;

2269 (d) goods purchased for resale; or

2270 ~~[(e)]~~ (e) any action taken by a majority of both houses of the Legislature.

2271 (2) (a) Notwithstanding Subsection (1), the provisions of Part 23, Unlawful Conduct  
 2272 and Penalties, are not applicable to an entity described in Subsection (1)(b)(ii), (iii), (iv), (vi),  
 2273 (vii), or (viii).

2274 ~~[(2)]~~ (b) This chapter does not prevent ~~[the state or a local public]~~ a procurement unit  
 2275 from complying with the terms and conditions of any grant, gift, or bequest that is otherwise  
 2276 consistent with law.

2277 (3) Notwithstanding any conflicting provision of this chapter, when a procurement  
 2278 involves the expenditure of federal assistance, federal contract funds, local matching funds, or  
 2279 federal financial participation funds, the ~~[public]~~ procurement unit ~~[or state purchasing unit]~~  
 2280 shall comply with mandatory applicable federal law and regulations not reflected in this  
 2281 chapter.

2282 (4) This chapter does not supersede the requirements for retention or withholding of  
 2283 construction proceeds and release of construction proceeds as provided in Section 13-8-5.

2284 Section 25. Section **63G-6a-108 (Effective 05/01/13)** is amended to read:

2285 **63G-6a-108 (Effective 05/01/13). Procurements under direction and control of**  
 2286 **division -- Exception for procurement unit with independent procurement authority.**

2287 (1) Except as provided in Subsection (2), a ~~[public]~~ procurement unit may not engage  
 2288 in a procurement unless:

2289 (a) the procurement is made under the direction and control of the division; or

2290 (b) the division, pursuant to rules made by the board, permits the ~~[public]~~ procurement  
 2291 unit to make the procurement on its own.

2292 ~~[(2) Subsection (1) does not apply to a public procurement unit that is:]~~

2293 ~~[(a) a non-executive state procurement unit;]~~

2294 ~~[(b) a local government unit; or]~~

2295 ~~[(c) a state purchasing unit, other than the division.]~~

2296 (2) Subsection (1) does not apply to the following procurement units, all of which have  
 2297 independent procurement authority:

- 2298            (a) a legislative procurement unit;
- 2299            (b) a judicial procurement unit;
- 2300            (c) an educational procurement unit;
- 2301            (d) a local government procurement unit;
- 2302            (e) a conservation district;
- 2303            (f) a local building authority;
- 2304            (g) a local district;
- 2305            (h) a public corporation;
- 2306            (i) a special service district;
- 2307            (j) the Utah Housing Corporation; or
- 2308            (k) a public transit district.
- 2309            (3) A procurement unit with independent procurement authority is not exempt from
- 2310 complying with the requirements of this chapter.

2311            Section 26. Section **63G-6a-201 (Effective 05/01/13)** is amended to read:

2312            **Part 2. Utah State Procurement Policy Board**

2313            **63G-6a-201 (Effective 05/01/13). Title.**

2314            This part is known as "Utah State Procurement Policy Board."

2315            Section 27. Section **63G-6a-203 (Effective 05/01/13)** is amended to read:

2316            **63G-6a-203 (Effective 05/01/13). Powers and duties of board.**

2317            (1) In addition to making rules in accordance with Section 63G-6a-402 and the other  
2318 provisions of this chapter, the board shall consider and decide matters of policy within the  
2319 provisions of this chapter, including those referred to it by the chief procurement officer.

2320            (2) (a) The board may:

- 2321            (i) audit and monitor the implementation of its rules and the requirements of this
- 2322 chapter;
- 2323            (ii) upon the request of [~~a local public procurement unit, review that local public~~
- 2324 ~~procurement unit's]~~ a procurement unit with an applicable rulemaking authority other than the
- 2325 board, review the procurement unit's proposed rules to ensure that they are not inconsistent

2326 with the provisions of this chapter or rules made by the board; and

2327 (iii) approve the use of innovative procurement processes.

2328 (b) Except as provided in Section 63G-6a-1702, the board may not exercise authority

2329 over the award or administration of:

2330 (i) any particular contract; or

2331 (ii) any dispute, claim, or litigation pertaining to any particular contract.

2332 [~~(3) The board does not have authority over a matter involving:~~]

2333 [~~(a) a non-executive state procurement unit;~~]

2334 [~~(b) a local government unit; or~~]

2335 [~~(c) except as otherwise expressly provided in this chapter, a local public procurement~~

2336 unit.]

2337 (3) Except as otherwise expressly provided in this chapter, the board does not have  
2338 authority over a matter involving a procurement unit with independent procurement authority.

2339 Section 28. Section **63G-6a-204 (Effective 05/01/13)** is amended to read:

2340 **63G-6a-204 (Effective 05/01/13). Applicability of rules and regulations of Utah**  
2341 **State Procurement Policy Board and State Building Board -- Report to interim**  
2342 **committee.**

2343 (1) Except as provided in Subsection (2), rules made by the board under this chapter  
2344 shall govern all [public] procurement units for which the board is the applicable rulemaking  
2345 authority.

2346 (2) The building board rules governing procurement of construction, architect-engineer  
2347 services, and leases apply to the procurement of construction, architect-engineer services, and  
2348 leases of real property by the Division of Facilities Construction and Management.

2349 (3) An applicable rulemaking authority may make its own rules, consistent with this  
2350 chapter, governing procurement by a person over which the applicable rulemaking authority  
2351 has rulemaking authority.

2352 (4) The board shall make a report on or before July 1 of each year to a legislative  
2353 interim committee, designated by the Legislative Management Committee created under

2354 Section 36-12-6, on the establishment, implementation, and enforcement of the rules made  
 2355 under Section 63G-6a-203.

2356 (5) Notwithstanding Subsection 63G-3-301(13)(b), an applicable rulemaking authority  
 2357 is, on or before May 13, 2014, required to initiate rulemaking proceedings for rules required to  
 2358 be made under this chapter.

2359 Section 29. Section **63G-6a-302 (Effective 05/01/13)** is amended to read:

2360 **63G-6a-302 (Effective 05/01/13). Chief procurement officer -- Appointment --**  
 2361 **Qualifications -- Authority.**

2362 (1) The executive director of the Department of Administrative Services, with the  
 2363 consent of the governor, shall appoint the chief procurement officer after considering  
 2364 recommendations from the board.

2365 (2) The chief procurement officer shall:

2366 (a) have a minimum of eight years' experience in the large-scale procurement of  
 2367 supplies and services or services and construction, at least five years of which shall have been  
 2368 in public or comparable private procurement within 12 years preceding the date of  
 2369 appointment; and

2370 (b) be a person with demonstrated executive and organizational ability.

2371 (3) The chief procurement officer appointed under Subsection (1) is also the director of  
 2372 the Division of Purchasing and General Services.

2373 ~~[(4) Except as otherwise expressly provided in this chapter, the chief procurement~~  
 2374 ~~officer has authority over procurements by a public procurement unit, other than:]~~

2375 ~~[(a) a non-executive procurement unit;]~~

2376 ~~[(b) a local government unit; or]~~

2377 ~~[(c) a state purchasing unit, other than the division.]~~

2378 (4) The chief procurement officer has authority over a procurement by a procurement  
 2379 unit, except:

2380 (a) a procurement unit with independent procurement authority; or

2381 (b) as otherwise expressly provided in this chapter.

2382 Section 30. Section **63G-6a-303 (Effective 05/01/13)** is amended to read:

2383 **63G-6a-303 (Effective 05/01/13). Duties of chief procurement officer.**

2384 Except as otherwise specifically provided in this chapter, the chief procurement officer  
2385 serves as the central procurement officer of the state and shall:

2386 (1) adopt office policies governing the internal functions of the division;

2387 (2) procure or supervise each procurement over which the chief procurement officer  
2388 has authority;

2389 (3) establish and maintain programs for the inspection, testing, and acceptance of each  
2390 procurement item over which the chief procurement officer has authority;

2391 (4) prepare statistical data concerning each procurement and procurement usage of a  
2392 state procurement unit;

2393 (5) ensure that:

2394 (a) before approving a procurement not covered by an existing statewide contract for  
2395 information technology or telecommunications supplies or services, the chief information  
2396 officer and the agency have stated in writing to the division that the needs analysis required in  
2397 Section 63F-1-205 was completed, unless the procurement is approved in accordance with  
2398 Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program; and

2399 (b) the oversight authority required by Subsection(5)(a) is not delegated outside the  
2400 division; and

2401 (6) provide training to [public] procurement units and to persons who do business with  
2402 [public] procurement units.

2403 Section 31. Section **63G-6a-305 (Effective 05/01/13)** is amended to read:

2404 **63G-6a-305 (Effective 05/01/13). Duty of chief procurement officer in**  
2405 **maintaining specifications.**

2406 (1) The chief procurement officer may prepare, issue, revise, maintain, and monitor the  
2407 use of specifications for each procurement over which the chief procurement officer has  
2408 authority.

2409 (2) The chief procurement officer shall obtain expert advice and assistance from

2410 personnel of [public] procurement units in the development of specifications and may delegate  
 2411 in writing to a [public] procurement unit the authority to prepare and utilize its own  
 2412 specifications.

2413 (3) For a procurement under Title 63M, Chapter 1, Part 26, Government Procurement  
 2414 Private Proposal Program, any delegation by the chief procurement officer under this section  
 2415 shall be made to the Governor's Office of Economic Development.

2416 Section 32. Section **63G-6a-402 (Effective 05/01/13)** is amended to read:

2417 **63G-6a-402 (Effective 05/01/13). Procurement unit required to comply with Utah**  
 2418 **Procurement Code and applicable rules -- Rulemaking authority -- Reporting.**

2419 (1) Except as otherwise provided in Section 63G-6a-107, Section 63G-6a-403, Part 8,  
 2420 Exceptions to Procurement Requirements, or elsewhere in this chapter, a [public] procurement  
 2421 unit may not obtain a procurement item, unless:

2422 (a) if the [public] procurement unit is ~~[an authorized purchasing entity]~~ the division or  
 2423 a procurement unit with independent procurement authority, the [public] procurement unit:

2424 (i) uses a standard procurement process or an exception to a standard procurement  
 2425 process, described in Part 8, Exceptions to Procurement Requirements; and

2426 (ii) complies with:

2427 (A) the requirements of this chapter; and

2428 (B) the rules made pursuant to this chapter by the applicable rulemaking authority;

2429 (b) ~~[except as provided in Subsection (2)(a), if]~~ If the [public] procurement unit is a  
 2430 [local government unit] county, a municipality, or the Utah Housing Corporation, the [public]  
 2431 procurement unit complies with:

2432 (i) the requirements of this chapter that are adopted by the ~~[local government unit]~~  
 2433 procurement unit; and

2434 (ii) all other procurement requirements that the ~~[local government unit]~~ procurement  
 2435 unit is required to comply with; or

2436 (c) if the [public] procurement unit is not a [public] procurement unit described in  
 2437 Subsections (1)(a) or (b), the [public] procurement unit:

2438 (i) obtains the procurement item under the direction and approval of the division,  
2439 unless otherwise provided by a rule made by the board;

2440 (ii) uses a standard procurement process; and

2441 (iii) complies with:

2442 (A) the requirements of this chapter; and

2443 (B) the rules made pursuant to this chapter by the applicable rulemaking authority.

2444 ~~[(2)(a) Subsection (1)(b) does not apply to a political subdivision created by counties~~  
2445 ~~or municipalities under Title 11, Chapter 13, Interlocal Cooperation Act, if the political~~  
2446 ~~subdivision does not receive or expend tax revenue.]~~

2447 ~~[(b)]~~ (2) Subject to Subsection (3), the applicable rulemaking authority shall make  
2448 rules relating to the management and control of procurements and procurement procedures by a  
2449 ~~[public]~~ procurement unit.

2450 (3) (a) Rules made under Subsection (2) shall ensure compliance with the federal  
2451 contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub.  
2452 L. No. 110-174) that prohibit contracting with a person doing business in Sudan.

2453 (b) The State Building Board rules governing procurement of construction,  
2454 architect-engineer services, and leases apply to the procurement of construction,  
2455 architect-engineer services, and leases of real property by the Division of Facilities  
2456 Construction and Management.

2457 (4) An applicable rulemaking authority that is subject to Title 63G, Chapter 3, Utah  
2458 Administrative Rulemaking Act, shall make the rules described in this chapter in accordance  
2459 with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2460 (5) The State Building Board shall make a report on or before July 1 of each year to a  
2461 legislative interim committee, designated by the Legislative Management Committee created  
2462 under Section 36-12-6, on the establishment, implementation, and enforcement of the rules  
2463 made by the State Building Board under this chapter.

2464 Section 33. Section **63G-6a-403 (Effective 05/01/13)** is amended to read:

2465 **63G-6a-403 (Effective 05/01/13). Prequalification of potential vendors.**



2466           (1) (a) As used in this section, "vendor" means:  
2467           (i) a bidder;  
2468           (ii) an offeror; or  
2469           (iii) a contractor, including an architect or an engineer.  
2470           [~~(+)~~ (b) A [~~public~~] procurement unit may, in accordance with this section:  
2471           [~~(a)~~ (i) prequalify potential [~~bidders or offerors~~] vendors to provide any type of  
2472 procurement item specified by the [~~public~~] procurement unit; and  
2473           [~~(b)~~ (ii) limit participation in an invitation for bids [~~or~~], a request for proposals, or an  
2474 approved vendor list to the prequalified potential [~~bidders or offerors~~] vendors for the specified  
2475 type of procurement item.  
2476           (2) To prequalify potential [~~bidders or offerors~~] vendors to provide a specified type of  
2477 procurement item, a [~~public~~] procurement unit shall issue a request for qualifications.  
2478           (3) A [~~public~~] procurement unit that issues a request for qualifications shall:  
2479           (a) publish the request for qualifications in accordance with the requirements of  
2480 Section 63G-6a-402;  
2481           (b) state in the request for qualifications:  
2482           (i) the type of procurement item to which the request for qualifications relates;  
2483           (ii) the scope of work to be performed;  
2484           (iii) the instructions and the deadline for providing information in response to the  
2485 request for qualifications;  
2486           (iv) the minimum criteria for prequalification;  
2487           (v) the period of time during which the list of prequalified potential [~~bidders or~~  
2488 ~~offerors~~] vendors will remain in effect, which may not be longer than 18 months after the list of  
2489 prequalified potential [~~bidders or offerors~~] vendors is made available to the public under  
2490 Subsection (8)(b); and  
2491           (vi) that a [~~public~~] procurement unit may limit participation in an invitation for bids or  
2492 a request for proposals, during the time period described in Subsection (3)(b)(v), to the  
2493 potential [~~bidders or offerors~~] vendors that are prequalified to provide the specified type of

2494 procurement item.

2495 (4) The minimum criteria described in Subsection (3)(b)(iv):

2496 (a) shall include the prequalification requirements unique to the procurement;

2497 (b) may include performance rating criteria; and

2498 (c) may not be so restrictive that the criteria unreasonably limit competition.

2499 (5) A [~~public~~] procurement unit may, before making a final list of prequalified [~~bidders~~  
2500 ~~or offerors~~] vendors, request additional information to clarify responses made to the request for  
2501 [~~prequalifications~~] qualifications.

2502 (6) A potential [~~bidder or offeror~~] vendor shall be included on the list of prequalified  
2503 potential [~~bidders or offerors~~] vendors if the [~~bidder or offeror~~] vendor:

2504 (a) submits a timely, responsive response to the request for [~~prequalifications~~]  
2505 qualifications; and

2506 (b) meets the minimum criteria for qualification described in Subsection (3)(b)(iv).

2507 (7) If a request for qualifications will result in only one [~~potential bidder or offeror~~]  
2508 vendor being placed on the list of prequalified potential [~~bidders or offerors~~] vendors:

2509 (a) the [~~public~~] procurement unit shall cancel the request for qualifications; and

2510 (b) the list may not be used by the [~~public~~] procurement unit.

2511 (8) The [~~public~~] procurement unit shall:

2512 (a) before making the list of prequalified potential [~~bidders or offerors~~] vendors  
2513 available to the public, provide each potential [~~bidder or offeror~~] vendor who provided  
2514 information in response to the request, but who did not meet the minimum qualifications for  
2515 placement on the list, a written justification statement describing why the potential [~~bidder or~~  
2516 ~~offeror~~] vendor did not meet the criteria for inclusion on the list; and

2517 (b) within 30 days after the day of the deadline described in Subsection (3)(b)(iii),  
2518 make the list of prequalified potential [~~bidders or offerors~~] vendors available to the public.

2519 Section 34. Section **63G-6a-404 (Effective 05/01/13)** is amended to read:

2520 **63G-6a-404 (Effective 05/01/13). Approved vendor list.**

2521 [~~(1) An authorized purchasing entity]~~

- 2522 (1) (a) As used in this section, "vendor" is as defined in Subsection 63G-6a-403(1)(a).
- 2523 (b) The process described in this section may not be used for construction projects that
- 2524 cost more than an amount specified by the applicable rulemaking authority.
- 2525 (c) The division or a procurement unit with independent procurement authority may
- 2526 compile a list of approved [~~contractors~~] vendors from which procurement items may be
- 2527 obtained.
- 2528 (2) An approved [~~contractor~~] vendor list may only be compiled from:
- 2529 (a) timely, responsive [~~bids or~~] responses received [~~in response to: (i) an invitation for~~
- 2530 ~~bids; or (ii) a request for proposals; or (b) timely, responsive responses to: (i) the~~
- 2531 ~~prequalification process described in] under Section 63G-6a-403[;] or [(ii)] the process~~
- 2532 ~~described in Part 15, Architect-Engineer Services.~~
- 2533 (3) In order to ensure equal treatment of [~~all contractors on a contractor list, an~~
- 2534 ~~authorized purchasing entity] vendors on an approved vendor list, for services other than the~~
- 2535 ~~services described in Subsection (4) or (5) the procurement unit shall use one of the following~~
- 2536 ~~methods in an unbiased manner:~~
- 2537 (a) a rotation system, organized alphabetically, numerically, or randomly;
- 2538 (b) assigning [~~contractors~~] vendors to a specified geographical area; or
- 2539 (c) classifying each [~~contractor~~] vendor based on each [~~contractor's~~] vendor's particular
- 2540 ~~expertise, qualifications, or field.~~
- 2541 (4) (a) For a construction project that costs less than the amount established by the
- 2542 applicable rulemaking authority, under Subsection (1)(b), a procurement unit shall select a
- 2543 potential construction contractor from an approved potential contractor list, using an invitation
- 2544 for bids or a request for proposals.
- 2545 (b) For architectural or engineering services for a construction project described in
- 2546 Subsection (4)(a), a procurement unit shall select a potential contractor from an approved
- 2547 potential contractor list:
- 2548 (i) using a rotation system, organized alphabetically, numerically, or randomly;
- 2549 (ii) assigning a potential contractor to a specified geographical area; or

2550 (iii) classifying each potential contractor based on the potential contractor's field or  
2551 area of expertise.

2552 (5) A procurement unit may not use an approved vendor list described in this section  
2553 for a construction project with a cost that is equal to or greater than the amount established by  
2554 the applicable rulemaking authority under Subsection (1)(b).

2555 (6) (a) After selecting a potential contractor under Subsection (4)(b), a procurement  
2556 unit shall enter into fee negotiations with the potential contractor.

2557 (b) If, after good faith negotiations, the procurement unit and the potential contractor  
2558 are unable to negotiate a fee that is acceptable to both parties, the procurement unit shall select  
2559 another contractor under Subsection (4)(b) and enter into fee negotiations with that potential  
2560 contractor.

2561 Section 35. Section **63G-6a-406 (Effective 05/01/13)** is amended to read:

2562 **63G-6a-406 (Effective 05/01/13). Public notice of procurement process or sole**  
2563 **source procurement.**

2564 (1) ~~[An authorized purchasing entity]~~ The division or a procurement unit with  
2565 independent procurement authority that issues an invitation for bids, a request for proposals, or  
2566 [another document] a notice of sole source procurement required [by this chapter] to be  
2567 published in accordance with this section, shall provide public notice that includes:

2568 (a) for an invitation for bids or a request for proposals, the name of the [authorized  
2569 purchasing entity and] issuing procurement unit;

2570 (b) the name of the [public] procurement unit acquiring the procurement item;

2571 ~~[(b)]~~ (c) for an invitation for bids or a request for proposals, information on how to  
2572 contact the [authorized purchasing entity] issuing procurement unit in relation to the invitation  
2573 for bids[;] or request for proposals[; or other document];

2574 (d) for a notice of sole source procurement, contact information and other information  
2575 relating to contesting, or obtaining additional information in relation to, the sole source  
2576 procurement;

2577 ~~[(e)]~~ (e) for an invitation for bids or a request for proposals, the date of the opening and

2578 closing of the invitation for bids or request for proposals;

2579 (f) for a notice of sole source procurement, the earliest date that the procurement unit  
2580 may make the sole source procurement;

2581 ~~[(d)]~~ (g) information on how to obtain a copy of the invitation for bids, request for  
2582 proposals, or ~~[other document]~~ further information related to the sole source procurement; and

2583 ~~[(e)]~~ (h) a general description of the procurement items that will be obtained through  
2584 the standard procurement process or sole source procurement.

2585 (2) Except as provided in Subsection ~~[(3)]~~ (4), for an invitation for bids or a request for  
2586 proposals, the [authorized purchasing entity] issuing procurement unit shall publish the notice  
2587 described in Subsection (1), using at least one of the following methods:

2588 (a) at least ~~[10]~~ seven days before the day of the deadline for submission of a bid or  
2589 other response, publish the notice:

2590 (i) in a newspaper of general circulation in the state; or

2591 (ii) in a newspaper of local circulation in the area:

2592 (A) directly impacted by the procurement; or

2593 (B) over which the ~~[public]~~ procurement unit has jurisdiction; or

2594 (b) at least ~~[10]~~ seven consecutive days before the day of the deadline for submission  
2595 of a bid or other response, publish the notice:

2596 (i) on the main website for the ~~[authorized purchasing entity or public]~~ issuing  
2597 procurement unit or the procurement unit acquiring the procurement item; or

2598 (ii) on a state website that is owned, managed by, or provided under contract with, the  
2599 division for posting a public procurement notice.

2600 (3) Except as provided in Subsection (4), for a sole source procurement for which  
2601 notice is required to be published in accordance with this section, the procurement unit making  
2602 the sole source procurement shall publish the notice described in Subsection (1), using at least  
2603 one of the following methods:

2604 (a) at least seven days before the day on which the procurement unit makes the sole  
2605 source procurement, publish the notice:

2606 (i) in a newspaper of general circulation in the state; or  
 2607 (ii) in a newspaper of local circulation in the area;  
 2608 (A) directly impacted by the procurement; or  
 2609 (B) over which the procurement unit has jurisdiction; or  
 2610 (b) at least seven consecutive days before the day on which the procurement unit makes  
 2611 the sole source procurement, publish the notice:

2612 (i) on the main website for the procurement unit acquiring the procurement item; or  
 2613 (ii) on a state website that is owned by, managed by, or provided under contract with,  
 2614 the division for posting a procurement notice.

2615 ~~[(3)]~~ (4) ~~[An authorized purchasing entity]~~ An issuing procurement unit, or the  
 2616 procurement unit making a sole source procurement may reduce the ~~[10-day]~~ seven-day period  
 2617 described in Subsection (2) or (3), if the procurement officer or the procurement officer's  
 2618 designee signs a written statement that:

2619 (a) states that a shorter time is needed; and  
 2620 (b) as it relates to an invitation for bids or a request for proposals, determines that  
 2621 competition from multiple sources may be obtained within the shorter period of time.

2622 ~~[(4)]~~ (5) (a) ~~An [authorized purchasing entity]~~ issuing procurement unit shall make a  
 2623 copy of an invitation for bids~~;~~ or a request for proposals~~;~~ ~~or any other document described in~~  
 2624 ~~Subsection (1);~~ available for public inspection at the main office of the ~~[authorized purchasing~~  
 2625 ~~entity]~~ issuing procurement unit or on the website described in Subsection (2)(b).

2626 (b) A procurement unit making a sole source procurement shall make a copy of  
 2627 information related to the sole source procurement available for public inspection at the main  
 2628 office of the procurement unit or on the website described in Subsection (3)(b).

2629 Section 36. Section **63G-6a-407 (Effective 05/01/13)** is amended to read:

2630 **63G-6a-407 (Effective 05/01/13). Purpose of specifications.**

2631 (1) All specifications shall seek to promote the overall economy and best use for the  
 2632 purposes intended and encourage competition in satisfying the needs of the ~~[public]~~  
 2633 procurement unit, and may not be unduly restrictive.

2634 (2) The requirements of this part regarding the purposes and nonrestrictiveness of  
2635 specifications shall apply to all specifications, including those prepared by architects,  
2636 engineers, designers, and draftsmen for public contracts.

2637 Section 37. Section **63G-6a-408 (Effective 05/01/13)** is amended to read:

2638 **63G-6a-408 (Effective 05/01/13). Small purchases.**

2639 (1) As used in this section:

2640 (a) "Annual cumulative threshold" means the maximum total annual amount,  
2641 established by the applicable rulemaking authority under Subsection (2)(a)(i), that a  
2642 procurement unit may expend to obtain procurement items from the same source under this  
2643 section.

2644 (b) "Individual procurement threshold" means the maximum amount, established by  
2645 the applicable rulemaking authority under Subsection (2)(a)(ii), for which a procurement unit  
2646 may purchase a procurement item under this section.

2647 (c) "Single procurement aggregate threshold" means the maximum total amount,  
2648 established by the applicable rulemaking authority under Subsection (2)(a)(iii), that a  
2649 procurement unit may expend to obtain multiple procurement items from one source at one  
2650 time under this section.

2651 ~~[(+)]~~ (2) The applicable rulemaking authority may make rules governing small  
2652 purchases, including:

2653 ~~[(a) establishing the maximum expenditure that may qualify as a small purchase, unless~~  
2654 ~~otherwise provided by statute;]~~

2655 ~~[(b)]~~ (a) establishing expenditure thresholds [and procurement requirements related to  
2656 those thresholds; and], including:

2657 (i) an annual cumulative threshold;

2658 (ii) an individual procurement threshold; and

2659 (iii) a single procurement aggregate threshold;

2660 (b) establishing procurement requirements relating to the thresholds described in  
2661 Subsection (2)(a); and

2662 (c) the use of electronic, telephone, or written quotes.

2663 (3) Expenditures made under this section by a procurement unit may not exceed a  
2664 threshold established by the applicable rulemaking authority, unless the chief procurement  
2665 officer or the head of a procurement unit with independent procurement authority gives written  
2666 authorization to exceed the threshold that includes the reasons for exceeding the threshold.

2667 ~~[(2)(a)]~~ (4) Except as provided in Subsection ~~[(2)(b), a public]~~ (5), an executive  
2668 branch procurement unit may not obtain a procurement item through a small purchase standard  
2669 procurement process if the procurement item may be obtained through a state cooperative  
2670 contract or a contract awarded by the chief procurement officer under Subsection  
2671 63G-6a-2105(1).

2672 ~~[(b)]~~ (5) Subsection ~~[(2)(a)]~~ (4) does not apply if:

2673 ~~[(i) to a non-executive state procurement unit;]~~

2674 ~~[(ii) if the procurement officer or the head of the state purchasing unit authorizes an~~  
2675 ~~exception to the requirement; or]~~

2676 ~~[(iii) to a local public procurement unit.]~~

2677 ~~[(c) An entity that is exempt from the requirements of Subsection (2)(a) is encouraged,~~  
2678 ~~but not required, to comply with Subsection (2)(a).]~~

2679 (a) the procurement item is obtained for an unanticipated, urgent or unanticipated,  
2680 emergency condition, including:

2681 (i) an item needed to avoid stopping a public construction project;

2682 (ii) an immediate repair to a facility or equipment; or

2683 (iii) another emergency condition; or

2684 (b) the chief procurement officer or the head of a procurement unit that is an executive  
2685 branch procurement unit with independent procurement authority:

2686 (i) determines in writing that it is in the best interest of the procurement unit to obtain  
2687 an individual procurement item outside of the state contract, comparing:

2688 (A) the contract terms and conditions applicable to the procurement item under the  
2689 state contract with the contract terms and conditions applicable to the procurement item if the



2690 procurement item is obtained outside of the state contract;

2691 (B) the maintenance and service applicable to the procurement item under the state  
2692 contract with the maintenance and service applicable to the procurement item if the  
2693 procurement item is obtained outside of the state contract;

2694 (C) the warranties applicable to the procurement item under the state contract with the  
2695 warranties applicable to the procurement item if the procurement item is obtained outside of  
2696 the state contract;

2697 (D) the quality of the procurement item under the state contract with the quality of the  
2698 procurement item if the procurement item is obtained outside of the state contract; and

2699 (E) the cost of the procurement item under the state contract with the cost of the  
2700 procurement item if the procurement item is obtained outside of the state contract;

2701 (ii) for a procurement item that, if defective in its manufacture, installation, or  
2702 performance, may result in serious physical injury, death, or substantial property damage,  
2703 determines in writing that the terms and conditions, relating to liability for injury, death, or  
2704 property damage, available from the source other than the contractor who holds the state  
2705 contract, are similar to, or better than, the terms and conditions available under the state  
2706 contract; and

2707 (iii) grants an exception, in writing, to the requirement described in Subsection (4).

2708 ~~[(3)]~~ ~~(6)~~ ~~[(a) Except as provided in Subsection (3)(b), a public]~~ Except as otherwise  
2709 expressly provided in this section, a procurement unit:

2710 ~~[(i)]~~ (a) may not use the small purchase standard procurement process described in this  
2711 section for ongoing, continuous, and regularly scheduled procurements that exceed the annual  
2712 cumulative threshold; and

2713 ~~[(ii)]~~ (b) shall make its ongoing, continuous, and regularly scheduled procurements that  
2714 exceed the annual cumulative threshold through a contract awarded through ~~[a]~~ another  
2715 standard procurement process described in this chapter or an applicable exception to ~~[a]~~  
2716 another standard procurement process, described in Part 8, Exceptions to Procurement  
2717 Requirements.

2718 ~~[(b) Subsection (3)(a) does not apply to an ongoing, continuous, or regularly scheduled~~  
2719 ~~procurement to the extent that the total expenditures for the procurement during a fiscal year do~~  
2720 ~~not exceed the maximum expenditure that the public procurement unit is permitted to make~~  
2721 ~~under this section, as established by rule made by the applicable rulemaking authority.]~~

2722 (7) This section does not prohibit regularly scheduled payments for a procurement item  
2723 obtained under another provision of this chapter.

2724 ~~[(4)] (8)~~ It is unlawful for a person to intentionally or knowingly divide a procurement  
2725 into one or more smaller procurements with the intent to make a procurement:

2726 (a) qualify as a small purchase, if, before dividing the procurement, it would not have  
2727 qualified as a small purchase; or

2728 (b) meet a threshold established by rule made by the applicable rulemaking authority,  
2729 if, before dividing the procurement, it would not have met the threshold.

2730 ~~[(5)] (9)~~ A division of a procurement that is prohibited under Subsection ~~[(4)] (8)~~  
2731 includes doing any of the following with the intent or knowledge described in Subsection ~~[(4)]~~  
2732 (8):

2733 (a) making two or more separate purchases;

2734 (b) dividing an invoice or purchase order into two or more invoices or purchase orders;

2735 or

2736 (c) making smaller purchases over a period of time.

2737 ~~[(6)] (10)~~ A person who violates Subsection ~~[(4)] (8)~~ is subject to the criminal  
2738 penalties described in Section 63G-6a-2305.

2739 ~~[(7)] (11)~~ The Division of Finance within the Department of Administrative Services  
2740 may conduct an audit of ~~[a public procurement unit in the state]~~ an executive branch  
2741 procurement unit to verify compliance with the requirements of this section.

2742 ~~[(8)] (12)~~ ~~[A public procurement unit in the state]~~ An executive branch procurement  
2743 unit may not make a small purchase after January 1, ~~[2013]~~ 2014, unless the chief procurement  
2744 officer certifies that the person responsible for procurements in the ~~[public]~~ procurement unit  
2745 has satisfactorily completed training on this section and the rules made under this section.

2746 Section 38. Section **63G-6a-503 (Effective 05/01/13)** is amended to read:

2747 **63G-6a-503 (Effective 05/01/13). Request for information and response**  
2748 **nonbinding.**

2749 (1) A request for information is not a procurement process and may not be used to  
2750 make a purchase or enter into a contract. A [public] procurement unit is required to use a  
2751 standard procurement process, or comply with an exception to the requirement to use a  
2752 standard procurement process described in Part 8, Exceptions to Procurement Requirements, in  
2753 order to make a purchase or enter into a contract.

2754 (2) A response to a request for information is not an offer and may not be accepted to  
2755 form a binding contract.

2756 Section 39. Section **63G-6a-505** is enacted to read:

2757 **63G-6a-505. Protected information.**

2758 Information submitted to or by a governmental entity in response to a request for  
2759 information is protected under Section 63G-2-305.

2760 Section 40. Section **63G-6a-602 (Effective 05/01/13)** is amended to read:

2761 **63G-6a-602 (Effective 05/01/13). Contracts awarded by bidding.**

2762 (1) Except as otherwise provided in this chapter, [~~an authorized purchasing entity~~] the  
2763 division or a procurement unit with independent procurement authority shall award a contract  
2764 for a procurement by bidding, in accordance with the rules of the applicable rulemaking  
2765 authority.

2766 (2) The bidding standard procurement process is appropriate to use when cost is the  
2767 major factor in determining the award of a procurement.

2768 Section 41. Section **63G-6a-603 (Effective 05/01/13)** is amended to read:

2769 **63G-6a-603 (Effective 05/01/13). Invitation for bids -- Contents -- Notice.**

2770 (1) The bidding standard procurement process begins when [~~the authorized purchasing~~  
2771 ~~entity~~] the division or a procurement unit with independent procurement authority issues an  
2772 invitation for bids.

2773 (2) An invitation for bids shall:

- 2774 (a) state the period of time during which bids will be accepted;
- 2775 (b) describe the manner in which a bid shall be submitted;
- 2776 (c) state the place where a bid shall be submitted; and
- 2777 (d) include, or incorporate by reference:
- 2778 (i) a description of the procurement items sought;
- 2779 (ii) the objective criteria that will be used to evaluate the bids; and
- 2780 (iii) the required contractual terms and conditions.
- 2781 (3) An [~~authorized purchasing entity~~] issuing procurement unit shall publish an
- 2782 invitation for bids in accordance with the requirements of Section 63G-6a-406.
- 2783 Section 42. Section **63G-6a-604 (Effective 05/01/13)** is amended to read:
- 2784 **63G-6a-604 (Effective 05/01/13). Bid opening and acceptance.**
- 2785 (1) Bids shall be opened:
- 2786 (a) publicly, except as provided in Section 63G-6a-611;
- 2787 (b) in the presence of one or more witnesses, unless an electronic bid opening process
- 2788 is used where bidders may see the opening of the bid electronically; and
- 2789 (c) at the time and place indicated in the invitation for bids.
- 2790 (2) Bids shall be accepted unconditionally, without alteration or correction, except as
- 2791 otherwise authorized by this chapter.
- 2792 (3) (a) The procurement officer shall reject a bid that is not responsive or responsible.
- 2793 (b) A bid that is not responsive includes a bid that:
- 2794 (i) is conditional;
- 2795 (ii) attempts to modify the bid requirements;
- 2796 (iii) contains additional terms or conditions; or
- 2797 (iv) fails to conform with the requirements or specifications of the invitation for bids.
- 2798 (c) A bid that is not responsible includes a bid where the procurement officer
- 2799 reasonably concludes that the bidder or an employee, agent, or subcontractor of the bidder, at
- 2800 any tier, is unable to satisfactorily fulfill the bid requirements.
- 2801 (4) An [~~authorized purchasing entity~~] issuing procurement unit may not accept a bid

2802 after the time for submission of a bid has expired.

2803 (5) The procurement officer shall:

2804 (a) record the name of each bidder and the amount of each bid; and

2805 (b) after the bid is awarded, make the information described in Subsection (5)(a)

2806 available for public disclosure.

2807 Section 43. Section **63G-6a-605 (Effective 05/01/13)** is amended to read:

2808 **63G-6a-605 (Effective 05/01/13). Correction or withdrawal of bids -- Cancellation**  
2809 **of award.**

2810 (1) Correction or withdrawal of inadvertently erroneous bids, or the cancellation of an  
2811 award or a contract that is based on an unintentionally erroneous bid, may be made in  
2812 accordance with the rules of the applicable rulemaking authority.

2813 (2) Notwithstanding Subsection (1), the following changes may not be made to a bid  
2814 after the bid opening:

2815 (a) changes in bid pricing;

2816 (b) changes in the cost evaluation formula; or

2817 (c) changes in other provisions that are prejudicial to fair competition or to the interest  
2818 of the ~~[public]~~ procurement unit.

2819 (3) A decision to permit the correction or withdrawal of a bid or the cancellation of an  
2820 award or a contract under Subsection (1) shall be supported in a written document, signed by  
2821 ~~the chief procurement officer,~~ the procurement officer, or the head of the ~~[authorized~~  
2822 ~~purchasing entity]~~ procurement unit with independent procurement authority.

2823 Section 44. Section **63G-6a-606 (Effective 05/01/13)** is amended to read:

2824 **63G-6a-606 (Effective 05/01/13). Evaluation of bids -- Award -- Cancellation --**  
2825 **Disqualification.**

2826 (1) ~~[An authorized purchasing entity]~~ The division or a procurement unit with  
2827 independent procurement authority shall evaluate each bid using the objective criteria  
2828 described in the invitation for bids, which may include:

2829 (a) experience;

- 2830 (b) performance ratings;
- 2831 (c) inspection;
- 2832 (d) testing;
- 2833 (e) quality;
- 2834 (f) workmanship;
- 2835 (g) time and manner of delivery;
- 2836 (h) references;
- 2837 (i) financial stability;
- 2838 (j) cost;
- 2839 (k) suitability for a particular purpose; or
- 2840 (l) other objective criteria specified in the invitation for bids.
- 2841 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.
- 2842 (3) The ~~[authorized purchasing entity]~~ procurement unit shall:
- 2843 (a) award the contract as soon as practicable to:
- 2844 (i) the lowest responsive and responsible bidder who meets the objective criteria
- 2845 described in the invitation for bids; or
- 2846 (ii) if, in accordance with Subsection (4), the procurement officer or the head of the
- 2847 ~~[authorized purchasing entity]~~ procurement unit disqualifies the bidder described in Subsection
- 2848 (3)(a)(i), the next lowest responsive and responsible bidder who meets the objective criteria
- 2849 described in the invitation for bids; or
- 2850 (b) cancel the invitation for bids without awarding a contract.
- 2851 (4) In accordance with Subsection (5), the procurement officer or the head of the
- 2852 ~~[authorized purchasing entity]~~ procurement unit may disqualify a bidder for:
- 2853 (a) a violation of this chapter;
- 2854 (b) a violation of a requirement of the invitation for bids;
- 2855 (c) unlawful or unethical conduct; or
- 2856 (d) a change in circumstance that, had the change been known at the time the bid was
- 2857 submitted, would have caused the bidder to not be the lowest responsive and responsible bidder

2858 who meets the objective criteria described in the invitation for bids.

2859 (5) A procurement officer or head of [~~an authorized purchasing entity~~] a procurement  
2860 unit who disqualifies a bidder under Subsection (4) shall:

2861 (a) make a written finding, stating the reasons for disqualification; and

2862 (b) provide a copy of the written finding to the disqualified bidder.

2863 (6) If [~~an authorized purchasing entity~~] a procurement unit cancels an invitation for  
2864 bids without awarding a contract, the [~~authorized purchasing entity~~] procurement unit shall  
2865 make available for public inspection a written justification for the cancellation.

2866 Section 45. Section **63G-6a-607 (Effective 05/01/13)** is amended to read:

2867 **63G-6a-607 (Effective 05/01/13). Action when all bids are over budget.**

2868 (1) Except as provided in Subsection (2) or (3), if the fiscal officer for the [~~public~~]  
2869 procurement unit certifies that all accepted bids exceed available funds and that the lowest  
2870 responsive and responsible bidder does not exceed the available funds by more than 5%, the  
2871 procurement officer may negotiate an adjustment of the bid price and bid requirements with the  
2872 lowest responsive and responsible bidder in order to bring the bid within the amount of  
2873 available funds.

2874 (2) A procurement officer may not adjust the bid requirements under Subsection (1) if  
2875 there is a substantial likelihood that, had the adjustment been included in the invitation for  
2876 bids, a person that did not submit a bid would have submitted a responsive, responsible, and  
2877 competitive bid.

2878 (3) The Division of Facilities Construction and Management is exempt from the  
2879 requirements of this section if:

2880 (a) the building board adopts rules governing procedures when all accepted bids exceed  
2881 available funds; and

2882 (b) the Division of Facilities Construction and Management complies with the rules  
2883 described in Subsection (3)(a).

2884 Section 46. Section **63G-6a-608 (Effective 05/01/13)** is amended to read:

2885 **63G-6a-608 (Effective 05/01/13). Tie bids -- Resolution -- Copies provided to**

2886 **attorney general.**

2887 (1) A procurement officer shall resolve a tie bid in accordance with a method  
2888 established by rule made by the applicable rulemaking authority. The method may include  
2889 awarding the tie bid:

2890 (a) to the tie bidder who:

2891 (i) is a provider of state products, if no other tie bidder is a responsive provider of state  
2892 products;

2893 (ii) is closest to the point of delivery;

2894 (iii) received the previous award; or

2895 (iv) will provide the earliest delivery date;

2896 (b) by drawing lots; or

2897 (c) by any other reasonable method of resolving a tie bid.

2898 (2) The method chosen by the procurement officer to resolve a tie bid shall be at the  
2899 sole discretion of the procurement officer, subject to the rules established under Subsection (1).

2900 (3) A [~~public~~] procurement unit in the state executive branch shall provide a copy of  
2901 the procurement to the attorney general if an award of a contract to a tie bidder exceeds  
2902 \$100,000 in expenditures.

2903 Section 47. Section **63G-6a-609 (Effective 05/01/13)** is amended to read:

2904 **63G-6a-609 (Effective 05/01/13). Multiple stage bidding process.**

2905 (1) [~~An authorized purchasing entity~~] The division or a procurement unit with  
2906 independent procurement authority may conduct a bid in multiple stages, to:

2907 (a) narrow the number of bidders who will progress to a subsequent stage;

2908 (b) prequalify bidders for subsequent stages, in accordance with Section 63G-6a-403;

2909 (c) enter into a contract for a single procurement; or

2910 (d) award multiple contracts for a series of upcoming procurements.

2911 (2) The invitation for bids for a multiple stage bidding process shall:

2912 (a) describe the requirements for, and purpose of, each stage of the process;

2913 (b) indicate whether the [~~authorized purchasing entity~~] procurement unit intends to



2914 award:

2915 (i) a single contract; or

2916 (ii) multiple contracts for a series of upcoming procurements; and

2917 (c) state that:

2918 (i) the first stage is for prequalification only;

2919 (ii) a bidder may not submit any pricing information in the first stage of the process;

2920 and

2921 (iii) bids in the second stage will only be accepted from a person who prequalifies in

2922 the first stage.

2923 (3) During the first stage, the ~~[authorized purchasing entity]~~ procurement unit:

2924 (a) shall prequalify bidders to participate in subsequent stages, in accordance with

2925 Section 63G-6a-403;

2926 (b) shall prohibit the submission of pricing information until the final stage; and

2927 (c) may, before beginning the second stage, request additional information to clarify

2928 the qualifications of the bidders who submit timely responses.

2929 (4) Contracts may only be awarded for a procurement item described in stage one of

2930 the invitation for bids.

2931 (5) ~~[An authorized purchasing entity]~~ The division or a procurement unit with

2932 independent procurement authority may conduct a bid in as many stages as it determines to be

2933 appropriate.

2934 (6) Except as otherwise expressly provided in this section, ~~[an authorized purchasing~~

2935 ~~entity]~~ the division or a procurement unit with independent procurement authority shall

2936 conduct a multiple stage process in accordance with this part.

2937 (7) The applicable rulemaking authority may make rules governing the use of a

2938 multiple stage process described in this section.

2939 Section 48. Section **63G-6a-610 (Effective 05/01/13)** is amended to read:

2940 **63G-6a-610 (Effective 05/01/13). Contracts awarded by reverse auction.**

2941 (1) Reverse auction bidding may be used if the procurement officer determines, in

2942 writing, that reverse auction bidding will provide the best value to the ~~[public]~~ procurement  
2943 unit.

2944 (2) Reverse auction bidding is appropriate to use when there are multiple prequalified  
2945 providers of a procurement item.

2946 Section 49. Section **63G-6a-611 (Effective 05/01/13)** is amended to read:

2947 **63G-6a-611 (Effective 05/01/13). Invitation for bids for reverse auction -- Notice**  
2948 **contents -- Agreement to terms and conditions.**

2949 (1) The reverse auction bidding process begins when ~~[an authorized purchasing entity]~~  
2950 the division or a procurement unit with independent procurement authority issues an invitation  
2951 for bids to prequalify bidders to participate in the reverse auction.

2952 (2) The invitation for bids shall:

2953 (a) state the period of time during which bids will be accepted;

2954 (b) state that the bid will be conducted by reverse auction;

2955 (c) describe the procurement items sought;

2956 (d) describe the minimum requirements to become prequalified;

2957 (e) state the required contractual terms and conditions; and

2958 (f) describe the procedure that the ~~[authorized purchasing entity]~~ division or the  
2959 procurement unit with independent procurement authority will follow in conducting the reverse  
2960 auction.

2961 (3) In order to participate in a reverse auction, a bidder shall agree to:

2962 (a) the specifications, and contractual terms and conditions, of the procurement; and

2963 (b) be trained in, and abide by, the procedure that the ~~[authorized purchasing entity]~~

2964 division or the procurement unit with independent procurement authority will follow in

2965 conducting the reverse auction.

2966 (4) ~~[An authorized purchasing entity]~~ The division or a procurement unit with

2967 independent procurement authority shall publish an invitation for bids for a reverse auction in

2968 accordance with the requirements of Section 63G-6a-406.

2969 Section 50. Section **63G-6a-612 (Effective 05/01/13)** is amended to read:

2970 **63G-6a-612 (Effective 05/01/13). Conduct of reverse auction.**

2971 (1) When conducting a reverse auction, [~~an authorized purchasing entity~~] the division  
2972 or a procurement unit with independent procurement authority:

2973 (a) may conduct the reverse auction at a physical location or by electronic means;

2974 (b) shall permit all prequalified bidders to participate in the reverse auction;

2975 (c) may not permit a bidder to participate in the reverse auction if the bidder did not  
2976 prequalify to participate in the reverse auction;

2977 (d) may not accept a bid after the time for submission of a bid has expired;

2978 (e) shall update the bids on a real time basis; and

2979 (f) shall conduct the reverse auction in a manner that permits each bidder to:

2980 (i) bid against each other; and

2981 (ii) lower the bidder's price below the lowest bid before the reverse auction closes.

2982 (2) At the end of the reverse auction, the [~~authorized purchasing entity~~] procurement  
2983 unit shall:

2984 (a) award the contract as soon as practicable to the lowest responsive and responsible  
2985 bidder who meets the objective criteria described in the invitation for bids; or

2986 (b) cancel the reverse auction without awarding a contract.

2987 (3) After the reverse auction is finished, the procurement officer shall make publicly  
2988 available:

2989 (a) (i) the amount of the final bid submitted by each bidder during the reverse auction;  
2990 and

2991 (ii) the identity of the bidder that submitted each final bid; and

2992 (b) if practicable:

2993 (i) the amount of each bid submitted during the reverse auction; and

2994 (ii) the identity of the bidder that submitted each bid.

2995 Section 51. Section **63G-6a-702 (Effective 05/01/13)** is amended to read:

2996 **63G-6a-702 (Effective 05/01/13). Contracts awarded by request for proposals.**

2997 (1) A request for proposals standard procurement process may be used instead of

- 2998 bidding if the procurement officer determines, in writing, that the request for proposals  
2999 standard procurement process will provide the best value to the [~~public~~] procurement unit.
- 3000 (2) The request for proposals standard procurement process is appropriate to use for:  
3001 (a) the procurement of professional services;  
3002 (b) a design-build procurement;  
3003 (c) when cost is not the most important factor to be considered in making the selection  
3004 that is most advantageous to the [~~public~~] procurement unit; or  
3005 (d) when factors, in addition to cost, are highly significant in making the selection that  
3006 is most advantageous to the [~~public~~] procurement unit.
- 3007 Section 52. Section **63G-6a-703 (Effective 05/01/13)** is amended to read:  
3008 **63G-6a-703 (Effective 05/01/13). Request for proposals -- Notice -- Contents.**
- 3009 (1) The request for proposals standard procurement process begins when [~~the~~  
3010 ~~authorized purchasing entity~~] the division or a procurement unit with independent procurement  
3011 authority issues a request for proposals.
- 3012 (2) A request for proposals shall:  
3013 (a) state the period of time during which a proposal will be accepted;  
3014 (b) describe the manner in which a proposal shall be submitted;  
3015 (c) state the place where a proposal shall be submitted;  
3016 (d) include, or incorporate by reference:  
3017 (i) a description of the procurement items sought;  
3018 (ii) a description of the subjective and objective criteria that will be used to evaluate  
3019 the proposal; and  
3020 (iii) the standard contractual terms and conditions required by the authorized  
3021 purchasing entity;  
3022 (e) state the relative weight that will be given to each score awarded for the criteria  
3023 described in Subsection (2)(d)(ii), including cost;  
3024 (f) state the formula that will be used to determine the score awarded for the cost of  
3025 each proposal;

3026 (g) if the request for proposals will be conducted in multiple stages, as described in  
3027 Section 63G-6a-710, include a description of the stages and the criteria and scoring that will be  
3028 used to screen offerors at each stage; and

3029 (h) state that discussions may be conducted with offerors who submit proposals  
3030 determined to be reasonably susceptible of being selected for award, followed by an  
3031 opportunity to make best and final offers, but that proposals may be accepted without  
3032 discussions.

3033 (3) ~~[An authorized purchasing entity]~~ The division or a procurement unit with  
3034 independent procurement authority shall publish a request for proposals in accordance with the  
3035 requirements of Section 63G-6a-406.

3036 Section 53. Section **63G-6a-704 (Effective 05/01/13)** is amended to read:

3037 **63G-6a-704 (Effective 05/01/13). Opening of proposals and acceptance.**

3038 (1) An ~~[authorized purchasing entity]~~ issuing procurement unit shall ensure that  
3039 proposals are opened in a manner that avoids disclosing the contents to competing offerors  
3040 during the evaluation process.

3041 (2) An ~~[authorized purchasing entity]~~ issuing procurement unit may not accept a  
3042 proposal:

3043 (a) after the time for submission of a proposal has expired; or

3044 (b) that is not responsive to the request for proposals.

3045 Section 54. Section **63G-6a-705 (Effective 05/01/13)** is amended to read:

3046 **63G-6a-705 (Effective 05/01/13). Discussions -- Best and final offers.**

3047 (1) After proposals are received and opened, the ~~[authorized purchasing entity]~~ issuing  
3048 procurement unit may conduct discussions with the offerors and allow the offerors to make  
3049 best and final offers after the discussions.

3050 (2) The ~~[authorized purchasing entity]~~ issuing procurement unit shall:

3051 (a) ensure that each offeror receives fair and equal treatment with respect to the other  
3052 offerors;

3053 (b) establish a schedule and procedures for conducting discussions;

- 3054 (c) ensure that information in each proposal and information gathered during
- 3055 discussions is not shared with other offerors until the contract is awarded;
- 3056 (d) ensure that auction tactics are not used in the discussion process, including
- 3057 discussing and comparing the costs and features of other proposals; and
- 3058 (e) set a common date and time for the submission of best and final offers.
- 3059 (3) If an offeror chooses not to participate in a discussion or does not make a timely
- 3060 best and final offer, the offer submitted by the offerors before the conduct of discussions shall
- 3061 be treated as the offeror's best and final offer.

3062 Section 55. Section **63G-6a-707 (Effective 05/01/13)** is amended to read:

3063 **63G-6a-707 (Effective 05/01/13). Evaluation of proposals -- Evaluation**  
3064 **committee.**

3065 (1) Each proposal shall be evaluated using the criteria described in the request for  
3066 proposals, which may include:

- 3067 (a) experience;
- 3068 (b) performance ratings;
- 3069 (c) inspection;
- 3070 (d) testing;
- 3071 (e) quality;
- 3072 (f) workmanship;
- 3073 (g) time, manner, or schedule of delivery;
- 3074 (h) references;
- 3075 (i) financial stability;
- 3076 (j) suitability for a particular purpose;
- 3077 (k) management plans;
- 3078 (l) cost; or
- 3079 (m) other subjective or objective criteria specified in the request for proposals.

3080 (2) Criteria not described in the request for proposals may not be used to evaluate a  
3081 proposal.

- 3082 (3) The ~~[authorized purchasing entity]~~ issuing procurement unit shall:
- 3083 (a) appoint an evaluation committee consisting of at least three individuals ~~[at least one~~  
3084 ~~of which is a representative of the user agency]~~; and
- 3085 (b) ensure that the evaluation committee and each member of the evaluation  
3086 committee:
- 3087 (i) does not have a conflict of interest with any of the offerors;
- 3088 (ii) can fairly evaluate each proposal;
- 3089 (iii) does not contact or communicate with an offeror for any reason other than  
3090 conducting the standard procurement process; and
- 3091 (iv) conducts the evaluation in a manner that ensures a fair and competitive process  
3092 and avoids the appearance of impropriety.
- 3093 (4) The evaluation committee may conduct interviews with, or participate in  
3094 presentations by, the offerors.
- 3095 (5) Except as provided in Subsection (6) or (7), each member of the evaluation  
3096 committee is prohibited from knowing, or having access to, any information relating to the  
3097 cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its  
3098 final recommended scores on all other criteria to the ~~[authorized purchasing entity]~~ issuing  
3099 procurement unit.
- 3100 (6) (a) As used in this Subsection (6), "management fee" includes only the following  
3101 fees of the construction manager/general contractor:
- 3102 (i) preconstruction phase services;
- 3103 (ii) monthly supervision fees for the construction phase; and
- 3104 (iii) overhead and profit for the construction phase.
- 3105 (b) When selecting a construction manager/general contractor for a construction  
3106 project, the evaluation committee:
- 3107 (i) may, at any time after the opening of the responses to the request for proposals, have  
3108 access to, and consider, the management fee proposed by the offerors; and
- 3109 (ii) except as provided in Subsection (7), may not know or have access to any other

3110 information relating to the cost of construction submitted by the offerors, until after the  
3111 evaluation committee submits its final recommended scores on all other criteria to the  
3112 ~~[authorized purchasing entity]~~ issuing procurement unit.

3113 (7) An ~~[authorized purchasing entity]~~ issuing procurement unit is not required to  
3114 comply with Subsection (5) if, before opening the responses to the request for proposals, the  
3115 head of the ~~[authorized purchasing entity]~~ issuing procurement unit or a person designated by  
3116 rule made by the applicable rulemaking authority:

3117 (a) signs a written statement:

3118 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the  
3119 best interest of the ~~[state]~~ procurement unit to waive compliance with Subsection (5); and

3120 (ii) describing the nature of the proposal and the other circumstances relied upon to  
3121 waive compliance with Subsection (5); and

3122 (b) makes the written statement available to the public, upon request.

3123 (8) The evaluation committee shall award scores to each responsive and responsible  
3124 proposal that has not been disqualified from consideration under the provisions of this chapter.

3125 Section 56. Section **63G-6a-708 (Effective 05/01/13)** is amended to read:

3126 **63G-6a-708 (Effective 05/01/13). Cost-benefit analysis.**

3127 ~~[(1) The authorized purchasing entity shall, on the day on which the selection is~~  
3128 ~~announced, make available to each offeror and to the public a written statement that includes:]~~

3129 ~~[(a) the name of the offeror found by the authorized purchasing entity to provide the~~  
3130 ~~greatest overall value to the public procurement unit, taking into account the cost and the other~~  
3131 ~~evaluation criteria described in the request for proposals; and]~~

3132 ~~[(b) the scores awarded to each offeror by the evaluation committee for each evaluation~~  
3133 ~~criteria category described in the request for proposals.]~~

3134 ~~[(2)]~~ (1) If the ~~[contract is]~~ highest score awarded by the evaluation committee,  
3135 including the score for cost, is awarded to [an offeror] a proposal other than the lowest cost  
3136 [offeror] proposal, and the difference between the cost of the ~~[accepted]~~ highest scored  
3137 proposal and the lowest cost proposal exceeds the greater of \$10,000 or 5% of the lowest cost



3138 ~~[offer, an authorized purchasing entity] proposal, the issuing procurement unit shall [include,~~  
3139 ~~with the statement described in Subsection (1), an] make an informal written cost-benefit~~  
3140 analysis that:

3141 (a) explains, in general terms, the advantage to the [public] procurement unit of  
3142 awarding the contract to the higher cost offeror;

3143 (b) includes, except as provided in Subsection ~~[(2)]~~ (1)(c), the estimated added  
3144 financial value to the [public] procurement unit of each criteria that justifies awarding the  
3145 contract to the higher cost offeror;

3146 (c) includes, to the extent that assigning a financial value to a particular criteria is not  
3147 practicable, a statement describing:

3148 (i) why it is not practicable to assign a financial value to the criteria; and

3149 (ii) in nonfinancial terms, the advantage to the [public] procurement unit, based on the  
3150 particular criteria, of awarding the contract to the higher cost offeror;

3151 (d) demonstrates that the value of the advantage to the [public] procurement unit of  
3152 awarding the contract to the higher cost offeror exceeds the value of the difference between the  
3153 cost of the higher cost ~~[offeror] proposal~~ and the cost of the lower cost ~~[offerors] proposals~~;  
3154 and

3155 (e) includes any other information required by rule made by the applicable rulemaking  
3156 authority.

3157 (2) If the informal cost-benefit analysis described in Subsection (1) does not justify  
3158 award of the contract to the offeror that received the highest score, the issuing procurement  
3159 unit:

3160 (a) may not award the contract to the offeror that received the highest score; and

3161 (b) may award the contract to the offeror that received the next highest score, unless:

3162 (i) an informal cost-benefit analysis is required, because the difference between the  
3163 cost proposed by the offeror that received the next highest score and the lowest cost proposal  
3164 exceeds the greater of \$10,000 or 5% of the lowest cost proposal; and

3165 (ii) the informal cost-benefit analysis does not justify award of the contract to the

3166 offeror that received the next highest score.

3167 (3) If the informal cost-benefit analysis described in Subsection (1) does not justify  
3168 award of the contract to the offeror, described in Subsection (2), that received the next highest  
3169 score, the issuing procurement unit:

3170 (a) may not award the contract to the offeror that received the next highest score; and

3171 (b) shall continue with the process described in Subsection (2) for each offeror that  
3172 received the next highest score, until the issuing procurement unit:

3173 (i) awards the contract in accordance with the provisions of this section; or

3174 (ii) cancels the request for proposals.

3175 (4) (a) An issuing procurement unit is not required to make the cost-benefit analysis  
3176 described in this section for a contract with a construction manager/general contractor if the  
3177 contract is awarded based solely on the qualifications of the construction manager/general  
3178 contractor and the management fee described in Subsection 63G-6a-706(6).

3179 (b) The applicable rulemaking authority shall make rules that establish procedures and  
3180 criteria for awarding a contract described in Subsection (4)(a) to ensure that:

3181 (i) a competitive process is maintained; and

3182 (ii) the contract awarded is in the best interest of the procurement unit.

3183 Section 57. Section **63G-6a-709 (Effective 05/01/13)** is amended to read:

3184 **63G-6a-709 (Effective 05/01/13). Award of contract -- Cancellation --**

3185 **Disqualification.**

3186 (1) After the evaluation and scoring of proposals is completed, the [~~authorized~~  
3187 ~~purchasing entity~~] issuing procurement unit shall:

3188 (a) except as provided in Section 63G-6a-708, award the contract as soon as practicable  
3189 to:

3190 (i) the responsive and responsible offeror with the highest total score; or

3191 (ii) if, in accordance with Subsection (2), the procurement officer or the head of the  
3192 [~~authorized purchasing entity~~] issuing procurement unit disqualifies the offeror described in

3193 Subsection (1)(a)(i), the responsive and responsible offeror with the next highest total score; or

3194 (b) cancel the request for proposals without awarding a contract.  
 3195 (2) In accordance with Subsection (3), the procurement officer or the head of the  
 3196 ~~[authorized purchasing entity]~~ issuing procurement unit may disqualify an offeror for:  
 3197 (a) a violation of this chapter;  
 3198 (b) a violation of a requirement of the request for proposals;  
 3199 (c) unlawful or unethical conduct; or  
 3200 (d) a change in circumstance that, had the change been known at the time the proposal  
 3201 was submitted, would have caused the proposal to not have the highest score.

3202 (3) A procurement officer or head of an ~~[authorized purchasing entity]~~ issuing  
 3203 procurement unit who disqualifies an offeror under Subsection (2) shall:  
 3204 (a) make a written finding, stating the reasons for disqualification; and  
 3205 (b) provide a copy of the written finding to the disqualified offeror.  
 3206 (4) If an ~~[authorized purchasing entity]~~ issuing procurement unit cancels a request for  
 3207 proposals without awarding a contract, the ~~[authorized purchasing entity]~~ issuing procurement  
 3208 unit shall make available for public inspection a written justification for the cancellation.

3209 Section 58. Section **63G-6a-709.5** is enacted to read:

3210 **63G-6a-709.5. Publication of award and scores.**

3211 The issuing procurement unit shall, on the day on which the award of a contract is  
 3212 announced, make available to each offeror and to the public a written statement that includes:

3213 (1) the name of the offeror to which the contract is awarded and the total score awarded  
 3214 by the evaluation committee to that offeror;

3215 (2) the total score awarded by the evaluation committee to each offeror to which the  
 3216 contract is not awarded, without identifying which offeror received which score; and

3217 (3) any cost-benefit analysis made, under Section 63G-6a-708, in relation to the request  
 3218 for proposals.

3219 Section 59. Section **63G-6a-710 (Effective 05/01/13)** is amended to read:

3220 **63G-6a-710 (Effective 05/01/13). Multiple stage process.**

3221 (1) ~~[An authorized purchasing entity]~~ The division or a procurement unit with

3222 independent procurement authority may conduct a request for proposals in stages, where an  
3223 earlier stage is used to qualify offerors for subsequent stages or to narrow the number of  
3224 offerors that will move on to subsequent stages.

3225 (2) Except as otherwise expressly provided in this section, [~~an authorized purchasing~~  
3226 ~~entity~~] the division or a procurement unit with independent procurement authority shall  
3227 conduct a multiple stage process in accordance with this part.

3228 Section 60. Section **63G-6a-711 (Effective 05/01/13)** is amended to read:

3229 **63G-6a-711 (Effective 05/01/13). Procurement for submitted proposal.**

3230 (1) As used in this section:

3231 (a) "Committee" is as defined in Section 63M-1-2602.

3232 (b) "Initial proposal" is a proposal submitted by a private entity under Section  
3233 63M-1-2605.

3234 (2) After receipt by the chief procurement officer of a copy of an initial proposal from  
3235 the committee in accordance with Subsection 63M-1-2606(5), including any comment,  
3236 suggestion, or modification to the initial proposal, the chief procurement officer shall initiate a  
3237 standard procurement process in compliance with this chapter.

3238 (3) The chief procurement officer or designee shall:

3239 (a) review each detailed proposal received in accordance with Title 63M, Chapter 1,  
3240 Part 26, Government Procurement Private Proposal Program; and

3241 (b) submit all detailed proposals that meet the guidelines established under Subsection  
3242 63M-1-2608(1) to the committee for review under Section 63M-1-2609.

3243 (4) For purposes of this chapter, the Governor's Office of Economic Development is  
3244 considered [~~the state purchasing unit~~] a procurement unit with independent procurement  
3245 authority for a procurement [~~process~~] under Title 63M, Chapter 1, Part 26, Government  
3246 Procurement Private Proposal Program.

3247 Section 61. Section **63G-6a-802 (Effective 05/01/13)** is amended to read:

3248 **63G-6a-802 (Effective 05/01/13). Sole source -- Award of contract without**  
3249 **competition -- Notice.**

3250 (1) As used in this section:

3251 (a) "Transitional costs" mean the costs of changing from an existing provider of, or  
3252 type of, a procurement item to another provider of, or type of, procurement item.

3253 (b) "Transitional costs" include:

3254 (i) training costs;

3255 (ii) conversion costs;

3256 (iii) compatibility costs;

3257 (iv) system downtime;

3258 (v) disruption of service;

3259 (vi) staff time necessary to put the transition into effect;

3260 (vii) installation costs; and

3261 (viii) ancillary software, hardware, equipment, or construction costs.

3262 (c) "Transitional costs" do not include:

3263 (i) the costs of preparing for or engaging in a procurement process; or

3264 (ii) contract negotiation or contract drafting costs.

3265 (2) ~~[A]~~ The division or a procurement unit with independent procurement authority

3266 may award a contract ~~[may be awarded]~~ for a procurement item without competition if the

3267 procurement officer, the head of ~~[an authorized purchasing entity]~~ the procurement unit, or a

3268 designee of either who is senior to the procurement officer or the head of the ~~[authorized~~

3269 ~~purchasing entity]~~ procurement unit, determines in writing that:

3270 (a) there is only one source for the procurement item; or

3271 (b) the award to a specific supplier, service provider, or contractor is a condition of a  
3272 donation that will fund the full cost of the supply, service, or construction item.

3273 (3) Circumstances under which there is only one source for a procurement item may  
3274 include:

3275 (a) where the most important consideration in obtaining a procurement item is the  
3276 compatibility of equipment, technology, software, accessories, replacement parts, or service;

3277 (b) where a procurement item is needed for trial use or testing;

3278 (c) where transitional costs are unreasonable or cost prohibitive; or

3279 (d) procurement of public utility services.

3280 (4) The applicable rulemaking authority shall make rules regarding the publication of  
3281 notice for a sole source procurement that, at a minimum, require publication of notice of a sole  
3282 source procurement, in accordance with Section 63G-6a-406, if the cost of the procurement  
3283 exceeds \$50,000.

3284 (5) [~~An authorized purchasing entity~~] The division or a procurement unit with  
3285 independent procurement authority who awards a sole source contract on behalf of [~~a public~~]  
3286 another procurement unit shall negotiate with the contractor to ensure that the terms of the  
3287 contract, including price and delivery, are in the best interest of the [~~state~~] procurement unit.

3288 (6) [~~A public procurement unit~~] The division or a procurement unit with independent  
3289 procurement authority may extend a contract for a reasonable period of time without engaging  
3290 in a standard procurement process, if:

3291 (a) the award of a new contract for the procurement item is delayed due to a protest or  
3292 appeal;

3293 (b) the standard procurement process is delayed due to unintentional error;

3294 (c) changes in industry standards require significant changes to specifications for the  
3295 procurement item;

3296 (d) the extension is necessary to prevent the loss of federal funds;

3297 (e) the extension is necessary to address a circumstance where the appropriation of  
3298 state or federal funds has been delayed; or

3299 (f) the extension covers the period of time during which contract negotiations with a  
3300 new provider are being conducted.

3301 Section 62. Section **63G-6a-804 (Effective 05/01/13)** is amended to read:

3302 **63G-6a-804 (Effective 05/01/13). Purchase of prison industry goods.**

3303 (1) (a) A [~~public~~] procurement unit that is not a political subdivision shall purchase  
3304 goods and services produced by the Utah Correctional Industries Division as provided in this  
3305 section.

3306 (b) A political subdivision of the state may, and is encouraged to, purchase goods and  
3307 services under this section.

3308 (c) A [public] procurement unit is not required to use a standard procurement process  
3309 to purchase goods or services under this section.

3310 (2) On or before July 1 of each year, the director of the Utah Correctional Industries  
3311 shall:

3312 (a) publish and distribute to all [public] procurement units and other interested public  
3313 entities a catalog of goods and services provided by the Correctional Industries Division,  
3314 including a description and price of each item offered for sale; and

3315 (b) update and revise the catalog described in Subsection (2)(a) during the year as the  
3316 director considers necessary.

3317 (3) (a) A procurement unit that is not a political subdivision of the state may not  
3318 purchase any goods or services provided by the Correctional Industries Division from any other  
3319 source unless it has been determined in writing by the director of Correctional Industries and by  
3320 the procurement officer or in the case of institutions of higher education, the institutional  
3321 procurement officer, that purchase from the Correctional Industries Division is not feasible due  
3322 to one of the following circumstances:

3323 (i) the good or service offered by the division does not meet the reasonable  
3324 requirements of the [public] procurement unit;

3325 (ii) the good or service cannot be supplied within a reasonable time by the division; or

3326 (iii) the cost of the good or service, including basic price, transportation costs, and  
3327 other expenses of acquisition, is not competitive with the cost of procuring the item from  
3328 another source.

3329 (b) In cases of disagreement under Subsection (3)(a):

3330 (i) the decision may be appealed to a board consisting of:

3331 (A) the director of the Department of Corrections;

3332 (B) the director of Administrative Services; and

3333 (C) a neutral third party agreed upon by the other two members of the board;

3334 (ii) in the case of an institution of higher education of the state, the president of the  
3335 institution, or the president's designee, shall make the final decision; or

3336 (iii) in the case of [~~a non-executive state procurement unit~~] any of the following  
3337 entities, a person designated by the applicable rulemaking authority shall make the final  
3338 decision[-];

3339 (A) a legislative procurement unit;

3340 (B) a judicial procurement unit; or

3341 (C) a public transit district.

3342 Section 63. Section **63G-6a-805 (Effective 05/01/13)** is amended to read:

3343 **63G-6a-805 (Effective 05/01/13). Purchase from community rehabilitation**  
3344 **programs.**

3345 (1) As used in this section:

3346 (a) "Advisory board" means the Purchasing from Persons with Disabilities Advisory  
3347 Board created under this section.

3348 (b) "Central not-for-profit association" means a group of experts designated by the  
3349 advisory board to do the following, under guidelines established by the advisory board:

3350 (i) assist the advisory board with its functions; and

3351 (ii) facilitate the implementation of advisory board policies.

3352 (c) (i) "Community rehabilitation program" means a program that is operated primarily  
3353 for the purpose of the employment and training of persons with a disability by a government  
3354 agency or qualified nonprofit organization which is an income tax exempt organization under  
3355 26 U.S.C. Sec. 501(c)(3) of the Internal Revenue Code.

3356 (ii) A community rehabilitation program:

3357 (A) maintains an employment ratio of at least 75% of the program employees under the  
3358 procurement contract in question have severe disabilities;

3359 (B) (I) complies with any applicable occupational health and safety standards  
3360 prescribed by the United States Department of Labor; or

3361 (II) is a supported employment program approved by the Utah State Office of



3362 Rehabilitation;

3363 (C) has its principal place of business in Utah;

3364 (D) produces any good provided under this section in Utah; and

3365 (E) provides any service that is provided by individuals with a majority of whom  
3366 domiciled in Utah.

3367 (d) "Person with a disability" means a person with any disability as defined by and  
3368 covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

3369 (2) There is created within the division the Purchasing from Persons with Disabilities  
3370 Advisory Board.

3371 (3) The advisory board shall consist of three members, as follows:

3372 (a) the director of the division or the director's designee;

3373 (b) the executive director of the Utah State Office of Rehabilitation, created under  
3374 Section 53A-24-103, or the executive director's designee; and

3375 (c) a representative of the private business community who shall be appointed to a  
3376 three-year term by the governor with the advice and consent of the Senate.

3377 (4) The advisory board shall meet, as needed, to facilitate the procurement of goods  
3378 and services from community rehabilitation programs by a [public] procurement unit under this  
3379 chapter by:

3380 (a) identifying goods and services that are available from community rehabilitation  
3381 programs in accordance with the requirements of Subsection (7);

3382 (b) approving prices in accordance with Subsection (7)(c) for goods and services that  
3383 are identified under Subsection (4)(a);

3384 (c) developing, maintaining, and approving a preferred procurement contract list of  
3385 goods and services identified and priced under Subsections (4)(a) and (b);

3386 (d) reviewing bids received by a community rehabilitation program; and

3387 (e) awarding and renewing specified contracts for set contract times, without  
3388 competitive bidding, for the purchase of goods and services under Subsection (7).

3389 (5) The provisions of Subsections (4) and (7)(a) are an exception to the procurement

3390 provisions under this chapter.

3391           (6) (a) The advisory board may designate a central not-for-profit association, appoint  
3392 its members, and establish guidelines for its duties.

3393           (b) The designated central not-for-profit association serves at the pleasure of the  
3394 advisory board. The central not-for-profit association or its individual members may be  
3395 removed by the advisory board at any time by a majority vote of the advisory board.

3396           (c) Subject to the advisory board guidelines and discretion, a designated central  
3397 not-for-profit association may be assigned to perform the following duties:

3398           (i) identify qualified community rehabilitation programs and the goods and services  
3399 that they provide or have the potential to provide;

3400           (ii) help ensure that goods and services are provided at reasonable quality and delivery  
3401 levels;

3402           (iii) recommend pricing for goods and services;

3403           (iv) review bids and recommend the award of contracts under the advisory board's  
3404 direction;

3405           (v) collect and report program data to the advisory board and to the division; and

3406           (vi) other duties specified by the advisory board.

3407           (7) Except as provided under Subsection (9), notwithstanding any provision of this  
3408 chapter to the contrary, each [public] procurement unit shall purchase goods and services  
3409 produced by a community rehabilitation program using the preferred procurement contract list  
3410 approved under Subsection (4)(c) if:

3411           (a) the good or service offered for sale by a community rehabilitation program  
3412 reasonably conforms to the needs and specifications of the [public] procurement unit;

3413           (b) the community rehabilitation program can supply the good or service within a  
3414 reasonable time; and

3415           (c) the price of the good or service is reasonably competitive with the cost of procuring  
3416 the good or service from another source.

3417           (8) Each community rehabilitation program:

3418 (a) may submit a bid to the advisory board at any time and not necessarily in response  
3419 to an invitation for bids; and

3420 (b) shall certify on any bid it submits to the advisory board or to a [public] procurement  
3421 unit under this section that it is claiming a preference under this section.

3422 (9) During a fiscal year, the requirement for a [public] procurement unit to purchase  
3423 goods and services produced by a community rehabilitation program under the preferred  
3424 procurement list under Subsection (7) does not apply if the division determines that the total  
3425 amount of procurement contracts with community rehabilitation programs has reached \$5  
3426 million for that fiscal year.

3427 (10) In the case of conflict between a purchase under this section and a purchase under  
3428 Section 63G-6a-804, this section prevails.

3429 Section 64. Section **63G-6a-806** is enacted to read:

3430 **63G-6a-806. Exception for public transit district contracting with a county or**  
3431 **municipality.**

3432 A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public Transit  
3433 District Act, may, without going through a standard procurement process or an exception to a  
3434 standard procurement process described in Part 8, Exception to Procurement Requirements:

3435 (1) contract with a county or municipality to receive money from the county or  
3436 municipality; and

3437 (2) use the money described in Subsection (1) to fund a transportation project or a  
3438 transit-related program in accordance with rules made by the applicable rulemaking authority.

3439 Section 65. Section **63G-6a-902 (Effective 05/01/13)** is amended to read:

3440 **63G-6a-902 (Effective 05/01/13). Cancellation and rejection of bids and**  
3441 **proposals.**

3442 (1) An [~~authorized purchasing entity~~] issuing procurement unit may cancel an  
3443 invitation for bids, a request for proposals, or other solicitation or reject any or all bids or  
3444 proposal responses, in whole or in part, as may be specified in the solicitation, when it is in the  
3445 best interests of the [public] procurement unit in accordance with the rules of the applicable

3446 rulemaking authority.

3447 (2) The reasons for a cancellation or rejection described in Subsection (1) shall be  
3448 made part of the contract file.

3449 Section 66. Section **63G-6a-903 (Effective 05/01/13)** is amended to read:

3450 **63G-6a-903 (Effective 05/01/13). Determination of nonresponsibility of bidder or**  
3451 **offeror.**

3452 (1) A determination of nonresponsibility of a bidder or offeror made by an [~~authorized~~  
3453 ~~purchasing entity~~] issuing procurement unit shall be made in writing, in accordance with the  
3454 rules of the applicable rulemaking authority.

3455 (2) The unreasonable failure of a bidder or offeror to promptly supply information in  
3456 connection with an inquiry with respect to responsibility may be grounds for a determination of  
3457 nonresponsibility with respect to the bidder or offeror.

3458 (3) Subject to Title 63G, Chapter 2, Government Records Access and Management  
3459 Act, information furnished by a bidder or offeror pursuant to this section may not be disclosed  
3460 outside of [~~the public~~] a procurement unit [~~or authorized purchasing entity~~] without prior  
3461 written consent by the bidder or offeror.

3462 Section 67. Section **63G-6a-904 (Effective 05/01/13)** is amended to read:

3463 **63G-6a-904 (Effective 05/01/13). Debarment from consideration for award of**  
3464 **contracts -- Causes for debarment.**

3465 (1) After reasonable notice to the person involved and reasonable opportunity for that  
3466 person to be heard, the chief procurement officer, a procurement officer, or the head of [~~an~~  
3467 ~~authorized purchasing entity~~] a procurement unit with independent procurement authority may,  
3468 after consultation with the [~~public~~] procurement unit involved in the matter for which  
3469 debarment is sought and, if the [~~public~~] procurement unit is in the state executive branch, the  
3470 attorney general:

3471 (a) debar a person for cause from consideration for award of contracts for a period not  
3472 to exceed three years; or

3473 (b) suspend a person from consideration for award of contracts if there is probable

3474 cause to believe that the person has engaged in any activity that might lead to debarment.

3475 (2) A suspension described in Subsection (1)(b) may not be for a period exceeding  
 3476 three months, unless an indictment has been issued for an offense which would be a cause for  
 3477 debarment under Subsection (3), in which case the suspension shall, at the request of the  
 3478 attorney general, remain in effect until after the trial of the suspended person.

3479 (3) The causes for debarment include the following:

3480 (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a  
 3481 public or private contract or subcontract or in the performance of a public or private contract or  
 3482 subcontract;

3483 (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery,  
 3484 falsification or destruction of records, receiving stolen property, or any other offense indicating  
 3485 a lack of business integrity or business honesty which currently, seriously, and directly affects  
 3486 responsibility as a state contractor;

3487 (c) conviction under state or federal antitrust statutes;

3488 (d) failure without good cause to perform in accordance with the terms of the contract;

3489 (e) a violation of this chapter[~~including Part 22, Ethical Requirements~~]; or

3490 (f) any other cause that the chief procurement officer, the procurement officer, or the  
 3491 head of [an authorized purchasing entity] a procurement unit with independent procurement  
 3492 authority determines to be so serious and compelling as to affect responsibility as a state  
 3493 contractor, including debarment by another governmental entity.

3494 Section 68. Section **63G-6a-905** is enacted to read:

3495 **63G-6a-905. Quote, bid, offer, or contract prohibited by person with outstanding**  
 3496 **tax lien -- Exceptions -- Rejection of quote, bid, or offer.**

3497 (1) Except as provided in Subsection (2), a person with an outstanding tax lien in the  
 3498 state may not:

3499 (a) submit a quote, bid, or offer to a procurement unit; or

3500 (b) contract to provide a procurement item to a procurement unit.

3501 (2) Subsection (1) does not apply to the extent that a procurement officer determines it

3502 is in the public interest to grant an exception to the requirements of Subsection (1) for a  
3503 particular quote, bid, offer, or contract specified by the procurement officer.

3504 (3) A procurement unit may reject a quote, bid, or offer submitted in violation of  
3505 Subsection (1).

3506 Section 69. Section **63G-6a-1002 (Effective 05/01/13)** is amended to read:

3507 **63G-6a-1002 (Effective 05/01/13). Reciprocal preference for providers of state**  
3508 **products.**

3509 (1) (a) An [~~authorized purchasing entity~~] issuing procurement unit shall, for all  
3510 procurements, give a reciprocal preference to those bidders offering procurement items that are  
3511 produced, manufactured, mined, grown, or performed in Utah over those bidders offering  
3512 procurement items that are produced, manufactured, mined, grown, or performed in any state  
3513 that gives or requires a preference to procurement items that are produced, manufactured,  
3514 mined, grown, or performed in that state.

3515 (b) The amount of reciprocal preference shall be equal to the amount of the preference  
3516 applied by the other state for that particular procurement item.

3517 (c) In order to receive a reciprocal preference under this section, the bidder shall certify  
3518 on the bid that the procurement items offered are produced, manufactured, mined, grown, or  
3519 performed in Utah.

3520 (d) The reciprocal preference is waived if the certification described in Subsection  
3521 (1)(c) does not appear on the bid.

3522 (2) (a) If the bidder submitting the lowest responsive and responsible bid offers  
3523 procurement items that are produced, manufactured, mined, grown, or performed in a state that  
3524 gives or requires a preference, and if another bidder has submitted a responsive and responsible  
3525 bid offering procurement items that are produced, manufactured, mined, grown, or performed  
3526 in Utah, and with the benefit of the reciprocal preference, the bid of the other bidder is equal to  
3527 or less than the original lowest bid, the [~~authorized purchasing entity~~] issuing procurement unit  
3528 shall:

3529 (i) give notice to the bidder offering procurement items that are produced,

3530 manufactured, mined, grown, or performed in Utah that the bidder qualifies as a preferred  
3531 bidder; and

3532 (ii) make the purchase from the preferred bidder if the bidder agrees, in writing, to  
3533 meet the low bid within 72 hours after notification that the bidder is a preferred bidder.

3534 (b) The [~~authorized purchasing entity~~] issuing procurement unit shall include the exact  
3535 price submitted by the lowest bidder in the notice the [~~authorized purchasing entity~~] issuing  
3536 procurement unit submits to the preferred bidder.

3537 (c) The [~~authorized purchasing entity~~] issuing procurement unit may not enter into a  
3538 contract with any other bidder for the purchase until 72 hours have elapsed after notification to  
3539 the preferred bidder.

3540 (3) (a) If there is more than one preferred bidder, the [~~authorized purchasing entity~~]  
3541 issuing procurement unit shall award the contract to the willing preferred bidder who was the  
3542 lowest preferred bidder originally.

3543 (b) If there were two or more equally low preferred bidders, the [~~authorized purchasing~~  
3544 ~~entity~~] issuing procurement unit shall comply with the rules of the applicable rulemaking  
3545 authority to determine which bidder should be awarded the contract.

3546 (4) The provisions of this section do not apply if application of this section might  
3547 jeopardize the receipt of federal funds.

3548 Section 70. Section **63G-6a-1003 (Effective 05/01/13)** is amended to read:

3549 **63G-6a-1003 (Effective 05/01/13). Preference for resident contractors.**

3550 (1) As used in this section, "resident contractor" means a person, partnership,  
3551 corporation, or other business entity that:

3552 (a) either has its principal place of business in Utah or that employs workers who are  
3553 residents of this state when available; and

3554 (b) was transacting business on the date when bids for the public contract were first  
3555 solicited.

3556 (2) (a) When awarding contracts for construction, an [~~authorized purchasing entity~~]  
3557 issuing procurement unit shall grant a resident contractor a reciprocal preference over a

3558 nonresident contractor from any state that gives or requires a preference to contractors from  
3559 that state.

3560 (b) The amount of the reciprocal preference shall be equal to the amount of the  
3561 preference applied by the state of the nonresident contractor.

3562 (3) (a) In order to receive the reciprocal preference under this section, the bidder shall  
3563 certify on the bid that the bidder qualifies as a resident contractor.

3564 (b) The reciprocal preference is waived if the certification described in Subsection  
3565 (2)(a) does not appear on the bid.

3566 (4) (a) If the contractor submitting the lowest responsive and responsible bid is not a  
3567 resident contractor whose principal place of business is in a state that gives or requires a  
3568 preference to contractors from that state, and if a resident contractor has also submitted a  
3569 responsive and responsible bid, and, with the benefit of the reciprocal preference, the resident  
3570 contractor's bid is equal to or less than the original lowest bid, the ~~[authorized purchasing~~  
3571 ~~entity]~~ issuing procurement unit shall:

3572 (i) give notice to the resident contractor that the resident contractor qualifies as a  
3573 preferred resident contractor; and

3574 (ii) issue the contract to the resident contractor if the resident contractor agrees, in  
3575 writing, to meet the low bid within 72 hours after notification that the resident contractor is a  
3576 preferred resident contractor.

3577 (b) The ~~[authorized purchasing entity]~~ issuing procurement unit shall include the exact  
3578 price submitted by the lowest bidder in the notice that the ~~[authorized purchasing entity]~~  
3579 issuing procurement unit submits to the preferred resident contractor.

3580 (c) The ~~[authorized purchasing entity]~~ issuing procurement unit may not enter into a  
3581 contract with any other bidder for the construction until 72 hours have elapsed after notification  
3582 to the preferred resident contractor.

3583 (5) (a) If there is more than one preferred resident contractor, the ~~[authorized~~  
3584 ~~purchasing entity]~~ issuing procurement unit shall award the contract to the willing preferred  
3585 resident contractor who was the lowest preferred resident contractor originally.



3586 (b) If there were two or more equally low preferred resident contractors, the  
3587 [~~authorized purchasing entity~~] issuing procurement unit shall comply with the rules of the  
3588 applicable rulemaking authority to determine which bidder should be awarded the contract.

3589 (6) The provisions of this section do not apply if application of this section might  
3590 jeopardize the receipt of federal funds.

3591 Section 71. Section **63G-6a-1102 (Effective 05/01/13)** is amended to read:

3592 **63G-6a-1102 (Effective 05/01/13). Bid security requirements -- Directed**  
3593 **suretyship prohibited -- Penalty.**

3594 (1) Bid security in an amount equal to at least 5% of the amount of the bid shall be  
3595 required for all competitive bidding for construction contracts. Bid security shall be a bond  
3596 provided by a surety company authorized to do business in this state, the equivalent in cash, or  
3597 any other form satisfactory to the state.

3598 (2) When a bidder fails to comply with the requirement for bid security described in the  
3599 invitation for bids, the bid shall be rejected unless, pursuant to rules of the applicable  
3600 rulemaking authority, the [~~authorized purchasing entity~~] issuing procurement unit determines  
3601 that the failure to comply with the security requirements is nonsubstantial.

3602 (3) After the bids are opened, they shall be irrevocable for the period specified in the  
3603 invitation for bids, except as provided in Section 63G-6a-605. If a bidder is permitted to  
3604 withdraw a bid before award, no action shall be taken against the bidder or the bid security.

3605 (4) (a) When issuing an invitation for a bid under this chapter, the procurement officer  
3606 or the head of an [~~authorized purchasing entity~~] issuing procurement unit responsible for  
3607 carrying out a construction project may not require a person or entity who is bidding for a  
3608 contract to obtain a bond of the type described in Subsection (1) from a specific insurance or  
3609 surety company, producer, agent, or broker.

3610 (b) A person who violates Subsection (4)(a) is guilty of an infraction.

3611 Section 72. Section **63G-6a-1103 (Effective 05/01/13)** is amended to read:

3612 **63G-6a-1103 (Effective 05/01/13). Bonds necessary when contract is awarded --**  
3613 **Waiver -- Action -- Attorney fees.**

3614 (1) When a construction contract is awarded under this chapter, the contractor to whom  
3615 the contract is awarded shall deliver the following bonds or security to the state, which shall  
3616 become binding on the parties upon the execution of the contract:

3617 (a) a performance bond satisfactory to the state that is in an amount equal to 100% of  
3618 the price specified in the contract and is executed by a surety company authorized to do  
3619 business in this state or any other form satisfactory to the state; and

3620 (b) a payment bond satisfactory to the state that is in an amount equal to 100% of the  
3621 price specified in the contract and is executed by a surety company authorized to do business in  
3622 this state or any other form satisfactory to the state, which is for the protection of each person  
3623 supplying labor, service, equipment, or material for the performance of the work provided for  
3624 in the contract.

3625 (2) (a) When a construction contract is awarded under this chapter, the procurement  
3626 officer or the head of the [~~authorized purchasing entity~~] issuing procurement unit responsible  
3627 for carrying out the construction project may not require a contractor to whom a contract is  
3628 awarded to obtain a bond of the types referred to in Subsection (1) from a specific insurance or  
3629 surety company, producer, agent, or broker.

3630 (b) A person who violates Subsection (2)(a) is guilty of an infraction.

3631 (3) Rules of the applicable rulemaking authority may provide for waiver of the  
3632 requirement of a bid, performance, or payment bond for circumstances in which the  
3633 procurement officer considers any or all of the bonds to be unnecessary to protect the [~~public~~]  
3634 procurement unit.

3635 (4) A person shall have a right of action on a payment bond under this section for any  
3636 unpaid amount due to the person if:

3637 (a) the person has furnished labor, service, equipment, or material for the work  
3638 provided for in the contract for which the payment bond is furnished under this section; and

3639 (b) the person has not been paid in full within 90 days after the last day on which the  
3640 person performed the labor or service or supplied the equipment or material for which the  
3641 claim is made.

3642 (5) An action upon a payment bond may only be brought in a court of competent  
3643 jurisdiction in a county where the construction contract was to be performed. The action is  
3644 barred if not commenced within one year after the last day on which the claimant performed  
3645 the labor or service or supplied the equipment or material on which the claim is based. The  
3646 obligee named in the bond need not be joined as a party to the action.

3647 (6) In any suit upon a payment bond, the court shall award reasonable attorney fees to  
3648 the prevailing party, which fees shall be taxed as costs in the action.

3649 Section 73. Section **63G-6a-1202 (Effective 05/01/13)** is amended to read:

3650 **63G-6a-1202 (Effective 05/01/13). Required contract clauses -- Computation of**  
3651 **price adjustments -- Use of rules and regulations.**

3652 (1) The rules of the applicable rulemaking authority shall require for state construction  
3653 contracts, and may permit or require for contracts for supplies and services, the inclusion of  
3654 clauses providing for adjustments in prices, time of performance, or other appropriate contract  
3655 provisions, and covering the following subjects:

3656 (a) the unilateral right of the procurement officer to order in writing changes in the  
3657 work within the scope of the contract and changes in the time of performance of the contract  
3658 that do not alter the scope of the contract work;

3659 (b) variations occurring between estimated quantities of work in a contract and actual  
3660 quantities;

3661 (c) suspension of work ordered by the procurement officer; and

3662 (d) site conditions differing from those indicated in the construction contract, or  
3663 ordinarily encountered, except that differing site conditions clauses required by the rules need  
3664 not be included in a construction contract when:

3665 (i) the contract is negotiated;

3666 (ii) the contractor provides the site or design; or

3667 (iii) the parties have otherwise agreed with respect to the risk of differing site  
3668 conditions.

3669 (2) Adjustments in price pursuant to clauses described in Subsection (1) shall be

3670 computed in one or more of the following ways:

3671 (a) by agreement on a fixed price adjustment before commencement of the pertinent  
3672 performance or as soon thereafter as practicable;

3673 (b) by unit prices specified in the contract or subsequently agreed upon;

3674 (c) by the costs attributable to the events or situations under the clauses with  
3675 adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

3676 (d) in any other manner as the contracting parties may mutually agree; or

3677 (e) in the absence of agreement by the parties, by a unilateral determination by the  
3678 procurement officer of the costs attributable to the events or situations under the clauses with  
3679 adjustment of profit or fee, all as computed by the procurement officer in accordance with  
3680 applicable rules and subject to the provisions of Part 17, Procurement Appeals Board, and Part  
3681 18, Appeals to Court and Court Proceedings.

3682 (3) A contractor shall be required to submit cost or pricing data if any adjustment in  
3683 contract price is subject to the provisions of Section 63G-6a-1206.

3684 (4) The rules of the applicable rulemaking authority shall require for construction  
3685 contracts, and may permit or require for contracts for supplies and services, the inclusion of  
3686 clauses providing for appropriate remedies and covering at least the following subjects:

3687 (a) liquidated damages as appropriate;

3688 (b) specified excuses for delay or nonperformance;

3689 (c) termination of the contract for default; and

3690 (d) termination of the contract in whole or in part for the convenience of the [public]  
3691 procurement unit.

3692 (5) The contract clauses described in this section shall be established by rule.  
3693 However, the procurement officer or the head of an [~~authorized purchasing entity~~] issuing  
3694 procurement unit may modify the clauses for inclusion in any particular contract. The  
3695 applicable rulemaking authority may, by rule, require that:

3696 (a) variations be supported by a written determination that describes the circumstances  
3697 justifying the variations; and

3698 (b) notice of any material variation shall be included in the invitation for bids or  
3699 request for proposals.

3700 (6) A contract for construction entered into by a [public] procurement unit shall contain  
3701 a clause that addresses the rights of the parties when, after the contract is executed, site  
3702 conditions are discovered that:

3703 (a) the contractor did not know existed, and should not have known existed, at the time  
3704 that the contract was executed; and

3705 (b) materially impacts the costs of construction.

3706 Section 74. Section **63G-6a-1203 (Effective 05/01/13)** is amended to read:

3707 **63G-6a-1203 (Effective 05/01/13). Contracts -- Certain indemnification provisions**  
3708 **forbidden.**

3709 (1) As used in this section, "design professional" means:

3710 (a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;

3711 (b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects  
3712 Licensing Act; ~~and~~ or

3713 (c) a professional engineer or professional land surveyor, licensed under Title 58,  
3714 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

3715 (2) (a) A contract, including an amendment to an existing contract, entered into under  
3716 this chapter may not require that a design professional indemnify another from liability claims  
3717 that arise out of the design professional's services, unless the liability claim arises from the  
3718 design professional's negligent act, wrongful act, error or omission, or other liability imposed  
3719 by law.

3720 (b) Subsection (2)(a) may not be waived by contract.

3721 (c) Notwithstanding Subsections (2)(a) and (b), a design professional may be required  
3722 to indemnify a person for whom the design professional has direct or indirect control or  
3723 responsibility.

3724 Section 75. Section **63G-6a-1204 (Effective 05/01/13)** is amended to read:

3725 **63G-6a-1204 (Effective 05/01/13). Multiyear contracts.**

3726 (1) Except as provided in Subsection (7), a [public] procurement unit may enter into a  
3727 multiyear contract resulting from an invitation for bids or a request for proposals, if:

3728 (a) the procurement officer determines, in the discretion of the procurement officer,  
3729 that entering into a multiyear contract is in the best interest of the [public] procurement unit;  
3730 and

3731 (b) the invitation for bids or request for proposals:

3732 (i) states the term of the contract, including all possible renewals of the contract;

3733 (ii) states the conditions for renewal of the contract; and

3734 (iii) includes the provisions of Subsections (3) through (5) that are applicable to the  
3735 contract.

3736 (2) In making the determination described in Subsection (1)(a), the procurement officer  
3737 shall consider whether entering into a multiyear contract will:

3738 (a) result in significant savings to the [public] procurement unit, including:

3739 (i) reduction of the administrative burden in procuring, negotiating, or administering  
3740 contracts;

3741 (ii) continuity in operations of the [public] procurement unit; or

3742 (iii) the ability to obtain a volume or term discount;

3743 (b) encourage participation by a person who might not otherwise be willing or able to  
3744 compete for a shorter term contract; or

3745 (c) provide an incentive for a bidder or offeror to improve productivity through capital  
3746 investment or better technology.

3747 (3) (a) The determination described in Subsection (1)(a) is discretionary and is not  
3748 required to be in writing or otherwise recorded.

3749 (b) Except as provided in Subsections (4) and (5), notwithstanding any provision of an  
3750 invitation for bids, a request for proposals, or a contract to the contrary, a multiyear contract,  
3751 including a contract that was awarded outside of an invitation for bids or request for proposals  
3752 process, may not continue or be renewed for any year after the first year of the multiyear  
3753 contract if adequate funds are not appropriated or otherwise available to continue or renew the

3754 contract.

3755 (4) A multiyear contract that is funded solely by federal funds may be continued or  
3756 renewed for any year after the first year of the multiyear contract if:

3757 (a) adequate funds to continue or renew the contract have not been, but are expected to  
3758 be appropriated by, and received from, the federal government;

3759 (b) continuation or renewal of the contract before the money is appropriated or  
3760 received is permitted by the federal government; and

3761 (c) the contract states that it may be cancelled, without penalty, if the anticipated  
3762 federal funds are not appropriated or received.

3763 (5) A multiyear contract that is funded in part by federal funds may be continued or  
3764 renewed for any year after the first year of the multiyear contract if:

3765 (a) the portion of the contract that is to be funded by funds of a public entity are  
3766 appropriated;

3767 (b) adequate federal funds to continue or renew the contract have not been, but are  
3768 expected to be, appropriated by, and received from, the federal government;

3769 (c) continuation or renewal of the contract before the federal money is appropriated or  
3770 received is permitted by the federal government; and

3771 (d) the contract states that it may be cancelled, without penalty, if the anticipated  
3772 federal funds are not appropriated or received.

3773 (6) A [public] procurement unit may not continue or renew a multiyear contract after  
3774 the end of the multiyear contract term or the renewal periods described in the contract, unless  
3775 the [public] procurement unit engages in a new standard procurement process or complies with  
3776 an exception, described in this chapter, to using a standard procurement process.

3777 (7) A multiyear contract, including any renewal periods, may not exceed a period of  
3778 five years, unless:

3779 (a) the procurement officer determines, in writing, that:

3780 (i) a longer period is necessary in order to obtain the procurement item;

3781 (ii) a longer period is customary for industry standards; or

3782 (iii) a longer period is in the best interest of the ~~[public]~~ procurement unit; and  
3783 (b) the written determination described in Subsection (7)(a) is included in the file  
3784 relating to the procurement.

3785 (8) This section does not apply to a contract for the design or construction of a facility,  
3786 a road, ~~[or]~~ a public transit project, or a contract for the financing of equipment.

3787 Section 76. Section **63G-6a-1204.5 (Effective 05/01/13)**, which is renumbered from  
3788 Section 63G-6a-405 (Effective 05/01/13) is renumbered and amended to read:

3789 ~~[63G-6a-405 (Effective 05/01/13)].~~ **63G-6a-1204.5 (Effective**  
3790 **05/01/13). Multiple award contracts.**

3791 (1) (a) ~~[An authorized purchasing entity]~~ The division or a procurement unit with  
3792 independent procurement authority may enter into multiple award contracts with bidders or  
3793 offerors.

3794 (b) The applicable rulemaking authority may make rules, consistent with this section,  
3795 regulating the use of multiple award contracts.

3796 (2) Multiple award contracts may be in ~~[an authorized purchasing entity's]~~ a  
3797 procurement unit's best interest if award to two or more bidders or offerors for similar  
3798 procurement items is needed or desired for adequate delivery, service, availability, or product  
3799 compatibility.

3800 (3) ~~[An authorized purchasing entity]~~ A procurement unit that enters into multiple  
3801 award contracts under this section shall:

3802 (a) exercise care to protect and promote competition among bidders or offerors when  
3803 seeking to enter into multiple award contracts;

3804 (b) name all eligible users of the multiple award contracts in the invitation for bids or  
3805 request for proposals; and

3806 (c) if the ~~[authorized purchasing entity]~~ procurement unit anticipates entering into  
3807 multiple award contracts before issuing the invitation for bids or request for proposals, state in  
3808 the invitation for bids or request for proposals that the ~~[authorized purchasing entity]~~  
3809 procurement unit may enter into multiple award contracts at the end of the procurement



3810 process.

3811 (4) ~~[An authorized purchasing entity]~~ A procurement unit that enters into multiple  
3812 award contracts under this section shall:

3813 (a) obtain, under the multiple award contracts, all of its normal, recurring requirements  
3814 for the procurement items that are the subject of the contracts until the contracts terminate; and

3815 (b) reserve the right to obtain the procurement items described in Subsection (4)(a)  
3816 separately from the contracts if:

3817 (i) there is a need to obtain a quantity of the procurement items that exceeds the  
3818 amount specified in the contracts; or

3819 (ii) the procurement officer makes a written finding that the procurement items  
3820 available under the contract will not effectively or efficiently meet a nonrecurring special need  
3821 of a ~~[public]~~ procurement unit.

3822 ~~[(5) Notwithstanding Subsection (3)(b), if an authorized purchasing entity enters into a  
3823 multiple award contract under this section, another authorized purchasing entity that is not a  
3824 signatory to the contract may, but is not required to, obtain a procurement item under the  
3825 contract.]~~

3826 ~~[(6)]~~ (5) An applicable rulemaking authority may make rules to further regulate a  
3827 procurement under this section.

3828 Section 77. Section **63G-6a-1205 (Effective 05/01/13)** is amended to read:

3829 **63G-6a-1205 (Effective 05/01/13). Regulation of contract types -- Permitted and**  
3830 **prohibited contract types.**

3831 (1) Except as otherwise provided in this section, and subject to rules made under this  
3832 section by the applicable rulemaking authority, a ~~[public]~~ procurement unit may use any type of  
3833 contract that will promote the best interests of the ~~[state]~~ procurement unit.

3834 (2) An applicable rulemaking authority:

3835 (a) may make rules governing, placing restrictions on, or prohibiting the use of any  
3836 type of contract; and

3837 (b) may not make rules that permit the use of a contract:

3838 (i) that is prohibited under this section; or  
3839 (ii) in a manner that is prohibited under this section.  
3840 ~~[(2) A public procurement unit may not use a cost-plus-a-percentage-of-cost contract.]~~  
3841 ~~[(3) A public procurement unit may not use a cost-reimbursement contract unless the~~  
3842 ~~procurement officer makes a written determination that:]~~  
3843 ~~[(a) the contract is likely to be less costly to the public procurement unit than any other~~  
3844 ~~type of contract; or]~~  
3845 ~~[(b) it is impracticable to obtain the procurement item under another type of contract.]~~  
3846 ~~[(4)]~~ (3) A procurement officer, the head of an ~~[authorized procurement entity]~~ issuing  
3847 procurement unit, or a designee of either, may not use a type of contract, other than a firm fixed  
3848 price contract, unless the procurement officer makes a written determination that:  
3849 (a) the proposed contractor's accounting system will permit timely development of all  
3850 necessary cost data in the form required by the specific contract type contemplated; ~~[and]~~  
3851 (b) the proposed contractor's accounting system is adequate to allocate costs in  
3852 accordance with generally accepted accounting principles[-]; and  
3853 (c) the use of a specified type of contract, other than a firm fixed price contract, is in  
3854 the best interest of the procurement unit, taking into consideration the following criteria:  
3855 (i) the type and complexity of the procurement item;  
3856 (ii) the difficulty of estimating performance costs at the time the contract is entered  
3857 into, due to factors that may include:  
3858 (A) the difficulty of determining definitive specifications;  
3859 (B) the difficulty of determining the risks, to the contractor, that are inherent in the  
3860 nature of the work to be performed; or  
3861 (C) the difficulty to clearly determine other factors necessary to enter into an accurate  
3862 firm fixed price contract;  
3863 (iii) the administrative costs to the procurement unit and the contractor;  
3864 (iv) the degree to which the procurement unit is required to provide technical  
3865 coordination during performance of the contract;

3866 (v) the impact that the choice of contract type may have upon the level of competition  
3867 for award of the contract;

3868 (vi) the stability of material prices, commodity prices, and wage rates in the applicable  
3869 market;

3870 (vii) the impact of the contract type on the level of urgency related to obtaining the  
3871 procurement item;

3872 (viii) the impact of any applicable governmental regulation relating to the contract; and

3873 (ix) other criteria that the procurement officer determines may relate to determining the  
3874 contract type that is in the best interest of the procurement unit.

3875 (4) Contract types that, subject to the provisions of this section and rules made under  
3876 this section, may be used by a procurement unit include the following:

3877 (a) a fixed price contract;

3878 (b) a fixed price contract with price adjustment;

3879 (c) a time and materials contract;

3880 (d) a labor hour contract;

3881 (e) a definite quantity contract;

3882 (f) an indefinite quantity contract;

3883 (g) a requirements contract; or

3884 (h) a contract that includes one of the following construction delivery methods:

3885 (i) design-build;

3886 (ii) design-bid-build; or

3887 (iii) construction manager/general contractor.

3888 (5) Except as it applies to a change order, a procurement unit may not enter into a  
3889 cost-plus-percentage-of-cost contract, unless:

3890 (a) use of a cost-plus-percentage-of-cost contract is approved by the procurement  
3891 officer;

3892 (b) it is standard practice in the industry to obtain the procurement item through a  
3893 cost-plus-percentage-of-cost contract; and

3894 (c) the percentage and the method of calculating costs in the contract are in accordance  
3895 with industry standards.

3896 (6) A procurement unit may not enter into a cost-reimbursement contract, unless the  
3897 procurement officer makes a written determination that:

3898 (a) (i) a cost-reimbursement contract is likely to cost less than any other type of  
3899 permitted contract; or

3900 (ii) it is impracticable to obtain the procurement item under any other type of permitted  
3901 contract; and

3902 (b) the proposed contractor's accounting system:

3903 (i) will timely develop the cost data in the form necessary for the procurement unit to  
3904 timely and accurately make payments under the contract; and

3905 (ii) will allocate costs in accordance with generally accepted accounting principles.

3906 Section 78. Section **63G-6a-1206 (Effective 05/01/13)** is amended to read:

3907 **63G-6a-1206 (Effective 05/01/13). Rules and regulations to determine allowable**  
3908 **incurred costs -- Required information -- Auditing of books.**

3909 (1) (a) The applicable rulemaking authority may, by rule, establish the cost principles  
3910 to be included in a cost-reimbursement contract to determine incurred costs for the purpose of  
3911 calculating a reimbursement.

3912 (b) The cost principles established by rule under Subsection (1)(a) may be modified, by  
3913 contract, if the procurement officer or head of the [~~authorized procurement entity~~] issuing  
3914 procurement unit approves the modification.

3915 (2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a  
3916 cost-based contract with a [~~public~~] procurement unit shall:

3917 (a) submit cost or pricing data relating to determining the cost or pricing amount; and

3918 (b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing  
3919 data submitted is accurate and complete as of the date specified by the [~~public~~] procurement  
3920 unit.

3921 (3) The procurement officer shall ensure that the date specified under Subsection (2)(b)

3922 is before:

3923 (a) the pricing of any contract awarded by a standard procurement process or pursuant  
3924 to a sole source procurement, if the total contract price is expected to exceed an amount  
3925 established by rule made by the applicable rulemaking authority; or

3926 (b) the pricing of any change order that is expected to exceed an amount established by  
3927 rule made by the applicable rulemaking authority.

3928 (4) A contract or change order that requires a certification described in Subsection (2)  
3929 shall include a provision that the price to the [public] procurement unit, including profit or fee,  
3930 shall be adjusted to exclude any significant sums by which the [public] procurement unit finds  
3931 that the price was increased because the contractor provided cost or pricing data that was  
3932 inaccurate, incomplete, or not current as of the date specified by the procurement officer.

3933 (5) A [public] procurement unit is not required to comply with Subsection (2) if:

3934 (a) the contract price is based on adequate price competition;

3935 (b) the contract price is based on established catalogue prices or market prices;

3936 (c) the contract price is set by law or rule; or

3937 (d) the procurement states, in writing:

3938 (i) that, in accordance with rules made by the applicable rulemaking authority, the  
3939 requirements of Subsection (2) may be waived; and

3940 (ii) the reasons for the waiver.

3941 (6) The procurement officer may, at reasonable times and places, only to the extent that  
3942 the books and records relate to the applicable cost or pricing data, audit the books and records  
3943 of:

3944 (a) a person who has submitted cost or pricing data pursuant to this section; or

3945 (b) a contractor or subcontractor under a contract or subcontract other than a firm fixed  
3946 price contract.

3947 (7) Unless a shorter time is provided for by contract:

3948 (a) a person described in Subsection (6)(a) shall maintain the books and records

3949 described in Subsection (6) for three years after the day on which the fiscal year in which final

3950 payment is made under the contract ends;

3951 (b) a contractor shall maintain the books and records described in Subsection (6) for  
3952 three years after the day on which the fiscal year in which final payment under the prime  
3953 contract ends; and

3954 (c) a subcontractor shall maintain the books and records described in Subsection (6) for  
3955 three years after the day on which the fiscal year in which final payment is made under the  
3956 subcontract ends.

3957 Section 79. Section **63G-6a-1208** is enacted to read:

3958 **63G-6a-1208. Installment payments -- Contract prepayments.**

3959 (1) A contract entered into by a procurement unit may provide for installment  
3960 payments, including interest charges, over a period of time, if the procurement officer makes a  
3961 written finding that:

3962 (a) the use of installment payments are in the interest of the procurement unit;

3963 (b) installment payments are not used as a method of avoiding budgetary constraints;

3964 (c) the procurement unit has obtained all budgetary approvals and other approvals  
3965 required for making the installment payments;

3966 (d) all aspects of the installment payments required in the contract are in accordance  
3967 with the requirements of law; and

3968 (e) for a contract awarded through an invitation for bids or a request for proposals, the  
3969 invitation for bids or request for proposals indicates that installment payments are required or  
3970 permitted.

3971 (2) A procurement unit may not pay for a procurement item before the procurement  
3972 item is received by the procurement unit, unless the procurement officer makes a written  
3973 finding that it is necessary or beneficial for the procurement unit to pay for the procurement  
3974 item before the procurement item is received by the procurement unit.

3975 (3) Circumstances where prepayment may be necessary for, or beneficial to, the  
3976 procurement unit include:

3977 (a) when it is customary in the industry to prepay for the procurement item;

- 3978            (b) if the procurement unit will receive an identifiable benefit by prepaying, including  
3979 reduced costs, additional procurement items, early delivery, better service, or better contract  
3980 terms; or
- 3981            (c) other circumstances permitted by rule made by the applicable rulemaking authority.
- 3982            (4) The applicable rulemaking authority may make rules governing prepayments.
- 3983            (5) A prepaid expenditure shall be supported by documentation indicating:
- 3984            (a) the amount of the prepayment;
- 3985            (b) the prepayment schedule;
- 3986            (c) the procurement items to which each prepayment relates;
- 3987            (d) the remedies for a contractor's noncompliance with requirements relating to the  
3988 provision of the procurement items; and
- 3989            (e) all other terms and conditions relating to the payments and the procurement items.
- 3990            (6) The procurement officer or the procurement officer's designee may require a  
3991 performance bond, of up to 100% of the prepayment amount, from the person to whom the  
3992 prepayments are made.

3993            Section 80. Section **63G-6a-1209** is enacted to read:

3994            **63G-6a-1209. Leases.**

- 3995            (1) As used in this section, "lease" means for a procurement unit to lease or  
3996 lease-purchase a procurement item from a person.
- 3997            (2) This section does not apply to the lease of real property.
- 3998            (3) A procurement unit may not lease a procurement item unless the procurement unit  
3999 complies with the requirements of this section.
- 4000            (4) A procurement unit may lease a procurement item if:
- 4001            (a) the procurement officer determines that it is in the best interest of the procurement  
4002 unit to lease the procurement item, after the procurement officer:
- 4003            (i) investigates alternative means of obtaining the procurement item; and
- 4004            (ii) considers the costs and benefits of the alternative means of obtaining the  
4005 procurement item;

- 4006 (b) all conditions for renewal and cost are included in the lease;
- 4007 (c) the lease is awarded through a standard procurement process, or an exception to a
- 4008 standard procurement process described in Part 8, Exceptions to Procurement Requirements;
- 4009 (d) for a standard procurement process, the invitation for bids, request for proposals, or
- 4010 request for quotes states:
- 4011 (i) that the procurement unit is seeking, or willing to consider, a lease; and
- 4012 (ii) for a lease purchase, that the procurement unit is seeking, or willing to consider, a
- 4013 lease-purchase;
- 4014 (e) the lease is not used to avoid competition; and
- 4015 (f) the lease complies to all other provisions of law or rule applicable to the lease.
- 4016 Section 81. Section **63G-6a-1210** is enacted to read:
- 4017 **63G-6a-1210. Contract provisions for incentives, damages, and penalties.**
- 4018 A procurement unit may include in a contract terms that provide for:
- 4019 (1) incentives, including bonuses;
- 4020 (2) payment of damages, including liquidated damages; or
- 4021 (3) penalties.
- 4022 Section 82. Section **63G-6a-1302 (Effective 05/01/13)** is amended to read:
- 4023 **63G-6a-1302 (Effective 05/01/13). Alternative methods of construction**
- 4024 **contracting management.**
- 4025 (1) The applicable rulemaking authority shall, by rule provide as many alternative
- 4026 methods of construction contracting management as determined to be feasible.
- 4027 (2) The rules described in Subsection (1) shall:
- 4028 (a) grant to the procurement officer or the head of the [~~state purchasing unit~~] issuing
- 4029 procurement unit responsible for carrying out the construction project the discretion to select
- 4030 the appropriate method of construction contracting management for a particular project; and
- 4031 (b) require the procurement officer to execute and include in the contract file a written
- 4032 statement describing the facts that led to the selection of a particular method of construction
- 4033 contracting management for each project.



4034 (3) Before choosing a construction contracting management method, the procurement  
4035 officer or the head of the [~~state purchasing unit~~] issuing procurement unit responsible for  
4036 carrying out the construction project shall consider the following factors:

4037 (a) when the project must be ready to be occupied;

4038 (b) the type of project;

4039 (c) the extent to which the requirements of the [~~public~~] procurement unit, and the way  
4040 they are to be met are known;

4041 (d) the location of the project;

4042 (e) the size, scope, complexity, and economics of the project;

4043 (f) the source of funding and any resulting constraints necessitated by the funding  
4044 source;

4045 (g) the availability, qualification, and experience of public personnel to be assigned to  
4046 the project and the amount of time that the public personnel can devote to the project; and

4047 (h) the availability, qualifications, and experience of outside consultants and  
4048 contractors to complete the project under the various methods being considered.

4049 (4) An applicable rulemaking authority may make rules that authorize the use of a  
4050 construction manager/general contractor as one method of construction contracting  
4051 management.

4052 (5) The rules described in Subsection (2) shall require that:

4053 (a) the construction manager/general contractor be selected using:

4054 (i) a standard procurement process; or

4055 (ii) an exception to the requirement to use a standard procurement process, described in  
4056 Part 8, Exceptions to Procurement Requirements; and

4057 (b) when entering into a subcontract that was not specifically included in the  
4058 construction manager/general contractor's cost proposal, the construction manager/general  
4059 contractor shall procure the subcontractor by using a standard procurement process, or an  
4060 exception to the requirement to use a standard procurement process, described in Part 8,  
4061 Exceptions to Procurement Requirements, in the same manner as if the subcontract work was

4062 procured directly by the [public] procurement unit.

4063 (6) Procurement rules adopted by the State Building Board under Subsections (1)  
4064 through (3) for state building construction projects may authorize the use of a design-build  
4065 provider as one method of construction contracting management.

4066 (7) A design-build contract may include a provision for obtaining the site for the  
4067 construction project.

4068 (8) A design-build contract or a construction manager/general contractor contract may  
4069 include provision by the contractor of operations, maintenance, or financing.

4070 Section 83. Section **63G-6a-1303 (Effective 05/01/13)** is amended to read:

4071 **63G-6a-1303 (Effective 05/01/13). Drug and alcohol testing required for state**  
4072 **construction contracts.**

4073 (1) As used in this section:

4074 (a) "Contractor" means a person who is or may be awarded a state construction  
4075 contract.

4076 (b) "Covered individual" means an individual who:

4077 (i) on behalf of a contractor or subcontractor provides services directly related to  
4078 design or construction under a state construction contract; and

4079 (ii) is in a safety sensitive position, including a design position that has responsibilities  
4080 that directly affect the safety of an improvement to real property that is the subject of a state  
4081 construction contract.

4082 (c) "Drug and alcohol testing policy" means a policy under which a contractor or  
4083 subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:

4084 (i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol,  
4085 except the medically prescribed possession and use of a drug; or

4086 (ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.

4087 (d) "Random testing" means that a covered individual is subject to periodic testing for  
4088 drugs and alcohol:

4089 (i) in accordance with a drug and alcohol testing policy; and

4090 (ii) on the basis of a random selection process.

4091 (e) "State executive entity" means:

4092 (i) a state executive branch:

4093 (A) department;

4094 (B) division;

4095 (C) agency;

4096 (D) board;

4097 (E) commission;

4098 (F) council;

4099 (G) committee; or

4100 (H) institution; or

4101 (ii) a state institution of higher education, as defined in Section 53B-3-102.

4102 (f) "State construction contract" means a contract for design or construction entered  
4103 into by a state executive entity.

4104 (2) Except as provided in Subsection (7), a state executive entity may not enter into a  
4105 state construction contract unless the public construction contract requires that the contractor  
4106 demonstrate to the state executive entity that the contractor:

4107 (a) has and will maintain a drug and alcohol testing policy during the period of the state  
4108 construction contract that applies to the covered individuals hired by the contractor;

4109 (b) posts in one or more conspicuous places notice to covered individuals hired by the  
4110 contractor that the contractor has the drug and alcohol testing policy described in Subsection  
4111 (2)(a);

4112 (c) subjects the covered individuals to random testing under the drug and alcohol  
4113 testing policy described in Subsection (2)(a) if at any time during the period of the state  
4114 construction contract there are 10 or more individuals who are covered individuals hired by the  
4115 contractor; and

4116 (d) requires that as a condition of contracting with the contractor, a subcontractor:

4117 (i) has and will maintain a drug and alcohol testing policy during the period of the state

4118 construction contract that applies to the covered individuals hired by the subcontractor;

4119       (ii) posts in one or more conspicuous places notice to covered individuals hired by the  
4120 subcontractor that the subcontractor has the drug and alcohol testing policy described in  
4121 Subsection (2)(d)(i); and

4122       (iii) subjects the covered individuals hired by the subcontractor to random testing under  
4123 the drug and alcohol testing policy described in Subsection (2)(d)(i) if at any time during the  
4124 period of the state construction contract there are 10 or more individuals who are covered  
4125 individuals hired by the subcontractor.

4126       (3) (a) Except as otherwise provided in this Subsection (3), if a contractor or  
4127 subcontractor fails to comply with Subsection (2), the contractor or subcontractor may be  
4128 suspended or debarred in accordance with this chapter.

4129       (b) A state executive entity shall include in a state construction contract:

4130       (i) a reference to the rules described in Subsection (4)(b); or

4131       (ii) if the applicable rulemaking authority has not made the rules described in  
4132 Subsection (4)(b), a process that provides a contractor or subcontractor reasonable notice and  
4133 opportunity to cure a violation of this section before suspension or debarment of the contractor  
4134 or subcontractor in light of the circumstances of the state construction contract or the violation.

4135       (c) (i) A contractor is not subject to penalties for the failure of a subcontractor to  
4136 comply with Subsection (2).

4137       (ii) A subcontractor is not subject to penalties for the failure of a contractor to comply  
4138 with Subsection (2).

4139       (4) An [~~authorized~~] applicable rulemaking authority:

4140       (a) may make rules that establish the requirements and procedures a contractor is  
4141 required to follow to comply with Subsection (2); and

4142       (b) shall make rules that establish:

4143       (i) the penalties that may be imposed in accordance with Subsection (3); and

4144       (ii) a process that provides a contractor or subcontractor reasonable notice and  
4145 opportunity to cure a violation of this section before suspension or debarment of the contractor

4146 or subcontractor in light of the circumstances of the state construction contract or the violation.

4147 (5) The failure of a contractor or subcontractor to meet the requirements of Subsection  
4148 (2):

4149 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,  
4150 or contractor under Part 17, Procurement Appeals Board, or Part 18, Appeals to Court and  
4151 Court Proceedings; and

4152 (b) may not be used by a state [~~public procurement unit~~] executive entity, a prospective  
4153 bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend,  
4154 disrupt, or terminate the design or construction under a state construction contract.

4155 (6) (a) After a state executive entity enters into a state construction contract in  
4156 compliance with this section, the state is not required to audit, monitor, or take any other action  
4157 to ensure compliance with this section.

4158 (b) The state is not liable in any action related to this section, including not being liable  
4159 in relation to:

4160 (i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

4161 (ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and  
4162 alcohol testing policy;

4163 (iii) the requirements of a contractor's or subcontractor's drug and alcohol testing  
4164 policy;

4165 (iv) a contractor's or subcontractor's implementation of a drug and alcohol testing  
4166 policy, including procedures for:

4167 (A) collection of a sample;

4168 (B) testing of a sample;

4169 (C) evaluation of a test; or

4170 (D) disciplinary or rehabilitative action on the basis of a test result;

4171 (v) an individual being under the influence of drugs or alcohol; or

4172 (vi) an individual under the influence of drugs or alcohol harming another person or  
4173 causing property damage.

4174 (7) This section does not apply if the state executive entity determines that the  
4175 application of this section would severely disrupt the operation of a [public] procurement unit  
4176 to the detriment of the [public] procurement unit or the general public, including:

- 4177 (a) jeopardizing the receipt of federal funds;  
4178 (b) causing the state construction contract to be a sole source contract; or  
4179 (c) causing the state construction contract to be an emergency procurement.

4180 (8) If a contractor or subcontractor meets the requirements of this section, this section  
4181 may not be construed to restrict the contractor's or subcontractor's ability to impose or  
4182 implement an otherwise lawful provision as part of a drug and alcohol testing policy.

4183 Section 84. Section **63G-6a-1502 (Effective 05/01/13)** is amended to read:

4184 **63G-6a-1502 (Effective 05/01/13). Policy regarding architect-engineer services.**

4185 (1) It is the policy of this state to publicly announce all requirements for  
4186 architect-engineer services and to negotiate contracts for architect-engineer services on the  
4187 basis of demonstrated competence and qualification for the type of services required, and at fair  
4188 and reasonable prices.

4189 (2) Architect-engineer services shall be procured as provided in this part except as  
4190 ~~[authorized by]~~ otherwise provided in Sections 63G-6a-403, 63G-6a-404, 63G-6a-408,  
4191 63G-6a-802, and 63G-6a-803.

4192 (3) This part does not affect the authority of, and does not apply to procedures  
4193 undertaken by, a [public] procurement unit to obtain the services of architects or engineers in  
4194 the capacity of employees of the [public] procurement unit.

4195 Section 85. Section **63G-6a-1503 (Effective 05/01/13)** is amended to read:

4196 **63G-6a-1503 (Effective 05/01/13). Selection committee for architect-engineer**  
4197 **services.**

4198 (1) In the procurement of architect-engineer services, the procurement officer or the  
4199 head of ~~[a state purchasing unit]~~ an issuing procurement unit shall encourage firms engaged in  
4200 the lawful practice of their profession to submit annually a statement of qualifications and  
4201 performance data.

4202 (2) The Building Board shall be the evaluation committee for architect-engineer  
4203 services contracts under its authority.

4204 (3) An evaluation committee for architect-engineer services contracts not under the  
4205 authority of the Building Board shall be established in accordance with rules made by the  
4206 applicable rulemaking authority.

4207 (4) An evaluation committee shall:

4208 (a) evaluate current statements of qualifications and performance data on file with the  
4209 state, together with those that may be submitted by other firms in response to the  
4210 announcement of the proposed contract;

4211 (b) consider no less than three firms; and

4212 (c) based upon criteria established and published by the [~~authorized purchasing entity~~]  
4213 issuing procurement unit, select no less than three of the firms considered to be the most highly  
4214 qualified to provide the services required.

4215 Section 86. Section **63G-6a-1506 (Effective 05/01/13)** is amended to read:

4216 **63G-6a-1506 (Effective 05/01/13). Restrictions on procurement of**  
4217 **architect-engineer services.**

4218 (1) Except as provided in Subsection (2), when [~~an authorized purchasing entity~~] the  
4219 division or a procurement unit with independent procurement authority, in accordance with  
4220 Section 63G-6a-1502, elects to obtain architect or engineering services by using a competitive  
4221 procurement process and has provided public notice of its competitive procurement process:

4222 (a) a higher education entity, or any part of one, may not submit a proposal in response  
4223 to the [~~authorized purchasing entity's~~] procurement unit's competitive procurement process; and

4224 (b) the [~~authorized purchasing entity~~] procurement unit may not award a contract to  
4225 perform the architect or engineering services solicited in the competitive procurement process  
4226 to a higher education entity or any part of one.

4227 (2) Subsection (1) does not apply when the [~~authorized purchasing entity~~] procurement  
4228 unit is procuring architect or engineer services for contracts related to research activities and  
4229 technology transfer.

4230 Section 87. Section **63G-6a-1603 (Effective 05/01/13)** is amended to read:  
4231 **63G-6a-1603 (Effective 05/01/13). Decisions of protest officer to be in writing --**  
4232 **Effect of no writing.**

4233 (1) After a timely protest is filed in accordance with Section 63G-6a-1602, the protest  
4234 officer:

- 4235 (a) shall consider the protest; and
- 4236 (b) may hold a hearing on the protest.

4237 (2) (a) The protest officer may:

- 4238 (i) subpoena witnesses and compel their attendance at a protest hearing; or
- 4239 (ii) subpoena documents for production at a protest hearing.

4240 (b) The Rules of Evidence do not apply to a protest hearing.

4241 (c) The [~~Procurement Policy Board~~] applicable rulemaking authority shall make rules  
4242 relating to intervention in a protest, including designating:

- 4243 (i) who may intervene; and
- 4244 (ii) the time and manner of intervention.

4245 (d) If a hearing on a protest is held under this section, the protest officer shall:

- 4246 (i) record the hearing;
- 4247 (ii) preserve all evidence presented at the hearing; and
- 4248 (iii) preserve all records and other evidence relied upon in reaching the written decision  
4249 described in this section.

4250 (e) Regardless of whether a hearing on a protest is held under this section, the protest  
4251 officer shall preserve all records and other evidence relied upon in reaching the written  
4252 decision.

4253 (f) The records described in Subsections (2)(d) and (e) may not be destroyed until the  
4254 decision, and any appeal of the decision, becomes final.

4255 (g) A protest officer who holds a hearing, considers a protest, or issues a written  
4256 decision under this section does not waive the right to, at a later date, question or challenge the  
4257 protest officer's jurisdiction to hold the hearing, consider the protest, or render the decision.



4258 (3) A protest officer, or the protest officer's designee, shall promptly issue a written  
4259 decision regarding any protest, debarment, suspension, or contract controversy if it is not  
4260 settled by mutual agreement. The decision shall state the reasons for the action taken and  
4261 inform the protestor, contractor, or prospective contractor of the right to judicial or  
4262 administrative review as provided in this chapter.

4263 (4) (a) A decision described in this section is effective until stayed or reversed on  
4264 appeal, except to the extent provided in Section 63G-6a-1903. A person who issues a decision  
4265 described in Subsection (1) shall mail, email, or otherwise immediately furnish a copy of the  
4266 decision to the protestor, prospective contractor, or contractor. [~~The decision~~]

4267 (b) A decision described in Subsection (4)(a) that is issued in relation to a procurement  
4268 unit other than a legislative procurement unit or a judicial procurement unit shall be final and  
4269 conclusive unless the protestor, prospective contractor, or contractor:

4270 [~~(a)~~] (i) for a controversy described in Section 63G-6a-1905, commences an action in  
4271 district court in accordance with Subsection 63G-6a-1802(5);

4272 [~~(b)~~] (ii) for a controversy related to a solicitation or the award of a contract, files an  
4273 appeal under Section 63G-6a-1702; or

4274 [~~(c)~~] (iii) for a debarment or suspension, files an appeal under Section 63G-6a-1702.

4275 (c) A decision described in Subsection (4)(a) that is issued in relation to a legislative  
4276 procurement unit or a judicial procurement unit shall be final and conclusive unless the  
4277 protestor, prospective contractor, or contractor:

4278 (i) for a controversy described in Section 63G-6a-1905, commences an action in  
4279 district court in accordance with Subsection 63G-6a-1802(5);

4280 (ii) for a controversy related to a solicitation or the award of a contract, files an appeal  
4281 under Subsection 63G-6a-1802(1)(b); or

4282 (iii) for a debarment or suspension, files an appeal under Subsection  
4283 63G-6a-1802(1)(b).

4284 (5) If the protest officer does not issue the written decision regarding a protest or a  
4285 contract controversy within 30 calendar days after the day on which a written request for a final

4286 decision is filed with the protest officer, or within a longer period as may be agreed upon by the  
4287 parties, the protester, prospective contractor, or contractor may proceed as if an adverse  
4288 decision had been received.

4289 (6) Except for a controversy described in Section 63G-6a-1905, a determination under  
4290 this section by the protest officer regarding an issue of fact may not be overturned on appeal  
4291 unless the decision is arbitrary and capricious or clearly erroneous.

4292 Section 88. Section **63G-6a-1702 (Effective 05/01/13)** is amended to read:

4293 **63G-6a-1702 (Effective 05/01/13). Appeal to Utah State Procurement Policy**  
4294 **Board -- Appointment of procurement appeals panel -- Proceedings.**

4295 (1) This part applies to all procurement units other than:

4296 (a) a legislative procurement unit;

4297 (b) a judicial procurement unit;

4298 (c) a county or municipality; or

4299 (d) a public transit district.

4300 ~~[(1)]~~ (2) A party to a protest involving a procurement unit other than a procurement  
4301 described in Subsection (1) may appeal the protest decision to the [~~procurement policy~~] board  
4302 by:

4303 (a) filing a written notice of appeal with the chair of the [~~procurement policy~~] board  
4304 within seven days after:

4305 (i) the day on which the written decision described in Section 63G-6a-1603 is:

4306 (A) personally served on the party or the party's representative; or

4307 (B) emailed or mailed to the address or email address of record provided by the party  
4308 under Subsection 63G-6a-1602(3); or

4309 (ii) the day on which the 30-day period described in Subsection 63G-6a-1603(5) ends,  
4310 if a written decision is not issued before the end of the 30-day period;

4311 (b) including in the filing document the person's address of record and email address of  
4312 record; and

4313 (c) at the time that the notice of appeal described in Subsection ~~[(1)]~~ (2)(a) is filed,

4314 complying with the requirements of Section 63G-6a-1703 regarding the posting of a security  
4315 deposit or a bond.

4316 ~~[(2)]~~ (3) A person may not appeal from a protest described in Section 63G-6a-1602,  
4317 unless:

4318 (a) a decision on the protest has been issued; or

4319 (b) a decision is not issued and the 30-day period described in Subsection  
4320 63G-6a-1603(5), or a longer period agreed to by the parties, has passed.

4321 ~~[(3)]~~ (4) The chair of the [~~procurement policy~~] board or a designee of the chair who is  
4322 not employed by the [~~public~~] procurement unit responsible for the solicitation, contract award,  
4323 or other action complained of:

4324 (a) shall, within seven days after the day on which the chair receives a timely written  
4325 notice of appeal under Subsection ~~[(1)]~~ (2), appoint:

4326 (i) a procurement appeals panel to hear and decide the appeal, consisting of at least  
4327 three individuals, each of whom shall be:

4328 (A) a member of the [~~Procurement Policy Board~~] board; or

4329 (B) a designee of a member appointed under Subsection ~~[(3)]~~ (4)(a)(i)(A), if the  
4330 designee is approved by the chair; and

4331 (ii) one of the members of the procurement appeals panel to be the chair of the panel;

4332 (b) may:

4333 (i) appoint the same procurement appeals panel to hear more than one appeal; or

4334 (ii) appoint a separate procurement appeals panel for each appeal; and

4335 (c) may not appoint a person to a procurement appeals panel if the person is employed  
4336 by the [~~public~~] procurement unit responsible for the solicitation, contract award, or other action  
4337 complained of.

4338 ~~[(4)]~~ (5) A procurement appeals panel described in Subsection ~~[(3)]~~ (4) shall:

4339 (a) consist of an odd number of members;

4340 (b) except as provided in Subsection ~~[(5)]~~ (6), conduct an informal proceeding on the  
4341 appeal within 60 days after the day on which the procurement appeals panel is appointed,

4342 unless all parties stipulate to a later date;

4343 (c) at least seven days before the proceeding, mail, email, or hand-deliver a written  
4344 notice of the proceeding to the parties to the appeal; and

4345 (d) within seven days after the day on which the proceeding ends:

4346 (i) issue a written decision on the appeal; and

4347 (ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the  
4348 appeal and to the protest officer.

4349 ~~[(5)]~~ (6) A procurement appeals panel may continue a procurement appeals proceeding  
4350 beyond the 60-day period described in Subsection ~~[(4)]~~ (5)(b) if the procurement appeals panel  
4351 determines that the continuance is in the interests of justice.

4352 ~~[(6)]~~ (7) A procurement appeals panel:

4353 (a) shall consider the appeal based solely on:

4354 (i) the protest decision;

4355 (ii) the record considered by the person who issued the protest decision; and

4356 (iii) if a protest hearing was held, the record of the protest hearing;

4357 (b) may not take additional evidence; and

4358 (c) shall uphold the decision of the protest officer, unless the decision is arbitrary and  
4359 capricious or clearly erroneous.

4360 ~~[(7)]~~ (8) If a procurement appeals panel determines that the decision of the protest  
4361 officer is arbitrary and ~~[a]~~ capricious or clearly erroneous, the procurement appeals panel:

4362 (a) shall remand the matter to the protest officer, to cure the problem or render a new  
4363 decision;

4364 (b) may recommend action that the protest officer should take; and

4365 (c) may not order that:

4366 (i) a contract be awarded to a certain person;

4367 (ii) a contract or solicitation be cancelled; or

4368 (iii) any other action be taken other than the action described in Subsection ~~[(7)]~~ (8)(a).

4369 ~~[(8)]~~ (9) The ~~[Procurement Policy Board]~~ board shall make rules relating to the

4370 conduct of an appeals proceeding, including rules that provide for:

4371 (a) expedited proceedings; and

4372 (b) electronic participation in the proceedings by panel members and participants.

4373 [~~9~~] (10) The Rules of Evidence do not apply to an appeals proceeding.

4374 Section 89. Section **63G-6a-1703 (Effective 05/01/13)** is amended to read:

4375 **63G-6a-1703 (Effective 05/01/13). Requirement to post a security deposit or bond**

4376 **-- Exceptions -- Forfeiture of security deposit or bond.**

4377 (1) Except as provided by rule made under Subsection (2)(a), a person who files an  
4378 appeal under Section 63G-6a-1702 shall, at the time that the appeal is filed, pay a security  
4379 deposit or post a bond with the protest officer in an amount that is the greater of:

4380 (a) for the appeal of a debarment or suspension, \$1,000;

4381 (b) for any type of procurement, \$1,000;

4382 (c) for an invitation for bids, 5% of:

4383 (i) the lowest bid amount, if the bid opening has occurred; or

4384 (ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the  
4385 bid opening has not yet occurred;

4386 (d) for a request for proposals, 5% of:

4387 (i) the lowest cost proposed in a response to a request for proposals, if the opening of  
4388 proposals has occurred; or

4389 (ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the  
4390 opening of proposals has not occurred; or

4391 (e) for a type of procurement other than an invitation for bids or a request for  
4392 proposals, the amount established in accordance with Subsection (2).

4393 (2) The [~~Procurement Policy Board~~] board shall make rules, in accordance with Title  
4394 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish:

4395 (a) circumstances and procedures under which the requirement for paying a security  
4396 deposit or posting a bond may be waived or reduced on grounds, including:

4397 (i) that the person filing the appeal is impecunious;

- 4398 (ii) circumstances where certain small purchases are involved; or  
4399 (iii) other grounds determined by the Division of Purchasing and General Services to  
4400 be appropriate; and
- 4401 (b) the method used to determine:
- 4402 (i) the estimated contract cost described in Subsections (1)(c)(ii) and (1)(d)(ii); and  
4403 (ii) the amount described in Subsection (1)(e).
- 4404 (3) The chair of the [~~Procurement Policy Board~~] board shall [a] dismiss a protest filed  
4405 under Section 63G-6a-1702 if the actual or prospective bidder, offeror, or contractor fails to  
4406 timely pay the security deposit or post the bond required under Subsection (1).
- 4407 (4) The chair of the [~~Procurement Policy Board~~] board shall:
- 4408 (a) retain the security deposit or bond until the protest and any appeal of the protest  
4409 decision is final;
- 4410 (b) as it relates to a security deposit:
- 4411 (i) deposit the security deposit into an interest-bearing account; and  
4412 (ii) after any appeal of the protest decision becomes final, return the security deposit  
4413 and the interest it accrues to the person who paid the security deposit, unless the security  
4414 deposit is forfeited to the General Fund under Subsection (5); and
- 4415 (c) as it relates to a bond:
- 4416 (i) retain the bond until the protest and any appeal of the protest decision becomes  
4417 final; and
- 4418 (ii) after the protest and any appeal of the protest decision becomes final, return the  
4419 bond to the person who posted the bond, unless the bond is forfeited to the General Fund under  
4420 Subsection (5).
- 4421 (5) A security deposit that is paid, or a bond that is posted, under this section shall  
4422 forfeit to the General Fund if:
- 4423 (a) the person who paid the security deposit or posted the bond fails to ultimately  
4424 prevail on appeal; and
- 4425 (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its

4426 primary purpose is to harass or cause a delay.

4427 Section 90. Section **63G-6a-1704 (Effective 05/01/13)** is amended to read:

4428 **63G-6a-1704 (Effective 05/01/13). Discontinued appeal with prejudice, except as**  
4429 **authorized.**

4430 After notice of an appeal to the [~~procurement policy~~] board is filed under Section  
4431 63G-6a-1702, no party may discontinue the appeal without prejudice, except as authorized by  
4432 the procurement appeals panel appointed for the appeal.

4433 Section 91. Section **63G-6a-1802 (Effective 05/01/13)** is amended to read:

4434 **63G-6a-1802 (Effective 05/01/13). Appeal to Utah Court of Appeals --**  
4435 **Jurisdiction of district court.**

4436 (1) (a) Subject to Subsection (2), a person who receives an adverse decision, or [~~the~~  
4437 ~~state~~] a procurement unit, may appeal a decision of a procurement appeals panel to the Utah  
4438 Court of Appeals within seven days after the day on which the decision is issued.

4439 (b) A person who receives an adverse decision in a protest relating to a legislative  
4440 procurement unit, a judicial procurement unit, a local government procurement unit, or a public  
4441 transit district may appeal the decision to the Utah Court of Appeals within seven days after the  
4442 day on which the decision is issued.

4443 (2) [~~An agency in the state executive branch or a local public~~] A procurement unit may  
4444 not appeal the decision of a procurement appeals panel, unless the appeal is:

4445 (a) recommended by the protest officer involved; and

4446 (b) except for a [~~local public~~] procurement unit that is not represented by the attorney  
4447 general's office, approved by the attorney general.

4448 (3) The Utah Court of Appeals:

4449 (a) shall consider the appeal as an appellate court;

4450 (b) may not hear the matter as a trial de novo; and

4451 (c) may not overturn a finding or decision of the protest officer or a procurement  
4452 appeals panel, unless the finding or decision is arbitrary and capricious or clearly erroneous.

4453 (4) The Utah Court of Appeals is encouraged to:

- 4454 (a) give an appeal made under Subsection (1) priority; and  
4455 (b) consider the appeal and render a decision in an expeditious manner.  
4456 (5) The district court shall have original jurisdiction in a cause of action between a  
4457 contractor and ~~[the state]~~ a procurement unit for any cause of action that arises under, or in  
4458 relation to, an existing contract between the contractor and ~~[the state]~~ a procurement unit.

4459 Section 92. Section **63G-6a-1902 (Effective 05/01/13)** is amended to read:

4460 **63G-6a-1902 (Effective 05/01/13). Requirement to exhaust administrative**  
4461 **remedies -- Protests and appeals.**

4462 (1) A person may not challenge a procurement, a procurement process, the award of a  
4463 contract relating to a procurement, a debarment, or a suspension, in a court, before an  
4464 administrative officer or body, or in any other forum other than the forum permitted in this  
4465 chapter.

4466 (2) A person who desires to challenge a procurement, a procurement process, the award  
4467 of a contract relating to a procurement, a debarment, or a suspension, shall bring the challenge,  
4468 in accordance with the requirements of this chapter, by timely filing:

4469 (a) a protest in accordance with Section 63G-6a-1602;

4470 (b) any appeal of the protest decision involving a procurement unit, other than a  
4471 legislative procurement unit, a judicial procurement unit, a local government procurement unit,  
4472 or a public transit district, in accordance with Section 63G-6a-1702; and

4473 (c) any appeal from a procurement appeals panel, or from a protest decision of a  
4474 legislative procurement unit, a judicial procurement unit, a local government procurement unit,  
4475 or a public transit district, in accordance with Section 63G-6a-1802.

4476 (3) A person who files a protest or appeal under this chapter is limited to protesting or  
4477 appealing on the grounds specified in the filing document described in Subsection  
4478 63G-6a-1602.

4479 (4) In hearing a protest or an appeal under this chapter relating to an expenditure of  
4480 federal assistance, federal contract funds, or a federal grant, the person who hears the appeal  
4481 shall ensure compliance with federal law and regulations relating to the expenditure.



4482 Section 93. Section **63G-6a-1903 (Effective 05/01/13)** is amended to read:

4483 **63G-6a-1903 (Effective 05/01/13). Effect of timely protest or appeal.**

4484 In the event of a timely protest under Subsection 63G-6a-1602(1), or a timely appeal of  
4485 the protest under Section 63G-6a-1702 or 63G-6a-1802, a [~~state executive branch agency or a~~  
4486 ~~local public~~] procurement unit, other than a legislative procurement unit, a judicial  
4487 procurement unit, a local government procurement unit, or a public transit district, may not  
4488 proceed further with the solicitation or with the award of the contract until:

4489 (1) all administrative and judicial remedies are exhausted;

4490 (2) for a protest under Section 63G-6a-1602 or an appeal under Section 63G-6a-1702:

4491 (a) the chief procurement officer, after consultation with the attorney general's office  
4492 and the head of the using agency, makes a written determination that award of the contract  
4493 without delay is necessary to protect substantial interests of the state;

4494 (b) the head of the purchasing agency, after consultation with the attorney general's  
4495 office, makes a written determination that award of the contract without delay is necessary to  
4496 protect substantial interests of the state; or

4497 (c) for a [~~local public~~] procurement unit that is not represented by the attorney general's  
4498 office, the [~~local public~~] procurement unit, after consulting with the attorney for the [~~local~~  
4499 ~~public~~] procurement unit, makes a written determination that award of the contract without  
4500 delay is necessary to protect substantial interests of the [~~local public~~] procurement unit; or

4501 (3) for an appeal under Section 63G-6a-1802, or an appeal to a higher court than  
4502 district court:

4503 (a) the chief procurement officer, after consultation with the attorney general's office  
4504 and the head of the using agency, makes a written determination that award of the contract  
4505 without delay is in the best interest of the state;

4506 (b) the head of the purchasing agency, after consultation with the attorney general's  
4507 office, makes a written determination that award of the contract without delay is in the best  
4508 interest of the state; or

4509 (c) for a [~~local public~~] procurement unit that is not represented by the attorney general's

4510 office, the [~~local public~~] procurement unit, after consulting with the attorney for the [~~local~~  
4511 ~~public~~] procurement unit, makes a written determination that award of the contract without  
4512 delay is necessary to protect the best interest of the [~~local public~~] procurement unit.

4513 Section 94. Section **63G-6a-1904 (Effective 05/01/13)** is amended to read:

4514 **63G-6a-1904 (Effective 05/01/13). Costs to or against protestor.**

4515 (1) When a protest is sustained administratively or upon administrative or judicial  
4516 review and the protesting bidder or offeror should have been awarded the contract under the  
4517 solicitation but is not, the protestor shall be entitled to the following relief as a claim against  
4518 the state:

4519 (a) the reasonable costs incurred in connection with the solicitation, including bid  
4520 preparation and appeal costs; and

4521 (b) any equitable relief determined to be appropriate by the reviewing administrative or  
4522 judicial body.

4523 (2) When a protest is not sustained by a procurement appeals panel, the protestor shall  
4524 reimburse the [~~public~~] issuing procurement unit for expenses incurred in defending the appeal,  
4525 including personnel costs, attorney fees, other legal costs, expenses incurred by the attorney  
4526 general's office, the per diem and expenses paid by the [~~public~~] issuing procurement unit to  
4527 witnesses or appeals panel members, and any additional expenses incurred by the staff of the  
4528 [~~public~~] issuing procurement unit who have provided materials and administrative services to  
4529 the procurement appeals panel for that case.

4530 (3) The provisions of Title 63G, Chapter 7, Part 4, Notice of Claim Against a  
4531 Governmental Entity or a Government Employee, and Section 63G-7-601 do not apply to  
4532 actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs  
4533 incurred in preparing or appealing an unsuccessful bid or offer.

4534 Section 95. Section **63G-6a-1905 (Effective 05/01/13)** is amended to read:

4535 **63G-6a-1905 (Effective 05/01/13). Authority to resolve controversy between state**  
4536 **and contractor.**

4537 A protest officer, or the protest officer's designee, is authorized, before commencement

4538 of an action in court concerning a controversy that arises between [~~the state~~] a procurement unit  
4539 and a contractor in relation to an existing contract between the [~~state~~] procurement unit and the  
4540 contractor, including controversies based upon breach of contract, mistake, misrepresentation,  
4541 or other cause for contract modification or rescission, to settle and resolve the controversy.

4542 Section 96. Section **63G-6a-1910 (Effective 05/01/13)** is amended to read:

4543 **63G-6a-1910 (Effective 05/01/13). Interest rates.**

4544 (1) [~~Except as provided in Subsection (2), in~~] In controversies between the state and  
4545 contractors under this chapter, interest on amounts ultimately determined to be due to a  
4546 contractor or the state are payable at the rate applicable to judgments from the date the claim  
4547 arose through the date of decision or judgment, whichever is later.

4548 (2) Unless otherwise specified in a lawful contract between a procurement unit and the  
4549 person making a bond claim against the procurement unit, the interest rate applicable to the  
4550 bond claim is the rate described in Subsection 15-1-1(2).

4551 [~~(2)~~] (3) This section does not apply to public assistance benefits programs.

4552 Section 97. Section **63G-6a-1911 (Effective 05/01/13)** is amended to read:

4553 **63G-6a-1911 (Effective 05/01/13). Determinations final except when arbitrary**  
4554 **and capricious.**

4555 The determinations required under the following provisions are final and conclusive  
4556 unless they are arbitrary and capricious or clearly erroneous:

4557 (1) Section 63G-6a-605;

4558 (2) Section 63G-6a-702;

4559 (3) [~~Subsection~~] Section 63G-6a-708[~~(1)~~(a)];

4560 (4) Subsection 63G-6a-709(1);

4561 (5) Section 63G-6a-803;

4562 (6) Section 63G-6a-804;

4563 (7) Section 63G-6a-903;

4564 (8) Subsection 63G-6a-1204(1) or (2);

4565 (9) Subsection 63G-6a-1204(5);

4566 (10) Section 63G-6a-1205; or

4567 (11) Subsection 63G-6a-1206(5).

4568 Section 98. Section **63G-6a-2002 (Effective 05/01/13)** is amended to read:

4569 **63G-6a-2002 (Effective 05/01/13). Records -- Retention.**

4570 (1) All procurement records shall be retained and disposed of in accordance with Title  
4571 63G, Chapter 2, Government Records Access and Management Act.

4572 (2) Written determinations required by this chapter shall be retained in the appropriate  
4573 official contract file of:

4574 (a) the division;

4575 (b) the ~~[state purchasing unit]~~ procurement unit with independent procurement  
4576 authority; or

4577 (c) for a ~~[non-executive state procurement unit]~~ legislative procurement unit or a  
4578 judicial procurement unit, the person designated by rule made by the applicable rulemaking  
4579 authority.

4580 (3) A ~~[public]~~ procurement unit shall keep, and make available to the public, upon  
4581 request, ~~[a] written [record of all]~~ records of procurements [made under this section] for which  
4582 an expenditure of \$50 or more is made, for the longer of:

4583 (a) four years;

4584 (b) the time otherwise required by law; or

4585 (c) the time period provided by rule made by the applicable rulemaking authority.

4586 (4) The written record described in Subsection (3) shall include:

4587 (a) the name of the provider from whom the procurement was made;

4588 (b) a description of the procurement item;

4589 (c) the date of the procurement; and

4590 (d) the expenditure made for the procurement.

4591 Section 99. Section **63G-6a-2003 (Effective 05/01/13)** is amended to read:

4592 **63G-6a-2003 (Effective 05/01/13). Records of contracts made -- Audits --**

4593 **Contract requirements.**

4594 The chief procurement officer, the procurement officer, or the head of [~~an authorized~~  
4595 ~~purchasing entity~~] a procurement unit with independent procurement authority shall maintain a  
4596 record [~~listing~~] of all contracts made under Section 63G-6a-408, 63G-6a-802, or 63G-6a-803,  
4597 in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.  
4598 The record shall contain each contractor's name, the amount and type of each contract, and a  
4599 listing of the procurement items to which the contract relates.

4600 Section 100. Section **63G-6a-2004 (Effective 05/01/13)** is amended to read:

4601 **63G-6a-2004 (Effective 05/01/13). Chief procurement officer's collection of**  
4602 **information on procurement items.**

4603 (1) To the extent possible, the chief procurement officer may collect information  
4604 concerning the type, cost, quality, and quantity of commonly used procurement items procured  
4605 or used by [~~public~~] procurement units.

4606 (2) The chief procurement officer may make the information described in Subsection  
4607 (1) available to any [~~public~~] procurement unit upon request.

4608 Section 101. Section **63G-6a-2101 (Effective 05/01/13)** is amended to read:

4609 **Part 21. Interaction Between Procurement Units**

4610 **63G-6a-2101 (Effective 05/01/13). Title.**

4611 This part is known as "Interaction Between [~~Public~~] Procurement Units."

4612 Section 102. Section **63G-6a-2102 (Effective 05/01/13)** is amended to read:

4613 **63G-6a-2102 (Effective 05/01/13). Agreements between procurement units.**

4614 [~~(1) For purposes of this section only, "public procurement unit" includes an external~~  
4615 ~~procurement unit.~~]

4616 [~~(2)~~] A [~~public~~] procurement unit may enter into an agreement with one or more other  
4617 [~~public~~] procurement units to:

4618 [~~(a)~~] (1) sponsor, conduct, or administer a cooperative agreement for:

4619 (a) the procurement [~~or disposal~~] of a procurement item[;], in accordance with the  
4620 requirements of Section 63G-6a-2105; or

4621 (b) the disposal of a procurement item;

4622           ~~[(b)]~~ (2) cooperatively use a procurement item;

4623           ~~[(c)]~~ (3) commonly use or share warehousing facilities, capital equipment, and other  
4624 facilities;

4625           ~~[(d)]~~ (4) provide personnel, if the receiving [public] procurement unit pays the [public]  
4626 procurement unit providing the personnel the direct and indirect cost of providing the  
4627 personnel, in accordance with the agreement; or

4628           ~~[(e)]~~ (5) make available informational, technical, and other services, if:

4629           ~~[(i)]~~ (a) the requirements of the [public] procurement unit tendering the services have  
4630 precedence over the [public] procurement unit that receives the services; and

4631           ~~[(ii)]~~ (b) the receiving [public] procurement unit pays the expenses of the services  
4632 provided, in accordance with the agreement.

4633           ~~[(3) If a public procurement unit does not have the expertise necessary to administer a  
4634 particular procurement, the public procurement unit may enter into an agreement for  
4635 administration of the procurement with:]~~

4636           ~~[(a) another public procurement unit; or]~~

4637           ~~[(b) a person that is under contract to administer procurements.]~~

4638           Section 103. Section **63G-6a-2103 (Effective 05/01/13)** is amended to read:

4639           **63G-6a-2103 (Effective 05/01/13). Services between procurement units.**

4640           (1) Upon request, a [public] procurement unit may make services available to another  
4641 [public] procurement unit, including:

4642           (a) standard forms;

4643           (b) printed manuals;

4644           (c) qualified products lists;

4645           (d) source information;

4646           (e) common use commodities listings;

4647           (f) supplier prequalification information;

4648           (g) supplier performance ratings;

4649           (h) debarred and suspended bidders lists;

4650 (i) forms for invitation for bids, requests for proposals, instructions to bidders, general  
4651 contract provisions, and contract forms; or

4652 (j) contracts or published summaries of contracts, including price and time of delivery  
4653 information.

4654 (2) A ~~[public]~~ procurement unit may provide technical services to another ~~[public]~~  
4655 procurement unit, including:

4656 (a) development of specifications;

4657 (b) development of quality assurance test methods, including receiving, inspection, and  
4658 acceptance procedures;

4659 (c) use of testing and inspection facilities; or

4660 (d) use of personnel training programs.

4661 (3) ~~[Public procurement]~~ Procurement units may enter into contractual arrangements  
4662 and publish a schedule of fees for the services provided under Subsections (1) and (2).

4663 Section 104. Section **63G-6a-2104 (Effective 05/01/13)** is amended to read:

4664 **63G-6a-2104 (Effective 05/01/13). Compliance by one procurement unit pursuant**  
4665 **to agreement considered compliance by others to agreement.**

4666 (1) When a ~~[public]~~ procurement unit that administers a cooperative ~~[purchase]~~  
4667 procurement complies with the requirements of this chapter, any ~~[public]~~ procurement unit  
4668 participating in the purchase is considered to have complied with this chapter.

4669 (2) A ~~[public]~~ procurement unit may not enter into a cooperative ~~[purchasing]~~  
4670 procurement agreement for the purpose of circumventing this chapter.

4671 Section 105. Section **63G-6a-2105 (Effective 05/01/13)** is amended to read:

4672 **63G-6a-2105 (Effective 05/01/13). Participation of a public entity or a**  
4673 **procurement unit in agreements or contracts of procurement units -- Cooperative**  
4674 **purchasing -- State cooperative contracts.**

4675 ~~[(1) A Utah county or municipality may purchase under or otherwise participate in an~~  
4676 ~~agreement or contract of a Utah public procurement unit.]~~

4677 (1) The chief procurement officer may, in accordance with the requirements of this

4678 chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a  
4679 cooperative procurement, with:

4680 (a) another state;

4681 (b) an external procurement unit; or

4682 (c) a public entity in Utah or outside of Utah.

4683 (2) A public entity may obtain a procurement item from a state cooperative contract or  
4684 a contract awarded by the chief procurement officer under Subsection (1), without signing a  
4685 participating addendum if the quote, invitation for bids, or request for proposals used to obtain  
4686 the contract includes a statement indicating that the resulting contract will be issued on behalf  
4687 of a public entity in Utah.

4688 (3) Except as provided in Section 63G-6a-408, or as otherwise provided in this chapter,  
4689 an executive branch procurement unit may not obtain a procurement item from a source other  
4690 than a state cooperative contract or a contract awarded by the chief procurement officer under  
4691 Subsection (1), if the procurement item is available under a state cooperative contract or a  
4692 contract awarded by the chief procurement officer under Subsection (1).

4693 ~~[(2)]~~ (4) A ~~[state purchasing unit or a]~~ Utah ~~[public]~~ procurement unit may:

4694 (a) contract with the federal government without going through a standard procurement  
4695 process or an exception to a standard procurement process~~;~~, described in Part 8, Exceptions to  
4696 Procurement Requirements, if the procurement item obtained under the contract is provided:

4697 (i) directly by the federal government and not by a person contracting with the federal  
4698 government; or

4699 (ii) by a person under contract with the federal government that obtained the contract in  
4700 a manner that substantially complies with the provisions of this chapter;

4701 ~~[(b) purchase under, or otherwise participate in, an agreement or contract of another~~  
4702 ~~Utah public procurement unit; or]~~

4703 (b) participate in, sponsor, conduct, or administer a cooperative procurement with  
4704 another Utah procurement unit or another public entity in Utah, if:

4705 (i) each party unit involved in the cooperative procurement enters into an agreement



4706 describing the rights and duties of each party:

4707 (ii) the procurement is conducted, and the contract awarded, in accordance with the  
4708 requirements of this chapter:

4709 (iii) the request for quotes, the invitation for bids, or the request for proposals:

4710 (A) clearly indicates that the procurement is a cooperative procurement; and

4711 (B) identifies each party that may purchase under the resulting contract; and

4712 (iv) each party involved in the cooperative procurement signs a participating addendum  
4713 describing its rights and obligations in relation to the resulting contract; or

4714 (c) purchase under, or otherwise participate in, an agreement or contract of an external  
4715 [public] procurement unit, if:

4716 (i) each party involved in the cooperative procurement enters into an agreement  
4717 describing the rights and duties of each party;

4718 ~~[(†) (ii) the procurement was conducted in accordance with the requirements of this~~  
4719 ~~chapter; [and]~~

4720 ~~[(ii) the Utah participating addendum to the contract contains the terms and conditions~~  
4721 ~~required by the applicable rulemaking authority that enters into the Utah participating~~  
4722 ~~addendum.]~~

4723 ~~[(3) A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public~~  
4724 ~~Transit District Act, may, without going through a procurement process or an exception to a~~  
4725 ~~procurement process, contract with a county or municipality to receive money from the county~~  
4726 ~~or municipality to fund a transportation project.]~~

4727 (iii) the request for quotes, the invitation for bids, or the request for proposals:

4728 (A) clearly indicates that the procurement is a cooperative procurement; and

4729 (B) identifies each party that may purchase under the resulting contract; and

4730 (iv) each party involved in the cooperative procurement signs a participating addendum  
4731 describing its rights and obligations in relation to the resulting contract.

4732 (5) A procurement unit may not obtain a procurement item under a contract that results  
4733 from a cooperative procurement described in Subsection (4), if the procurement unit:

4734 (a) is not identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); or  
4735 (b) does not sign a participating addendum to the contract as required by this section.  
4736 (6) A procurement unit, other than a legislative procurement unit or a judicial  
4737 procurement unit, may not obtain a procurement item under a contract held by the United  
4738 States General Services Administration, unless, based upon documentation provided by the  
4739 procurement unit, the Director of the State Division of Purchasing and General Services  
4740 determines in writing that the United States General Services Administration procured the  
4741 contract in a manner that substantially complies with the provisions of this chapter.

4742 Section 106. Section **63G-6a-2302 (Effective 05/01/13)** is amended to read:

4743 **63G-6a-2302 (Effective 05/01/13). Duty to report factual information to attorney**  
4744 **general.**

4745 If a [public] procurement unit [suspects] has reason to believe that a person has engaged  
4746 in a violation of Section 63G-6a-2304.5, collusion, or other anticompetitive practices [among  
4747 bidders or offerors] relating to a procurement or a potential procurement, the [public]  
4748 procurement unit shall transmit a notice of the relevant facts to the attorney general.

4749 Section 107. Section **63G-6a-2304.5** is enacted to read:

4750 **63G-6a-2304.5. Gratuities -- Kickbacks -- Unlawful use of position or influence.**

4751 (1) As used in this section:

4752 (a) "Contract administrator" means a person who administers a current contract, on  
4753 behalf of a public entity, including:

4754 (i) making payments relating to the contract;

4755 (ii) ensuring compliance with the contract;

4756 (iii) auditing a contractor in relation to the contract; or

4757 (iv) enforcing the contract.

4758 (b) "Contribution" means:

4759 (i) a voluntary gift or donation to a public entity for the public entity's use, and not for a  
4760 particular person employed by a public entity, including:

4761 (A) a philanthropic donation;

- 4762            (B) services;
- 4763            (C) money; or
- 4764            (D) other items of value;
- 4765            (ii) admission to a seminar, vendor fair, charitable event, fundraising event, or similar
- 4766 event that relates to the function of the public entity;
- 4767            (iii) purchase of a booth at an event sponsored by the public entity or a group of which
- 4768 the public entity is a member; or
- 4769            (iv) sponsorship of an event that is organized by the public entity.
- 4770            (c) "Gratuity" means anything of value, including:
- 4771            (i) money;
- 4772            (ii) a loan at an interest rate below the market rate or with terms that are more
- 4773 advantageous to the person receiving the loan than terms offered generally on the market;
- 4774            (iii) an award;
- 4775            (iv) employment;
- 4776            (v) admission to an event;
- 4777            (vi) a meal;
- 4778            (vii) lodging;
- 4779            (viii) travel; or
- 4780            (ix) entertainment for which a charge is normally made.
- 4781            (d) "Family member" means a parent, stepparent, spouse, sibling, stepsibling, child,
- 4782 stepchild, grandparent, great-grandparent, grandchild, or great-grandchild.
- 4783            (e) (i) "Hospitality gift" means a promotional or hospitality item, including, a pen,
- 4784 pencil, stationery, toy, pin, trinket, snack, nonalcoholic beverage, or appetizer.
- 4785            (ii) "Hospitality gift" does not include money, a meal, a ticket, admittance to an event,
- 4786 entertainment for which a charge is normally made, travel, or lodging.
- 4787            (f) "Interested person" means a person who is interested in any way in the sale of a
- 4788 procurement item or insurance to a public entity.
- 4789            (g) "Kickback" means a gratuity given in exchange for favorable treatment in a pending

4790 procurement or the administration of a contract.

4791 (h) "Pending procurement" means a procurement at any stage, including:

4792 (i) preparing to engage in a standard procurement process, including preparing

4793 documents that will be used in the standard procurement process;

4794 (ii) engaging in a standard procurement process;

4795 (iii) evaluating, or making a recommendation regarding, a quote, a bid, or a response;

4796 and

4797 (iv) awarding a contract or otherwise making a decision to obtain a procurement item

4798 from a particular person.

4799 (i) "Procurement participant" means a person involved in:

4800 (i) administering, conducting, or making decisions regarding a standard procurement

4801 process;

4802 (ii) making a recommendation regarding award of a contract or regarding a decision to

4803 obtain a procurement item for a particular person;

4804 (iii) evaluating a quote, a bid, or a response; or

4805 (iv) awarding a contract or otherwise making a decision to obtain a procurement item

4806 from a particular person.

4807 (2) Nothing in this section exempts a person subject to the provisions of Title 67,

4808 Chapter 16, Utah Public Officers' and Employees Ethics Act, from complying with the

4809 provisions of the Utah Public Officers' and Employees Ethics Act.

4810 (3) (a) Except as provided in Subsection (6) or (7), it is unlawful for an interested

4811 person to give, offer, or promise to give a gratuity to:

4812 (i) a procurement participant; or

4813 (ii) an individual who the person knows is a family member of a procurement

4814 participant.

4815 (b) Except as provided in Subsection (6) or (7), it is unlawful for a procurement

4816 participant to ask, receive, offer to receive, accept, or ask for a promise to receive a gratuity

4817 from an interested person.

4818 (c) Except as provided in Subsection (6) or (7), it is unlawful for a contractor to give a  
4819 gratuity to:

4820 (i) a contract administrator of the contractor's contract; or

4821 (ii) an individual who the contractor knows is a family member of a contract  
4822 administrator of the contractor's contract.

4823 (d) Except as provided in Subsection (6) or (7), it is unlawful for a person who is a  
4824 contract administrator of a contract to ask, receive, offer to receive, accept, or ask for a promise  
4825 to receive, for the contract administrator or a family member of the contract administrator, a  
4826 gratuity from the contractor for that contract.

4827 (4) (a) It is unlawful for a person to give, offer, or promise to give a kickback to a  
4828 procurement participant or to another person for the benefit of a procurement participant.

4829 (b) It is unlawful for a procurement participant to ask, receive, offer to receive, accept,  
4830 or ask for a promise to receive a kickback for the procurement participant or for another  
4831 person.

4832 (c) It is unlawful for a person to give a kickback to a contract administrator, or to  
4833 another person for the benefit of a contract administrator.

4834 (d) It is unlawful for a contract administrator to ask, receive, offer to receive, accept, or  
4835 ask for a promise to receive a kickback for the contract administrator or for another person.

4836 (5) It is unlawful for a procurement participant to use the procurement participant's  
4837 position or influence to obtain a personal benefit for the procurement participant, or for a  
4838 family member of the procurement participant, from an interested person.

4839 (6) A person is not guilty of a violation of Subsection (3) for giving, offering,  
4840 promising to give, receiving, or accepting a hospitality gift if, as it relates to a procurement  
4841 participant or a contract administrator:

4842 (a) the total value of all hospitality gifts given, offered, or promised to, or received or  
4843 accepted by, the procurement participant or contract administrator in relation to a particular  
4844 procurement or contract is less than \$10; and

4845 (b) the total value of all hospitality gifts given, offered, or promised to, or received or

4846 accepted by, the procurement participant or contract administrator from any one person,  
4847 vendor, bidder, responder, or contractor in a calendar year is less than \$50.

4848 (7) (a) A person is not guilty of a violation of this section for giving, offering, or  
4849 promising a contribution to a public entity, unless the contribution is given, offered, or  
4850 promised with the intent to induce a person to make a procurement decision, or to take action  
4851 in relation to the administration of a contract, in reciprocation for the contribution.

4852 (b) A person is not guilty of a violation of this section for receiving or accepting a  
4853 contribution on behalf of a public entity, unless the person accepts or receives the contribution  
4854 in exchange for making a procurement decision, or for taking action in relation to the  
4855 administration of a contract, in reciprocation for the contribution.

4856 (c) A person is not guilty of a violation of this section if the person gives, offers, or  
4857 makes a pledge, in the form of a contribution to an organization to which a procurement  
4858 participant or contract administrator belongs, unless the contribution is given, offered, or  
4859 pledged with the intent to induce a person to make a procurement decision, or to take action in  
4860 relation to the administration of a contract, in reciprocation for the contribution.

4861 (8) A person who violates this section is guilty of:

4862 (a) a felony of the second degree if the total value of the gratuity or kickback is \$1,000  
4863 or more;

4864 (b) a felony of the third degree if the total value of the gratuity or kickback is \$250 or  
4865 more, but less than \$1,000;

4866 (c) a class A misdemeanor if the total value of the gratuity or kickback is \$100 or more,  
4867 but less than \$250; or

4868 (d) a class B misdemeanor if the total value of the gratuity or kickback is less than  
4869 \$100.

4870 Section 108. Section **63G-6a-2305 (Effective 05/01/13)** is amended to read:

4871 **63G-6a-2305 (Effective 05/01/13). Penalties for artificially dividing a purchase.**

4872 A person who violates Subsection 63G-6a-408[~~(4)~~ or ~~(5)~~](8) or (9) is guilty of:

4873 (1) a felony of the second degree if the total value of the divided procurements is

4874 \$1,000,000 or more;

4875 (2) a felony of the third degree if the total value of the divided procurements is  
4876 \$250,000 or more, but less than \$1,000,000;

4877 (3) a class A misdemeanor if the total value of the divided procurements is \$100,000 or  
4878 more, but less than \$250,000; or

4879 (4) a class B misdemeanor if the total value of the divided procurements is less than  
4880 \$100,000.

4881 Section 109. Section **63G-6a-2306 (Effective 05/01/13)** is amended to read:

4882 **63G-6a-2306 (Effective 05/01/13). Penalties.**

4883 (1) Except as provided in Subsection (2), in addition to any penalty contained in any  
4884 other provision of law, a public officer or public employee who intentionally violates a  
4885 provision of Section [~~63G-6a-2303, Section 63G-6a-2304~~] 63G-6a-2304.5, or Section  
4886 63G-6a-2305 shall be dismissed from employment or removed from office.

4887 (2) An elected official who intentionally violates a provision of Section [~~63G-6a-2303,~~  
4888 ~~Section 63G-6a-2304~~] 63G-6a-2304.5, or Section 63G-6a-2305 may only be removed from  
4889 office in accordance with the requirements of law relating to removal of the elected official  
4890 from office.

4891 (3) Except as provided in Subsection (4), a public officer or public employee who  
4892 intentionally violates a provision of this chapter[~~, including Part 22, Ethical Requirements,~~] is  
4893 subject to disciplinary action, up to and including dismissal from employment or dismissal  
4894 from office.

4895 (4) An elected official who intentionally violates a provision of this chapter[~~, including~~  
4896 ~~Part 22, Ethical Requirements,~~] may only be disciplined or removed from office in accordance  
4897 with the requirements of law relating to discipline of the elected official or removal of the  
4898 elected official from office.

4899 Section 110. Section **63G-6a-2307 (Effective 05/01/13)** is amended to read:

4900 **63G-6a-2307 (Effective 05/01/13). Contract awarded in relation to criminal**  
4901 **conduct void.**

4902 If a person who is awarded a contract intentionally violates a provision of Section  
 4903 [~~63G-6a-2303 or Section 63G-6a-2304~~] 63G-6a-2304.5 in relation to the contract, the contract  
 4904 is void and unenforceable.

4905 Section 111. Section **63G-6a-2308** is enacted to read:

4906 **63G-6a-2308. Exemption.**

4907 (1) This part does not apply to:

4908 (a) a county, a municipality, a local district, a special service district, a conservation  
 4909 district, or a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation  
 4910 Act; or

4911 (b) as it relates to a procurement by, or a contract with, a person described in  
 4912 Subsection (1)(a):

4913 (i) a procurement participant, interested person, or contract administrator of a person  
 4914 described in Subsection (1)(a); or

4915 (ii) a family member of a person described in Subsection (1)(b)(i).

4916 (2) A person described in Subsection (1) is, as it is applicable to the person, required to  
 4917 comply with:

4918 (a) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

4919 (b) Section 76-8-105; and

4920 (c) all other applicable provisions of law.

4921 Section 112. Section **67-16-4 (Effective 05/01/13)** is amended to read:

4922 **67-16-4 (Effective 05/01/13). Improperly disclosing or using private, controlled,**  
 4923 **or protected information -- Using position to secure privileges or exemptions -- Accepting**  
 4924 **employment which would impair independence of judgment or ethical performance --**  
 4925 **Exception.**

4926 (1) [It] Except as provided in Subsection (3), it is an offense for a public officer, public  
 4927 employee, or legislator[, under circumstances not amounting to a violation of Section  
 4928 63G-6a-2304 or 76-8-105;] to:

4929 (a) accept employment or engage in any business or professional activity that he might



4930 reasonably expect would require or induce him to improperly disclose controlled information  
4931 that he has gained by reason of his official position;

4932 (b) disclose or improperly use controlled, private, or protected information acquired by  
4933 reason of his official position or in the course of official duties in order to further substantially  
4934 the officer's or employee's personal economic interest or to secure special privileges or  
4935 exemptions for himself or others;

4936 (c) use or attempt to use his official position to:

4937 (i) further substantially the officer's or employee's personal economic interest; or

4938 (ii) secure special privileges or exemptions for himself or others;

4939 (d) accept other employment that he might expect would impair his independence of  
4940 judgment in the performance of his public duties; or

4941 (e) accept other employment that he might expect would interfere with the ethical  
4942 performance of his public duties.

4943 (2) (a) Subsection (1) does not apply to the provision of education-related services to  
4944 public school students by public education employees acting outside their regular employment.

4945 (b) The conduct referred to in Subsection (2)(a) is subject to Section 53A-1-402.5.

4946 (3) This section does not apply to a public officer, public employee, or legislator who  
4947 engages in conduct that constitutes a violation of this section to the extent that the public  
4948 officer, public employee, or legislator is chargeable, for the same conduct, under Section  
4949 63G-6a-2304.5 or Section 76-8-105.

4950 Section 113. Section **67-16-5 (Effective 05/01/13)** is amended to read:

4951 **67-16-5 (Effective 05/01/13). Accepting gift, compensation, or loan -- When**  
4952 **prohibited.**

4953 (1) As used in this section, "economic benefit tantamount to a gift" includes:

4954 (a) a loan at an interest rate that is substantially lower than the commercial rate then  
4955 currently prevalent for similar loans; and

4956 (b) compensation received for private services rendered at a rate substantially  
4957 exceeding the fair market value of the services.

4958 (2) [~~It~~] Except as provided in Subsection (4), it is an offense for a public officer or  
4959 public employee~~[, under circumstances not amounting to a violation of Section 63G-6a-2304 or~~  
4960 ~~76-8-105,]~~ to knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself  
4961 or another a gift of substantial value or a substantial economic benefit tantamount to a gift:

4962 (a) that would tend improperly to influence a reasonable person in the person's position  
4963 to depart from the faithful and impartial discharge of the person's public duties;

4964 (b) that the public officer or public employee knows or that a reasonable person in that  
4965 position should know under the circumstances is primarily for the purpose of rewarding the  
4966 public officer or public employee for official action taken; or

4967 (c) if the public officer or public employee recently has been, is now, or in the near  
4968 future may be involved in any governmental action directly affecting the donor or lender,  
4969 unless a disclosure of the gift, compensation, or loan and other relevant information has been  
4970 made in the manner provided in Section 67-16-6.

4971 (3) Subsection (2) does not apply to:

4972 (a) an occasional nonpecuniary gift, having a value of not in excess of \$50;

4973 (b) an award publicly presented in recognition of public services;

4974 (c) any bona fide loan made in the ordinary course of business; or

4975 (d) a political campaign contribution.

4976 (4) This section does not apply to a public officer or public employee who engages in  
4977 conduct that constitutes a violation of this section to the extent that the public officer or public  
4978 employee is chargeable, for the same conduct, under Section 63G-6a-2304.5 or Section  
4979 76-8-105.

4980 Section 114. Section **67-16-5.3 (Effective 05/01/13)** is amended to read:

4981 **67-16-5.3 (Effective 05/01/13). Requiring donation, payment, or service to**  
4982 **government agency in exchange for approval -- When prohibited.**

4983 (1) [~~It~~] Except as provided in Subsection (3), it is an offense for a public officer, public  
4984 employee, or legislator~~[, under circumstances not amounting to a violation of Section~~  
4985 ~~63G-6a-2304 or 76-8-105,]~~ to demand from any person as a condition of granting any

4986 application or request for a permit, approval, or other authorization, that the person donate  
4987 personal property, money, or services to any agency.

4988 (2) (a) Subsection (1) does not apply to any donation of property, funds, or services to  
4989 an agency that is:

4990 (i) expressly required by statute, ordinance, or agency rule;

4991 (ii) mutually agreed to between the applicant and the entity issuing the permit,  
4992 approval, or other authorization;

4993 (iii) made voluntarily by the applicant; or

4994 (iv) a condition of a consent decree, settlement agreement, or other binding instrument  
4995 entered into to resolve, in whole or in part, an actual or threatened agency enforcement action.

4996 (b) If a person donates property, funds, or services to an agency, the agency shall, as  
4997 part of the permit or other written authorization:

4998 (i) identify that a donation has been made;

4999 (ii) describe the donation;

5000 (iii) certify, in writing, that the donation was voluntary; and

5001 (iv) place that information in its files.

5002 (3) This section does not apply to a public officer, public employee, or legislator who  
5003 engages in conduct that constitutes a violation of this section to the extent that the public  
5004 officer, public employee, or legislator is chargeable, for the same conduct, under Section  
5005 63G-6a-2304.5 or Section 76-8-105.

5006 Section 115. Section **67-16-5.6** is amended to read:

5007 **67-16-5.6. Offering donation, payment, or service to government agency in**  
5008 **exchange for approval -- When prohibited.**

5009 (1) [~~H~~] Except as provided in Subsection (3), it is an offense for any person[~~, under~~  
5010 ~~circumstances not amounting to a violation of Section 76-8-103;~~] to donate or offer to donate  
5011 personal property, money, or services to any agency on the condition that the agency or any  
5012 other agency approve any application or request for a permit, approval, or other authorization.

5013 (2) (a) Subsection (1) does not apply to any donation of property, funds, or services to

5014 an agency that is:

5015 (i) otherwise expressly required by statute, ordinance, or agency rule;

5016 (ii) mutually agreed to between the applicant and the entity issuing the permit,

5017 approval, or other authorization;

5018 (iii) a condition of a consent decree, settlement agreement, or other binding instrument

5019 entered into to resolve, in whole or in part, an actual or threatened agency enforcement action;

5020 or

5021 (iv) made without condition.

5022 (b) The person making the donation of property, funds, or services shall include with

5023 the donation a signed written statement certifying that the donation is made without condition.

5024 (c) The agency receiving the donation shall place the signed written statement in its

5025 files.

5026 (3) This section does not apply to a person who engages in conduct that constitutes a

5027 violation of this section to the extent that the person is chargeable, for the same conduct, under

5028 Section 63G-6a-2304.5 or Section 76-8-105.

5029 Section 116. Section **67-16-6 (Effective 05/01/13)** is amended to read:

5030 **67-16-6 (Effective 05/01/13). Receiving compensation for assistance in transaction**

5031 **involving an agency -- Filing sworn statement.**

5032 (1) ~~[It]~~ Except as provided in Subsection (5), it is an offense for a public officer or

5033 public employee~~[-, under circumstances not amounting to a violation of Section 63G-6a-2304 or~~

5034 ~~76-8-105,]~~ to receive or agree to receive compensation for assisting any person or business

5035 entity in any transaction involving an agency unless the public officer or public employee files

5036 a sworn, written statement containing the information required by Subsection (2) with:

5037 (a) the head of the officer or employee's own agency;

5038 (b) the agency head of the agency with which the transaction is being conducted; and

5039 (c) the state attorney general.

5040 (2) The statement shall contain:

5041 (a) the name and address of the public officer or public employee involved;

- 5042 (b) the name of the public officer's or public employee's agency;
- 5043 (c) the name and address of the person or business entity being or to be assisted; and
- 5044 (d) a brief description of:
  - 5045 (i) the transaction as to which service is rendered or is to be rendered; and
  - 5046 (ii) the nature of the service performed or to be performed.

5047 (3) The statement required to be filed under Subsection (1) shall be filed within 10  
5048 days after the date of any agreement between the public officer or public employee and the  
5049 person or business entity being assisted or the receipt of compensation, whichever is earlier.

5050 (4) The statement is public information and shall be available for examination by the  
5051 public.

5052 (5) This section does not apply to a public officer or public employee who engages in  
5053 conduct that constitutes a violation of this section to the extent that the public officer or public  
5054 employee is chargeable, for the same conduct, under Section 63G-6a-2304.5 or Section  
5055 76-8-105.

5056 Section 117. Section **77-38-3** is amended to read:

5057 **77-38-3. Notification to victims -- Initial notice, election to receive subsequent**  
5058 **notices -- Form of notice -- Protected victim information.**

5059 (1) Within seven days of the filing of felony criminal charges against a defendant, the  
5060 prosecuting agency shall provide an initial notice to reasonably identifiable and locatable  
5061 victims of the crime contained in the charges, except as otherwise provided in this chapter.

5062 (2) The initial notice to the victim of a crime shall provide information about electing  
5063 to receive notice of subsequent important criminal justice hearings listed in Subsections  
5064 77-38-2(5)(a) through (f) and rights under this chapter.

5065 (3) The prosecuting agency shall provide notice to a victim of a crime for the important  
5066 criminal justice hearings, provided in Subsections 77-38-2(5)(a) through (f) which the victim  
5067 has requested.

5068 (4) (a) The responsible prosecuting agency may provide initial and subsequent notices  
5069 in any reasonable manner, including telephonically, electronically, orally, or by means of a

5070 letter or form prepared for this purpose.

5071 (b) In the event of an unforeseen important criminal justice hearing, listed in  
5072 Subsections 77-38-2(5)(a) through (f) for which a victim has requested notice, a good faith  
5073 attempt to contact the victim by telephone shall be considered sufficient notice, provided that  
5074 the prosecuting agency subsequently notifies the victim of the result of the proceeding.

5075 (5) (a) The court shall take reasonable measures to ensure that its scheduling practices  
5076 for the proceedings provided in Subsections 77-38-2(5)(a) through (f) permit an opportunity for  
5077 victims of crimes to be notified.

5078 (b) The court shall also consider whether any notification system it might use to  
5079 provide notice of judicial proceedings to defendants could be used to provide notice of those  
5080 same proceedings to victims of crimes.

5081 (6) A defendant or, if it is the moving party, Adult Probation and Parole, shall give  
5082 notice to the responsible prosecuting agency of any motion for modification of any  
5083 determination made at any of the important criminal justice hearings provided in Subsections  
5084 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so that the  
5085 prosecuting agency may comply with its notification obligation.

5086 (7) (a) Notice to a victim of a crime shall be provided by the Board of Pardons and  
5087 Parole for the important criminal justice hearing provided in Subsection 77-38-2(5)(g).

5088 (b) The board may provide notice in any reasonable manner, including telephonically,  
5089 electronically, orally, or by means of a letter or form prepared for this purpose.

5090 (8) Prosecuting agencies and the Board of Pardons and Parole are required to give  
5091 notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through  
5092 (f) only where the victim has responded to the initial notice, requested notice of subsequent  
5093 proceedings, and provided a current address and telephone number if applicable.

5094 (9) (a) Law enforcement and criminal justice agencies shall refer any requests for  
5095 notice or information about crime victim rights from victims to the responsible prosecuting  
5096 agency.

5097 (b) In a case in which the Board of Pardons and Parole is involved, the responsible

5098 prosecuting agency shall forward any request for notice it has received from a victim to the  
5099 Board of Pardons and Parole.

5100 (10) In all cases where the number of victims exceeds 10, the responsible prosecuting  
5101 agency may send any notices required under this chapter in its discretion to a representative  
5102 sample of the victims.

5103 (11) (a) A victim's address, telephone number, and victim impact statement maintained  
5104 by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice  
5105 Services, Department of Corrections, and Board of Pardons and Parole, for purposes of  
5106 providing notice under this section, is classified as protected as provided in Subsection  
5107 63G-2-305~~(10)~~(11).

5108 (b) The victim's address, telephone number, and victim impact statement is available  
5109 only to the following persons or entities in the performance of their duties:

- 5110 (i) a law enforcement agency, including the prosecuting agency;
- 5111 (ii) a victims' right committee as provided in Section 77-37-5;
- 5112 (iii) a governmentally sponsored victim or witness program;
- 5113 (iv) the Department of Corrections;
- 5114 (v) the Utah Office for Victims of Crime;
- 5115 (vi) the Commission on Criminal and Juvenile Justice; and
- 5116 (vii) the Board of Pardons and Parole.

5117 (12) The notice provisions as provided in this section do not apply to misdemeanors as  
5118 provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section  
5119 77-38-2.

5120 Section 118. Section **78A-4-106** is amended to read:

5121 **78A-4-106. Appellate Mediation Office -- Protected records and information --**  
5122 **Governmental immunity.**

5123 (1) Unless a more restrictive rule of court is adopted pursuant to Subsection  
5124 63G-2-201(3)(b), information and records relating to any matter on appeal received or  
5125 generated by the Chief Appellate Mediator or other staff of the Appellate Mediation Office as a

5126 result of any party's participation or lack of participation in the settlement program shall be  
5127 maintained as protected records pursuant to Subsections 63G-2-305[(16), (17), and (32)](17),  
5128 (18), and (33).

5129 (2) In addition to the access restrictions on protected records provided in Section  
5130 63G-2-202, the information and records may not be disclosed to judges, staff, or employees of  
5131 any court of this state.

5132 (3) The Chief Appellate Mediator may disclose statistical and other demographic  
5133 information as may be necessary and useful to report on the status and to allow supervision and  
5134 oversight of the Appellate Mediation Office.

5135 (4) When acting as mediators, the Chief Appellate Mediator and other professional  
5136 staff of the Appellate Mediation Office shall be immune from liability pursuant to Title 63G,  
5137 Chapter 7, Governmental Immunity Act of Utah.

5138 (5) Pursuant to Utah Constitution, Article VIII, Section 4, the Supreme Court may  
5139 exercise overall supervision of the Appellate Mediation Office as part of the appellate process.

5140 Section 119. **Repealer.**

5141 This bill repeals:

5142 Section **63G-6-506.5, Interest rate for bond claim.**

5143 Section **63G-6a-1908 (Effective 05/01/13), Resolution of local public procurement**  
5144 **controversies.**

5145 Section **63G-6a-2201 (Effective 05/01/13), Title.**

5146 Section **63G-6a-2202 (Effective 05/01/13), Ethical requirements for public**  
5147 **procurement.**

5148 Section **63G-6a-2303 (Effective 05/01/13), Offering a gratuity.**

5149 Section **63G-6a-2304 (Effective 05/01/13), Accepting or requesting a gratuity.**

5150 Section 120. **Effective date.**

5151 If approved by two-thirds of all members elected to each house, this bill takes effect on  
5152 May 1, 2013.