

**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



- 28 fund a transportation project without going through a standard procurement process or an  
29 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 **63G-2-305**, as last amended by Laws of Utah 2012, Chapters 331 and 377

59           **63G-6a-103 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 235  
60 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended  
61 by Coordination Clause, Laws of Utah 2012, Chapter 347

62           **63G-6a-105 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91  
63 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended  
64 by Coordination Clause, Laws of Utah 2012, Chapter 347

65           **63G-6a-106 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
66 Chapter 347

67           **63G-6a-107 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
68 Chapter 347

69           **63G-6a-108 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

70           **63G-6a-201 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

71           **63G-6a-203 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91  
72 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended  
73 by Coordination Clause, Laws of Utah 2012, Chapter 347

74           **63G-6a-204 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
75 Chapter 347

76           **63G-6a-302 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
77 Chapter 347

78           **63G-6a-303 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
79 Chapter 347

80           **63G-6a-305 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
81 Chapter 347

82           **63G-6a-402 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

83           **63G-6a-403 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

84           **63G-6a-404 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

85           **63G-6a-406 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

86           **63G-6a-407 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
87 Chapter 347

88           **63G-6a-408 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

89           **63G-6a-503 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

- 90           **63G-6a-602 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 91           **63G-6a-603 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 92           **63G-6a-604 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 93           **63G-6a-605 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 94           **63G-6a-606 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 95           **63G-6a-607 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 96           **63G-6a-608 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 97           **63G-6a-609 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 98           **63G-6a-610 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 99           **63G-6a-611 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 100          **63G-6a-612 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 101          **63G-6a-702 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 102          **63G-6a-703 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 103          **63G-6a-704 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 104          **63G-6a-705 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 105          **63G-6a-707 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 106          **63G-6a-708 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 107          **63G-6a-709 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 108          **63G-6a-710 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347
- 109          **63G-6a-711 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,
- 110 Chapter 347
- 111          **63G-6a-802 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,
- 112 Chapter 347
- 113          **63G-6a-804 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,
- 114 Chapter 347
- 115          **63G-6a-805 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,
- 116 Chapter 347
- 117          **63G-6a-902 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,
- 118 Chapter 347
- 119          **63G-6a-903 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,
- 120 Chapter 347

121           **63G-6a-904 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
122 Chapter 347  
123           **63G-6a-1002 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
124 Chapter 347  
125           **63G-6a-1003 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
126 Chapter 347  
127           **63G-6a-1102 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
128 Chapter 347  
129           **63G-6a-1103 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
130 Chapter 347  
131           **63G-6a-1202 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter  
132 330 and renumbered and amended by Laws of Utah 2012, Chapter 347  
133           **63G-6a-1203 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
134 Chapter 347  
135           **63G-6a-1204 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347  
136           **63G-6a-1205 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
137 Chapter 347  
138           **63G-6a-1206 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
139 Chapter 347  
140           **63G-6a-1302 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter  
141 330 and renumbered and amended by Laws of Utah 2012, Chapter 347  
142           **63G-6a-1303 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
143 Chapter 347  
144           **63G-6a-1502 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
145 Chapter 347  
146           **63G-6a-1503 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
147 Chapter 347  
148           **63G-6a-1506 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
149 Chapter 347  
150           **63G-6a-1603 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91  
151 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended

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

153 **63G-6a-1702 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
154 Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter  
155 347

156 **63G-6a-1703 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
157 Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter  
158 347

159 **63G-6a-1704 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91  
160 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended  
161 by Coordination Clause, Laws of Utah 2012, Chapter 347

162 **63G-6a-1802 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
163 Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter  
164 347

165 **63G-6a-1902 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
166 Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter  
167 347

168 **63G-6a-1903 (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-1904 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91  
172 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended  
173 by Coordination Clause, Laws of Utah 2012, Chapter 347

174 **63G-6a-1905 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91  
175 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended  
176 by Coordination Clause, Laws of Utah 2012, Chapter 347

177 **63G-6a-1910 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
178 Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter  
179 347

180 **63G-6a-2002 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
181 Chapter 347

182 **63G-6a-2003 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,

183 Chapter 347

184 **63G-6a-2004 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,

185 Chapter 347

186 **63G-6a-2101 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

187 **63G-6a-2102 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,

188 Chapter 347

189 **63G-6a-2103 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,

190 Chapter 347

191 **63G-6a-2104 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,

192 Chapter 347

193 **63G-6a-2105 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,

194 Chapter 347

195 **63G-6a-2302 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,

196 Chapter 347

197 ENACTS:

198 **63G-6a-505**, Utah Code Annotated 1953

199 **63G-6a-709.5**, Utah Code Annotated 1953

200 **63G-6a-806**, Utah Code Annotated 1953

201 **63G-6a-905**, Utah Code Annotated 1953

202 **63G-6a-1208**, Utah Code Annotated 1953

203 **63G-6a-1209**, Utah Code Annotated 1953

204 **63G-6a-1210**, Utah Code Annotated 1953

205 **63G-6a-2304.5**, Utah Code Annotated 1953

206 REPEALS AND REENACTS:

207 **63G-6a-104 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347 and

208 last amended by Coordination Clause, Laws of Utah 2012, Chapter 347

209 RENUMBERS AND AMENDS:

210 **63G-6a-1204.5 (Effective 05/01/13)**, (Renumbered from 63G-6a-405 (Effective

211 05/01/13), as enacted by Laws of Utah 2012, Chapter 347)

212 REPEALS:

213 **63G-6-506.5**, as enacted by Laws of Utah 2012, Chapter 330

214           **63G-6a-1908 (Effective 05/01/13)**, as renumbered and amended by Laws of Utah 2012,  
215 Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter  
216 347

217           **63G-6a-2201 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

218           **63G-6a-2202 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

219           **63G-6a-2303 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

220           **63G-6a-2304 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

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

223           Section 1. Section **63G-2-305** is amended to read:

224           **63G-2-305. Protected records.**

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

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

228           (2) commercial information or nonindividual financial information obtained from a  
229 person if:

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

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

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

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

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

244           (5) test questions and answers to be used in future license, certification, registration,

245 employment, or academic examinations;

246 (6) records, the disclosure of which would impair governmental procurement  
 247 proceedings or give an unfair advantage to any person proposing to enter into a contract or  
 248 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this  
 249 Subsection (6) does not restrict the right of a person to have access to, ~~[onee]~~ after the contract  
 250 or grant has been awarded and signed by all parties, a bid, proposal, ~~[or]~~ application, or other  
 251 information submitted to or by a governmental entity in response to:

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

253 (b) a request for proposals;

254 (c) a request for quotes;

255 ~~[(e)]~~ (d) a grant; or

256 ~~[(f)]~~ (e) other similar document;

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

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

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

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

266 ~~[(7)]~~ (8) records that would identify real property or the appraisal or estimated value of  
 267 real or personal property, including intellectual property, under consideration for public  
 268 acquisition before any rights to the property are acquired unless:

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

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

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

275 (d) in the case of records that would identify the appraisal or estimated value of

276 property, the potential sellers have already learned of the governmental entity's estimated value  
277 of the property; or

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

281 [~~(8)~~] (9) records prepared in contemplation of sale, exchange, lease, rental, or other  
282 compensated transaction of real or personal property including intellectual property, which, if  
283 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value  
284 of the subject property, unless:

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

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

291 [~~(9)~~] (10) records created or maintained for civil, criminal, or administrative  
292 enforcement purposes or audit purposes, or for discipline, licensing, certification, or  
293 registration purposes, if release of the records:

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

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

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

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

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

307           ~~[(10)]~~ (11) records the disclosure of which would jeopardize the life or safety of an  
308 individual;

309           ~~[(11)]~~ (12) records the disclosure of which would jeopardize the security of  
310 governmental property, governmental programs, or governmental recordkeeping systems from  
311 damage, theft, or other appropriation or use contrary to law or public policy;

312           ~~[(12)]~~ (13) records that, if disclosed, would jeopardize the security or safety of a  
313 correctional facility, or records relating to incarceration, treatment, probation, or parole, that  
314 would interfere with the control and supervision of an offender's incarceration, treatment,  
315 probation, or parole;

316           ~~[(13)]~~ (14) records that, if disclosed, would reveal recommendations made to the Board  
317 of Pardons and Parole by an employee of or contractor for the Department of Corrections, the  
318 Board of Pardons and Parole, or the Department of Human Services that are based on the  
319 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's  
320 jurisdiction;

321           ~~[(14)]~~ (15) records and audit workpapers that identify audit, collection, and operational  
322 procedures and methods used by the State Tax Commission, if disclosure would interfere with  
323 audits or collections;

324           ~~[(15)]~~ (16) records of a governmental audit agency relating to an ongoing or planned  
325 audit until the final audit is released;

326           ~~[(16)]~~ (17) records that are subject to the attorney client privilege;

327           ~~[(17)]~~ (18) records prepared for or by an attorney, consultant, surety, indemnitor,  
328 insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a  
329 judicial, quasi-judicial, or administrative proceeding;

330           ~~[(18)]~~ (19) (a) (i) personal files of a state legislator, including personal correspondence  
331 to or from a member of the Legislature; and

332           (ii) notwithstanding Subsection ~~[(18)]~~ (19)(a)(i), correspondence that gives notice of  
333 legislative action or policy may not be classified as protected under this section; and

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

336           (A) members of a legislative body;

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

338 (C) members of a legislative body's staff; and  
339 (ii) notwithstanding Subsection [~~(18)~~] (19)(b)(i), a communication that gives notice of  
340 legislative action or policy may not be classified as protected under this section;

341 [~~(19)~~] (20) (a) records in the custody or control of the Office of Legislative Research  
342 and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated  
343 legislation or contemplated course of action before the legislator has elected to support the  
344 legislation or course of action, or made the legislation or course of action public; and

345 (b) notwithstanding Subsection [~~(19)~~] (20)(a), the form to request legislation submitted  
346 to the Office of Legislative Research and General Counsel is a public document unless a  
347 legislator asks that the records requesting the legislation be maintained as protected records  
348 until such time as the legislator elects to make the legislation or course of action public;

349 [~~(20)~~] (21) research requests from legislators to the Office of Legislative Research and  
350 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared  
351 in response to these requests;

352 [~~(21)~~] (22) drafts, unless otherwise classified as public;

353 [~~(22)~~] (23) records concerning a governmental entity's strategy about:

354 (a) collective bargaining; or

355 (b) imminent or pending litigation;

356 [~~(23)~~] (24) records of investigations of loss occurrences and analyses of loss  
357 occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance  
358 Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

359 [~~(24)~~] (25) records, other than personnel evaluations, that contain a personal  
360 recommendation concerning an individual if disclosure would constitute a clearly unwarranted  
361 invasion of personal privacy, or disclosure is not in the public interest;

362 [~~(25)~~] (26) records that reveal the location of historic, prehistoric, paleontological, or  
363 biological resources that if known would jeopardize the security of those resources or of  
364 valuable historic, scientific, educational, or cultural information;

365 [~~(26)~~] (27) records of independent state agencies if the disclosure of the records would  
366 conflict with the fiduciary obligations of the agency;

367 [~~(27)~~] (28) records of an institution within the state system of higher education defined  
368 in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,

369 retention decisions, and promotions, which could be properly discussed in a meeting closed in  
370 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of  
371 the final decisions about tenure, appointments, retention, promotions, or those students  
372 admitted, may not be classified as protected under this section;

373 ~~[(28)]~~ (29) records of the governor's office, including budget recommendations,  
374 legislative proposals, and policy statements, that if disclosed would reveal the governor's  
375 contemplated policies or contemplated courses of action before the governor has implemented  
376 or rejected those policies or courses of action or made them public;

377 ~~[(29)]~~ (30) records of the Office of the Legislative Fiscal Analyst relating to budget  
378 analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final  
379 recommendations in these areas;

380 ~~[(30)]~~ (31) records provided by the United States or by a government entity outside the  
381 state that are given to the governmental entity with a requirement that they be managed as  
382 protected records if the providing entity certifies that the record would not be subject to public  
383 disclosure if retained by it;

384 ~~[(31)]~~ (32) transcripts, minutes, or reports of the closed portion of a meeting of a public  
385 body except as provided in Section 52-4-206;

386 ~~[(32)]~~ (33) records that would reveal the contents of settlement negotiations but not  
387 including final settlements or empirical data to the extent that they are not otherwise exempt  
388 from disclosure;

389 ~~[(33)]~~ (34) memoranda prepared by staff and used in the decision-making process by  
390 an administrative law judge, a member of the Board of Pardons and Parole, or a member of any  
391 other body charged by law with performing a quasi-judicial function;

392 ~~[(34)]~~ (35) records that would reveal negotiations regarding assistance or incentives  
393 offered by or requested from a governmental entity for the purpose of encouraging a person to  
394 expand or locate a business in Utah, but only if disclosure would result in actual economic  
395 harm to the person or place the governmental entity at a competitive disadvantage, but this  
396 section may not be used to restrict access to a record evidencing a final contract;

397 ~~[(35)]~~ (36) materials to which access must be limited for purposes of securing or  
398 maintaining the governmental entity's proprietary protection of intellectual property rights  
399 including patents, copyrights, and trade secrets;

400            [~~(36)~~] (37) the name of a donor or a prospective donor to a governmental entity,  
401 including an institution within the state system of higher education defined in Section  
402 53B-1-102, and other information concerning the donation that could reasonably be expected to  
403 reveal the identity of the donor, provided that:

404            (a) the donor requests anonymity in writing;  
405            (b) any terms, conditions, restrictions, or privileges relating to the donation may not be  
406 classified protected by the governmental entity under this Subsection [~~(36)~~] (37); and

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

412            [~~(37)~~] (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
413 73-18-13;

414            [~~(38)~~] (39) a notification of workers' compensation insurance coverage described in  
415 Section 34A-2-205;

416            [~~(39)~~] (40) (a) the following records of an institution within the state system of higher  
417 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,  
418 or received by or on behalf of faculty, staff, employees, or students of the institution:

- 419            (i) unpublished lecture notes;
- 420            (ii) unpublished notes, data, and information:
  - 421            (A) relating to research; and
  - 422            (B) of:

423            (I) the institution within the state system of higher education defined in Section  
424 53B-1-102; or

425            (II) a sponsor of sponsored research;

426            (iii) unpublished manuscripts;

427            (iv) creative works in process;

428            (v) scholarly correspondence; and

429            (vi) confidential information contained in research proposals;

430            (b) Subsection [~~(39)~~] (40)(a) may not be construed to prohibit disclosure of public

431 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and  
432 (c) Subsection [~~(39)~~] (40)(a) may not be construed to affect the ownership of a record;  
433 [~~(40)~~] (41) (a) records in the custody or control of the Office of Legislative Auditor  
434 General that would reveal the name of a particular legislator who requests a legislative audit  
435 prior to the date that audit is completed and made public; and  
436 (b) notwithstanding Subsection [~~(40)~~] (41)(a), a request for a legislative audit  
437 submitted to the Office of the Legislative Auditor General is a public document unless the  
438 legislator asks that the records in the custody or control of the Office of Legislative Auditor  
439 General that would reveal the name of a particular legislator who requests a legislative audit be  
440 maintained as protected records until the audit is completed and made public;  
441 [~~(41)~~] (42) records that provide detail as to the location of an explosive, including a  
442 map or other document that indicates the location of:  
443 (a) a production facility; or  
444 (b) a magazine;  
445 [~~(42)~~] (43) information:  
446 (a) contained in the statewide database of the Division of Aging and Adult Services  
447 created by Section 62A-3-311.1; or  
448 (b) received or maintained in relation to the Identity Theft Reporting Information  
449 System (IRIS) established under Section 67-5-22;  
450 [~~(43)~~] (44) information contained in the Management Information System and  
451 Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;  
452 [~~(44)~~] (45) information regarding National Guard operations or activities in support of  
453 the National Guard's federal mission;  
454 [~~(45)~~] (46) records provided by any pawn or secondhand business to a law enforcement  
455 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and  
456 Secondhand Merchandise Transaction Information Act;  
457 [~~(46)~~] (47) information regarding food security, risk, and vulnerability assessments  
458 performed by the Department of Agriculture and Food;  
459 [~~(47)~~] (48) except to the extent that the record is exempt from this chapter pursuant to  
460 Section 63G-2-106, records related to an emergency plan or program, a copy of which is  
461 provided to or prepared or maintained by the Division of Emergency Management, and the

462 disclosure of which would jeopardize:

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

464 (b) the security of:

465 (i) governmental property;

466 (ii) governmental programs; or

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

468 Management information;

469 [~~48~~] (49) records of the Department of Agriculture and Food that provides for the  
470 identification, tracing, or control of livestock diseases, including any program established under  
471 Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Control of  
472 Animal Disease;

473 [~~49~~] (50) as provided in Section 26-39-501:

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

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

479 [~~50~~] (51) unless otherwise classified as public under Section 63G-2-301 and except  
480 as provided under Section 41-1a-116, an individual's home address, home telephone number,  
481 or personal mobile phone number, if:

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

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

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

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

488 [~~51~~] (52) the name, home address, work addresses, and telephone numbers of an  
489 individual that is engaged in, or that provides goods or services for, medical or scientific  
490 research that is:

491 (a) conducted within the state system of higher education, as defined in Section  
492 53B-1-102; and

493 (b) conducted using animals;

494 [~~(52)~~] (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government  
495 Procurement Private Proposal Program, to the extent not made public by rules made under that  
496 chapter;

497 [~~(53)~~] (54) in accordance with Section 78A-12-203, any record of the Judicial  
498 Performance Evaluation Commission concerning an individual commissioner's vote on  
499 whether or not to recommend that the voters retain a judge;

500 [~~(54)~~] (55) information collected and a report prepared by the Judicial Performance  
501 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter  
502 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,  
503 the information or report;

504 [~~(55)~~] (56) records contained in the Management Information System created in  
505 Section 62A-4a-1003;

506 [~~(56)~~] (57) records provided or received by the Public Lands Policy Coordinating  
507 Office in furtherance of any contract or other agreement made in accordance with Section  
508 63J-4-603;

509 [~~(57)~~] (58) information requested by and provided to the Utah State 911 Committee  
510 under Section 53-10-602;

511 [~~(58)~~] (59) recorded Children's Justice Center investigative interviews, both video and  
512 audio, the release of which are governed by Section 77-37-4;

513 [~~(59)~~] (60) in accordance with Section 73-10-33:

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

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

518 [~~(60)~~] (61) the following records in the custody or control of the Office of Inspector  
519 General of Medicaid Services, created in Section 63J-4a-201:

520 (a) records that would disclose information relating to allegations of personal  
521 misconduct, gross mismanagement, or illegal activity of a person if the information or  
522 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services  
523 through other documents or evidence, and the records relating to the allegation are not relied

524 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation  
525 report or final audit report;

526 (b) records and audit workpapers to the extent they would disclose the identity of a  
527 person who, during the course of an investigation or audit, communicated the existence of any  
528 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or  
529 regulation adopted under the laws of this state, a political subdivision of the state, or any  
530 recognized entity of the United States, if the information was disclosed on the condition that  
531 the identity of the person be protected;

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

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

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

539 ~~[(61)]~~ (62) records that reveal methods used by the Office of Inspector General of  
540 Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud,  
541 waste, or abuse;

542 ~~[(62)]~~ (63) information provided to the Department of Health or the Division of  
543 Occupational and Professional Licensing under Subsection 58-68-304(3) or (4); and

544 ~~[(63)]~~ (64) a record described in Section 63G-12-210.

545 Section 2. Section **63G-6a-103 (Effective 05/01/13)** is amended to read:

546 **63G-6a-103 (Effective 05/01/13). Definitions.**

547 As used in this chapter:

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

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

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

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

552 ~~[(a) as it relates to the state legislative branch, the Legislative Management Committee,~~  
553 ~~except to the extent that the Legislature passes a rule that supercedes or conflicts with a rule~~  
554 ~~made by the Legislative Management Committee;]~~

555 ~~[(b) as it relates to the state judicial branch, the Judicial Council;]~~  
556 ~~[(c) as it relates to a local public procurement unit, other than a local public~~  
557 ~~procurement unit described in Subsections (2)(d) through (h), the board; or]~~  
558 ~~[(d) as it relates to a municipality or county that adopts this chapter, the legislative~~  
559 ~~body of the municipality or county, not as a delegation of authority from the Legislature, but~~  
560 ~~under the municipality's or county's own legislative authority;]~~  
561 ~~[(e) as it relates to a school district or a public school, the Procurement Policy Board,~~  
562 ~~except to the extent that a school district makes its own non-administrative rules, with respect~~  
563 ~~to a particular subject, that do not conflict with the provisions of this chapter;]~~  
564 ~~[(f) as it relates to a state institution of higher education, the State Board of Regents;]~~  
565 ~~[(g) as it relates to a public transit district organized under Title 17B, Chapter 2a, Part~~  
566 ~~8, Public Transit District Act, the governing board of the public transit district;]~~  
567 ~~[(h) as it relates to a local district or a special service district, the board, except to the~~  
568 ~~extent that the local district or special service district enacts its own rules;]~~  
569 ~~[(i) with respect to a subject addressed by board rules; or]~~  
570 ~~[(ii) that are in addition to board rules;]~~  
571 ~~[(i) as it relates to the following entities, but only to the extent that the rules relate to~~  
572 ~~procurement authority expressly granted to the entity by statute:]~~  
573 ~~[(i) the State Building Board, created in Section 63A-5-101;]~~  
574 ~~[(ii) the Division of Facilities Construction and Management created in Section~~  
575 ~~63A-5-201;]~~  
576 ~~[(iii) the attorney general's office; or]~~  
577 ~~[(iv) the Department of Transportation, created in Section 72-1-201;]~~  
578 ~~[(j) as it relates to the state executive branch and all public procurement units other~~  
579 ~~than those described in Subsections (2)(a) through (h), the board; or]~~  
580 ~~[(k) as it relates to an entity described in Subsection (2)(i), except to the extent that the~~  
581 ~~rules relate to procurement authority expressly granted to the entity by statute, the board.]~~  
582 ~~[(3)] (1) "Architect-engineer services" means:~~  
583 (a) professional services within the scope of the practice of architecture as defined in  
584 Section 58-3a-102; or  
585 (b) professional engineering as defined in Section 58-22-102.

586 ~~[(4)]~~ (2) "Bidder" means a person who responds to an invitation for bids.

587 ~~[(5)]~~ "Board" means the Utah State Procurement Policy Board, created in Section  
588 ~~63G-6a-202.~~

589 ~~[(6)]~~ "Building board" means the State Building Board created in Section ~~63A-5-101.~~

590 ~~[(7)]~~ (3) "Change order" means:

591 (a) a written order signed by the procurement officer that directs the contractor to  
592 suspend work or make changes, as authorized by contract, without the consent of the  
593 contractor; or

594 (b) a written alteration in specifications, delivery point, rate of delivery, period of  
595 performance, price, quantity, or other provisions of a contract, upon mutual agreement of the  
596 parties to the contract.

597 ~~[(8)]~~ (4) "Chief procurement officer" means the chief procurement officer appointed  
598 under Subsection 63G-6a-302(1).

599 ~~[(9)]~~ (5) (a) "Construction" means the process of building, renovating, altering,  
600 improving, or repairing a public building or public work.

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

603 ~~[(10)]~~ (6) (a) "Construction manager/general contractor" means a contractor who enters  
604 into a contract for the management of a construction project when the contract allows the  
605 contractor to subcontract for additional labor and materials that are not included in the  
606 contractor's cost proposal submitted at the time of the procurement of the contractor's services.

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

611 ~~[(11)]~~ (7) "Contract" means an agreement for the procurement or disposal of a  
612 procurement item.

613 ~~[(12)]~~ (8) "Contractor" means a person who is awarded a contract with a ~~public~~  
614 procurement unit.

615 ~~[(13)]~~ (9) "Cooperative ~~purchasing~~ procurement" means procurement conducted by,  
616 or on behalf of, more than one ~~public~~ procurement unit, or by a ~~public~~ procurement unit and

617 an external procurement unit.

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

620 ~~[(14)]~~ (11) "Cost-reimbursement contract" means a contract under which a contractor  
621 is reimbursed for costs which are allowed and allocated in accordance with the contract terms  
622 and the provisions of this chapter, and a fee, if any.

623 ~~[(15)]~~ (12) "Days" means calendar days, unless expressly provided otherwise.

624 (13) "Definite quantity contract" means a fixed price contract that provides for the  
625 supply of a specified amount of goods over a specified period, with deliveries scheduled  
626 according to a specified schedule.

627 ~~[(16)]~~ (14) "Design-build" means the procurement of architect-engineer services and  
628 construction by the use of a single contract with the design-build provider.

629 ~~[(17)]~~ (15) "Director" means the director of the division.

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

631 ~~[(19)]~~ (16) "Established catalogue price" means the price included in a catalogue, price  
632 list, schedule, or other form that:

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

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

635 (c) states prices at which sales are currently or were last made to a significant number  
636 of any category of buyers or buyers constituting the general buying public for the supplies or  
637 services involved.

638 (17) "Fixed price contract" means a contract that provides a price, for each  
639 procurement item obtained under the contract, that is not subject to adjustment except to the  
640 extent that:

641 (a) the contract provides, under circumstances specified in the contract, for an  
642 adjustment in price that is not based on cost to the contractor; or

643 (b) an adjustment is required by law.

644 (18) "Fixed price contract with price adjustment" means a fixed price contract that  
645 provides for an upward or downward revision of price, precisely described in the contract, that:

646 (a) is based on the consumer price index or another commercially acceptable index,  
647 source, or formula; and

648 (b) is not based on a percentage of the cost to the contractor.  
649 ~~[(20)]~~ (19) (a) "Grant" means furnishing, by a public entity or by any other public or  
650 private source, financial or other assistance to a person to support a program authorized by law.  
651 (b) "Grant" does not include:  
652 (i) an award whose primary purpose is to procure an end product or procurement item;  
653 or  
654 (ii) a contract that is awarded as a result of a procurement or a procurement process.  
655 ~~[(21)]~~ (20) "Head of a [public] procurement unit" means:  
656 (a) as it relates to ~~[the state legislative branch]~~ a legislative procurement unit, any  
657 person designated by rule made by the applicable rulemaking authority;  
658 (b) as it relates to ~~[the state executive branch]~~ an executive branch procurement unit:  
659 (i) the director of a division; or  
660 (ii) any other person designated by the board, by rule;  
661 (c) as it relates to ~~[the state judicial branch]~~ a judicial procurement unit:  
662 (i) the Judicial Council; or  
663 (ii) any other person designated by the Judicial Council, by rule;  
664 ~~[(d) as it relates to a local public procurement unit, other than a local public~~  
665 ~~procurement unit described in Subsections (21)(c) through (i):]~~  
666 ~~[(i) the appointed or elected head of the local public procurement unit; or]~~  
667 ~~[(ii) any other person designated by the board, by rule;]~~  
668 ~~[(e)]~~ (d) as it relates to a local [public] government procurement unit ~~[that is a~~  
669 ~~municipality or a county]:~~  
670 (i) the legislative body of the ~~[municipality or county]~~ local government procurement  
671 unit; or  
672 (ii) any other person designated by the ~~[municipality or county]~~ local government  
673 procurement unit;  
674 (e) as it relates to a local district, the board of trustees of the local district;  
675 (f) as it relates to a special service district, the governing body of the special service  
676 district;  
677 (g) as it relates to a local building authority, the board of directors of the local building  
678 authority;

679 (h) as it relates to a conservation district, the board of supervisors of the conservation  
680 district;

681 (i) as it relates to a public corporation, the board of directors of the public corporation;

682 ~~[(f)]~~ (j) as it relates to a school district or any school or entity within a school district,  
683 the board of the school district, or the board's designee;

684 ~~[(g)]~~ (k) as it relates to a charter school, the individual or body with executive authority  
685 over the charter school, or the individual's or body's designee; or

686 ~~[(h)]~~ (l) as it relates to an institution of higher education of the state, the president of  
687 the institution of higher education, or the president's designee~~[-or]~~.

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

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

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

692 ~~[(b) to the extent that the entities have express statutory authority to engage in a~~  
693 ~~procurement without the involvement of the division:]~~

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

696 ~~[(ii) as it relates to the Division of Facilities Construction and Management created in~~  
697 ~~Section 63A-5-201, the director of the Division of Facilities Construction and Management;]~~

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

699 ~~[(iv) as it relates to the Department of Transportation, created in Section 72-1-201, the~~  
700 ~~executive director of the Department of Transportation; or]~~

701 ~~[(v) as it relates to a district court, a person designated by the Judicial Council, by~~  
702 ~~rule;]~~

703 ~~[(e) as it relates to an institution of higher education of the state, the president of the~~  
704 ~~institution of higher education of the state;]~~

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

706 ~~[(e) as it relates to a public school, including a local school board, the board of the~~  
707 ~~school district;]~~

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

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

710 applicable rulemaking authority; or]

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

713 (21) "Indefinite quantity contract" means a fixed price contract that:

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

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

717 (ii) provides a maximum purchase limit.

718 (22) "Independent procurement authority" means authority granted to a procurement  
719 unit, under Subsection 63G-6a-108(2), to engage in a procurement without oversight or control  
720 of the division.

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

724 (24) "Issuing procurement unit" means the procurement unit, with independent  
725 procurement authority, that issues a particular invitation for bids or request for proposals.

726 (25) "Labor hour contract" is a contract where:

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

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

730 [~~(24)~~] (26) "Multiple award contracts" means the award of a contract for an indefinite  
731 quantity of a procurement item to more than one bidder or offeror.

732 [~~(25)~~] (27) "Multiyear contract" means a contract that extends beyond a one-year  
733 period, including a contract that permits renewal of the contract, without competition, beyond  
734 the first year of the contract.

735 [~~(26)~~] (28) "Municipality" means a city or a town.

736 [~~(27)~~] (29) "Offeror" means a person who responds to a request for proposals.

737 [~~(28)~~] (30) "Preferred bidder" means a bidder that is entitled to receive a reciprocal  
738 preference under the requirements of this chapter.

739 [~~(29)~~] (31) (a) "Procure" or "procurement" means buying, purchasing, renting, leasing,  
740 leasing with an option to purchase, or otherwise acquiring a procurement item.

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

- 743 (i) the description of requirements;  
744 (ii) the selection process;  
745 (iii) solicitation of sources;  
746 (iv) the preparation for soliciting a procurement item;  
747 (v) the award of a contract; and  
748 (vi) all phases of contract administration.

749 ~~[(30)]~~ (32) "Procurement item" means a supply, a service, construction, or technology.

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

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

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

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

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

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

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

762 (33) "Procurement officer" means:

763 (a) as it relates to a procurement unit with independent procurement authority:

- 764 (i) the head of the procurement unit;  
765 (ii) a designee of the head of the procurement unit; or  
766 (iii) a person designated by rule made by the applicable rulemaking authority; or

767 (b) as it relates to a procurement unit without independent procurement authority, the  
768 chief procurement officer.

769 ~~[(32)]~~ (34) "Professional service" means a service that requires a high degree of  
770 specialized knowledge and discretion in the performance of the service, including:

- 771 (a) legal services;

- 772 (b) consultation services;
- 773 (c) architectural services;
- 774 (d) engineering;
- 775 (e) design;
- 776 (f) underwriting;
- 777 (g) bond counsel;
- 778 (h) financial advice; or
- 779 (i) construction management.

780 [~~(33)~~ "Protest officer" means:]

781 [~~(a)~~ as it relates to a state purchasing unit, the head of the state purchasing unit or a  
782 designee of the head of the state purchasing unit;]

783 [~~(b)~~ as it relates to a local public procurement unit, the purchasing officer or the  
784 governing body of the local public procurement unit, or a designee of either; or]

785 [~~(c)~~ as it relates to a public procurement unit other than a public procurement unit  
786 described in Subsection (1)(a) or (b), the chief procurement officer or the chief procurement  
787 officer's designee.]

788 (35) "Protest officer" means:

789 (a) as it relates to a procurement unit with independent procurement authority:

790 (i) the head of the procurement unit;

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

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

793 (b) as it relates to a procurement unit without independent procurement authority, the  
794 chief procurement officer or the chief procurement officer's designee.

795 [~~(34)~~ (36) "Request for information" means a nonbinding process where a [public]  
796 procurement unit requests information relating to a procurement item.

797 [~~(35)~~ (37) "Request for proposals" includes all documents, including documents that  
798 are attached or incorporated by reference, used for soliciting proposals to provide a  
799 procurement item to a [public] procurement unit.

800 (38) "Requirements contract" means a contract:

801 (a) where a contractor agrees to provide a procurement unit's entire requirements for  
802 certain procurement items at prices specified in the contract during the contract period; and

- 803           **(b) that:**
- 804           **(i) does not require a minimum purchase amount; or**
- 805           **(ii) provides a maximum purchase limit.**
- 806           ~~[(36)]~~ **(39)** "Responsible" means that a bidder or offeror:
- 807           (a) is capable, in all respects, to fully perform the contract requirements solicited in an
- 808 invitation for bids or a request for proposals; and
- 809           (b) has the integrity and reliability to ensure good faith performance.
- 810           ~~[(37)]~~ **(40)** "Responsive" means that a bidder or offeror submits a response to an
- 811 invitation for bids or a request for proposals that conforms in all material respects to the
- 812 invitation for bids or request for proposals.
- 813           ~~[(38)]~~ **(41)** "Sealed" means manually or electronically sealed and submitted bids or
- 814 proposals.
- 815           ~~[(39)]~~ **(42)** (a) "Services" means the furnishing of labor, time, or effort by a contractor,
- 816 not involving the delivery of a specific end product other than a report that is incidental to the
- 817 required performance.
- 818           (b) "Services" does not include an employment agreement or a collective bargaining
- 819 agreement.
- 820           ~~[(40)]~~ **(43)** "Specification" means any description of the physical or functional
- 821 characteristics, or nature of a procurement item included in an invitation for bids or a request
- 822 for proposals, or otherwise specified or agreed to by a ~~[public]~~ procurement unit, including a
- 823 description of:
- 824           (a) a requirement for inspecting or testing a procurement item; or
- 825           (b) preparing a procurement item for delivery.
- 826           ~~[(41)]~~ **(44)** "Standard procurement process" means one of the following methods of
- 827 obtaining a procurement item:
- 828           (a) bidding, as described in Part 6, Bidding;
- 829           (b) request for proposals, as described in Part 7, Request for Proposals; or
- 830           (c) small purchases, in accordance with the requirements established under Section
- 831 63G-6a-408.
- 832           **(45)** "State cooperative contract" means a contract awarded by the division.
- 833           ~~[(42)]~~ **(46)** (a) "Subcontractor" means a person under contract with a contractor or

834 another subcontractor to provide services or labor for design or construction.

835 (b) "Subcontractor" includes a trade contractor or specialty contractor.

836 (c) "Subcontractor" does not include a supplier who provides only materials,  
837 equipment, or supplies to a contractor or subcontractor.

838 [~~(43)~~] (47) "Supplies" means all property, including equipment, materials, and printing.

839 [~~(44)~~] (48) "Tie bid" means that the lowest responsive and responsible bids are  
840 identical in price.

841 (49) "Time and materials contract" means a contract where the contractor is paid:

842 (a) the actual cost of direct labor at specified hourly rates;

843 (b) the actual cost of materials and equipment usage; and

844 (c) an additional amount, expressly described in the contract, to cover overhead and  
845 profit, that is not based on a percentage of the cost to the contractor.

846 Section 3. Section **63G-6a-104 (Effective 05/01/13)** is repealed and reenacted to read:

847 **63G-6a-104 (Effective 05/01/13). Definitions of government entities.**

848 As used in this chapter:

849 (1) "Applicable rulemaking authority" means:

850 (a) as it relates to a legislative procurement unit, the Legislative Management

851 Committee, which shall adopt a policy establishing requirements applicable to a legislative  
852 procurement unit;

853 (b) as it relates to a judicial procurement unit, the Judicial Council;

854 (c) as it relates to an executive branch procurement unit, except to the extent provided  
855 in Subsections (1)(d) through (g), the board;

856 (d) as it relates to the State Building Board, created in Section 63A-5-101, the State  
857 Building Board, but only to the extent that the rules relate to procurement authority expressly  
858 granted to the State Building Board by statute;

859 (e) as it relates to the Division of Facilities Construction and Management, created in  
860 Section 63A-5-201, the director of the Division of Facilities Construction and Management,  
861 but only to the extent that the rules relate to procurement authority expressly granted to the  
862 Division of Facilities Construction and Management by statute;

863 (f) as it relates to the Office of the Attorney General, the attorney general, but only to  
864 the extent that the rules relate to procurement authority expressly granted to the attorney

865 general by statute;

866 (g) as it relates to the Department of Transportation, created in Section 72-1-201, the  
867 executive director of the Department of Transportation, but only to the extent that the rules  
868 relate to procurement authority expressly granted to the Department of Transportation by  
869 statute;

870 (h) as it relates to a local government procurement unit, the legislative body of the local  
871 government procurement unit, not as a delegation of authority from the Legislature, but under  
872 the local government procurement unit's own legislative authority;

873 (i) as it relates to a school district or a public school, the Utah State Procurement Policy  
874 Board, except to the extent that a school district makes its own nonadministrative rules, with  
875 respect to a particular subject, that do not conflict with the provisions of this chapter;

876 (j) as it relates to a state institution of higher education, the State Board of Regents;

877 (k) as it relates to a public transit district, the governing board of the public transit  
878 district;

879 (l) as it relates to a local district or a special service district, the board, except to the  
880 extent that the local district or special service district enacts its own rules:

881 (i) with respect to a subject addressed by board rules; or

882 (ii) that are in addition to board rules; or

883 (m) as it relates to a procurement unit, other than a procurement described in  
884 Subsections (1)(a) through (l), the board.

885 (2) "Board" means the Utah State Procurement Policy Board, created in Section  
886 63G-6a-202.

887 (3) "Building board" means the State Building Board created in Section 63A-5-101.

888 (4) "Conservation district" is as defined in Section 17D-3-102.

889 (5) "Division" means the Division of Purchasing and General Services.

890 (6) "Educational procurement unit" means:

891 (a) a school district;

892 (b) a public school, including a local school board or a charter school;

893 (c) Utah Schools for the Deaf and Blind;

894 (d) the Utah Education Network; or

895 (e) an institution of higher education of the state.

896 (7) "Executive branch procurement unit" means each department, division, office,  
897 bureau, agency, or other organization within the state executive branch, including the division  
898 and the attorney general's office.

899 (8) "External procurement unit" means:

900 (a) a buying organization not located in this state which, if located in this state, would  
901 qualify as a procurement unit; or

902 (b) an agency of the United States.

903 (9) "Judicial procurement unit" means:

904 (a) the Utah Supreme Court;

905 (b) the Utah Court of Appeals;

906 (c) the Judicial Council;

907 (d) a state judicial district; or

908 (e) each office, committee, subcommittee, or other organization within the state  
909 judicial branch.

910 (10) "Legislative procurement unit" means:

911 (a) the Legislature;

912 (b) the Senate;

913 (c) the House of Representatives;

914 (d) a staff office of an entity described in Subsection (10)(a), (b), or (c); or

915 (e) each office, committee, subcommittee, or other organization within the state  
916 legislative branch.

917 (11) "Local building authority" is as defined in Section 17D-2-102.

918 (12) "Local district" is as defined in Section 17B-1-102.

919 (13) "Local government procurement unit" means:

920 (a) a county or municipality, and each office or agency of the county or municipality,  
921 unless the county or municipality adopts its own procurement code by ordinance;

922 (b) a county or municipality, and each office or agency of the county or municipality,  
923 that has adopted this entire chapter by ordinance;

924 (c) a county or municipality, and each office or agency of the county or municipality,  
925 that has adopted a portion of this chapter by ordinance, to the extent that the term is used in the  
926 adopted portion of this chapter; or

927 (d) two or more of the entities described in this Subsection (13), acting under  
928 legislation that authorizes intergovernmental cooperation.

929 (14) (a) "Procurement unit" means:

930 (i) a legislative procurement unit;

931 (ii) an executive branch procurement unit;

932 (iii) a judicial procurement unit;

933 (iv) an educational procurement unit;

934 (v) a local government procurement unit;

935 (vi) a local district;

936 (vii) a special service district;

937 (viii) a local building authority;

938 (ix) a conservation district;

939 (x) a public corporation; or

940 (xi) a public transit district.

941 (b) "Procurement unit" does not include a political subdivision created by counties or  
942 municipalities under Title 11, Chapter 13, Interlocal Cooperation Act.

943 (15) "Public corporation" is as defined in Section 63E-1-102.

944 (16) "Public entity" means any state government entity or a political subdivision of the  
945 state, including:

946 (a) a procurement unit;

947 (b) a municipality or county, regardless of whether the municipality or county has  
948 adopted this chapter or any part of this chapter; and

949 (c) any other government entity located in Utah that expends public funds.

950 (17) "Public transit district" means a public transit district organized under Title 17B,  
951 Chapter 2a, Part 8, Public Transit District Act.

952 (18) "Special service district" is as defined in Section 17D-1-102.

953 Section 4. Section **63G-6a-105 (Effective 05/01/13)** is amended to read:

954 **63G-6a-105 (Effective 05/01/13). Application of chapter.**

955 (1) The provisions of this chapter that are enacted on [~~July 1, 2012~~] May 1, 2013, apply  
956 only to a procurement advertised, or begun on or after [~~July 1, 2012~~] May 1, 2013, unless the  
957 parties agree to have the provisions apply with respect to a procurement that was advertised or

958 begun before ~~[July 1, 2012]~~ May 1, 2013, but is not completed before ~~[July 1, 2012]~~ May 1,  
959 2013.

960 (2) (a) Except as provided in Section 63G-6a-107, this chapter shall apply to every  
961 expenditure of public funds irrespective of the source of the funds, including federal assistance,  
962 by any ~~[public]~~ procurement unit, under any contract.

963 (b) The provisions of this chapter do not apply to a public entity that is not a ~~[public]~~  
964 procurement unit.

965 (3) Except as provided in Subsection 17B-1-108(3) relating to local districts, ~~[each~~  
966 ~~local public procurement unit]~~ the following procurement units shall adopt ordinances or  
967 resolutions relating to the procurement of architect-engineer services not inconsistent with the  
968 provisions of Part 15, Architect-Engineer Services[-]:

969 (a) an educational procurement unit;

970 (b) a conservation district;

971 (c) a local building authority;

972 (d) a local district;

973 (e) a public corporation;

974 (f) a special service district; or

975 (g) two or more of the entities described in Subsections (3)(a) through (f), acting under  
976 legislation that authorizes intergovernmental cooperation.

977 (4) Any section of this chapter, or its implementing regulations, may be adopted by  
978 ~~[any local government unit.]:~~

979 (a) a county;

980 (b) a municipality;

981 (c) a political subdivision created by counties or municipalities under Title 11, Chapter  
982 13, Interlocal Cooperation Act; or

983 (d) the Utah Housing Corporation.

984 (5) Rules adopted under this chapter shall be consistent with the provisions of this  
985 chapter.

986 (6) ~~[A state purchasing unit]~~ An authorized rulemaking authority or a ~~[public]~~  
987 procurement unit may not adopt rules, policies, or regulations that are inconsistent with this  
988 chapter.

989 (7) Unless otherwise provided by statute, this chapter does not apply to procurement of  
990 real property.

991 Section 5. Section **63G-6a-106 (Effective 05/01/13)** is amended to read:

992 **63G-6a-106 (Effective 05/01/13). Specific statutory authority -- Limitations on**  
993 **authority of chief procurement officer and division.**

994 (1) The procurement authority given to a [public] procurement unit under the following  
995 provisions shall be retained, and shall be applied only to the extent described in those  
996 provisions:

997 (a) Title 53B, State System of Higher Education;

998 (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction  
999 and Management;

1000 (c) Title 67, Chapter 5, Attorney General;

1001 (d) Title 72, Transportation Code; and

1002 (e) Title 78A, Chapter 5, District Courts.

1003 (2) Except as otherwise provided in Sections 63G-6a-105 and 63G-6a-107, a [public]  
1004 procurement unit shall conduct a procurement in accordance with this chapter.

1005 (3) (a) The Department of Transportation may make rules governing the procurement  
1006 of highway construction or improvement.

1007 (b) This Subsection (3) supersedes Subsections (1) and (2).

1008 (4) Except to the extent otherwise agreed to in a memorandum of understanding  
1009 between the division and the following entities, the authority of the chief procurement officer  
1010 and of the division does not extend to[+] a procurement unit with independent procurement  
1011 authority.

1012 [~~(a) a non-executive state procurement unit;~~]

1013 [~~(b) a local government unit; or~~]

1014 [~~(c) a state purchasing unit, other than the division.~~]

1015 (5) An entity described in Subsection (4) [~~or a state purchasing unit, other than the~~  
1016 ~~division,~~] may, without supervision, interference, or involvement by the chief procurement  
1017 officer or the division, but consistent with the requirements of this chapter:

1018 (a) engage in a standard procurement process;

1019 (b) procure an item under an exception, as provided in this chapter, to the requirement

1020 to use a standard procurement process; or

1021 (c) otherwise engage in an act authorized or required by this chapter.

1022 (6) The attorney general may, in accordance with the provisions of this chapter, but  
1023 without involvement by the division or the chief procurement officer:

1024 (a) retain outside counsel; or

1025 (b) procure litigation support services, including retaining an expert witness.

1026 (7) [~~A public procurement unit, or a state purchasing unit,~~] An entity described in

1027 Subsection (4) that is not represented by the attorney general's office may, in accordance with

1028 the provisions of this chapter, but without involvement by the division or the chief procurement  
1029 officer:

1030 (a) retain outside counsel; or

1031 (b) procure litigation support services, including retaining an expert witness.

1032 (8) The state auditor's office may, in accordance with the provisions of this chapter, but  
1033 without involvement by the division or the chief procurement officer, procure audit services.

1034 (9) The state treasurer may, in accordance with the provisions of this chapter, but  
1035 without involvement by the division or the chief procurement officer, procure:

1036 (a) deposit and investment services; and

1037 (b) services related to issuing bonds.

1038 Section 6. Section **63G-6a-107 (Effective 05/01/13)** is amended to read:

1039 **63G-6a-107 (Effective 05/01/13). Exemptions from chapter -- Compliance with**  
1040 **federal law.**

1041 (1) Except for Part 23, Unlawful Conduct and Penalties, the provisions of this chapter  
1042 are not applicable to:

1043 (a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art  
1044 Act;

1045 (b) grants awarded by the state or contracts between the state and [~~a local public~~  
1046 ~~procurement unit, except as provided in Part 21, Intergovernmental Relations; or~~] any of the  
1047 following:

1048 (i) an educational procurement unit;

1049 (ii) a conservation district;

1050 (iii) a local building authority;

- 1051 (iv) a local district;  
 1052 (v) a public corporation;  
 1053 (vi) a special service district; or  
 1054 (vii) two or more of the entities described in Subsections (1)(b)(i) through (vi), acting  
 1055 under legislation that authorizes intergovernmental cooperation;  
 1056 (c) medical supplies or medical equipment, including service agreements for medical  
 1057 equipment, obtained through a purchasing consortium by the Utah State Hospital, the Utah  
 1058 State Developmental Center, the University of Utah Hospital, or any other hospital owned by  
 1059 the state or a political subdivision of the state, if:  
 1060 (i) the consortium uses a competitive procurement process; and  
 1061 (ii) the chief administrative officer of the hospital makes a written finding that the  
 1062 prices for purchasing medical supplies and medical equipment through the consortium are  
 1063 competitive with market prices;  
 1064 (d) goods purchased for resale; or  
 1065 ~~(e)~~ (e) any action taken by a majority of both houses of the Legislature.  
 1066 (2) This chapter does not prevent ~~[the state or a local]~~ a public procurement unit from  
 1067 complying with the terms and conditions of any grant, gift, or bequest that is otherwise  
 1068 consistent with law.  
 1069 (3) Notwithstanding any conflicting provision of this chapter, when a procurement  
 1070 involves the expenditure of federal assistance, federal contract funds, or federal financial  
 1071 participation funds, the ~~[public]~~ procurement unit ~~[or state purchasing unit]~~ shall comply with  
 1072 mandatory applicable federal law and regulations not reflected in this chapter.  
 1073 (4) This chapter does not supersede the requirements for retention or withholding of  
 1074 construction proceeds and release of construction proceeds as provided in Section 13-8-5.  
 1075 Section 7. Section **63G-6a-108 (Effective 05/01/13)** is amended to read:  
 1076 **63G-6a-108 (Effective 05/01/13). Procurements under direction and control of**  
 1077 **division -- Exception for procurement unit with independent procurement authority.**  
 1078 (1) Except as provided in Subsection (2), a ~~[public]~~ procurement unit may not engage  
 1079 in a procurement unless:  
 1080 (a) the procurement is made under the direction and control of the division; or  
 1081 (b) the division, pursuant to rules made by the board, permits the ~~[public]~~ procurement

1082 unit to make the procurement on its own.

1083 [~~(2) Subsection (1) does not apply to a public procurement unit that is:~~

1084 [~~(a) a non-executive state procurement unit;~~

1085 [~~(b) a local government unit; or]~~

1086 [~~(c) a state purchasing unit, other than the division.]~~

1087 (2) Subsection (1) does not apply to the following procurement units, all of which have  
1088 independent procurement authority:

1089 (a) a legislative procurement unit;

1090 (b) a judicial procurement unit;

1091 (c) an educational procurement unit;

1092 (d) a local government procurement unit;

1093 (e) a political subdivision created by counties or municipalities under Title 11, Chapter  
1094 13, Interlocal Cooperation Act;

1095 (f) a conservation district;

1096 (g) a local building authority;

1097 (h) a local district;

1098 (i) a public corporation;

1099 (j) a special service district;

1100 (k) the Utah Housing Corporation;

1101 (l) a public transit district; or

1102 (m) two or more of the entities described in Subsections (2)(a) through (l), acting under  
1103 legislation that authorizes intergovernmental cooperation.

1104 (3) A procurement unit with independent procurement authority is not exempt from  
1105 complying with the requirements of this chapter.

1106 Section 8. Section **63G-6a-201 (Effective 05/01/13)** is amended to read:

1107 **Part 2. Utah State Procurement Policy Board**

1108 **63G-6a-201 (Effective 05/01/13). Title.**

1109 This part is known as "Utah State Procurement Policy Board."

1110 Section 9. Section **63G-6a-203 (Effective 05/01/13)** is amended to read:

1111 **63G-6a-203 (Effective 05/01/13). Powers and duties of board.**

1112 (1) In addition to making rules in accordance with Section 63G-6a-402 and the other

1113 provisions of this chapter, the board shall consider and decide matters of policy within the  
 1114 provisions of this chapter, including those referred to it by the chief procurement officer.

1115 (2) (a) The board may:

1116 (i) audit and monitor the implementation of its rules and the requirements of this  
 1117 chapter;

1118 (ii) upon the request of [~~a local public procurement unit, review that local public~~  
 1119 ~~procurement unit's~~] a procurement unit with an authorized rulemaking authority other than the  
 1120 board, review the procurement unit's proposed rules to ensure that they are not inconsistent  
 1121 with the provisions of this chapter or rules made by the board; and

1122 (iii) approve the use of innovative procurement processes.

1123 (b) Except as provided in Section 63G-6a-1702, the board may not exercise authority  
 1124 over the award or administration of:

1125 (i) any particular contract; or

1126 (ii) any dispute, claim, or litigation pertaining to any particular contract.

1127 [~~(3) The board does not have authority over a matter involving:~~]

1128 [~~(a) a non-executive state procurement unit;~~]

1129 [~~(b) a local government unit; or~~]

1130 [~~(c) except as otherwise expressly provided in this chapter, a local public procurement~~  
 1131 ~~unit.]~~

1132 (3) Except as otherwise expressly provided in this chapter, the board does not have  
 1133 authority over a matter involving a procurement unit with independent procurement authority.

1134 Section 10. Section **63G-6a-204 (Effective 05/01/13)** is amended to read:

1135 **63G-6a-204 (Effective 05/01/13). Applicability of rules and regulations of Utah**  
 1136 **State Procurement Policy Board and State Building Board -- Report to interim**  
 1137 **committee.**

1138 (1) Except as provided in Subsection (2), rules made by the board under this chapter  
 1139 shall govern all [~~public~~] procurement units for which the board is the applicable rulemaking  
 1140 authority.

1141 (2) The building board rules governing procurement of construction, architect-engineer  
 1142 services, and leases apply to the procurement of construction, architect-engineer services, and  
 1143 leases of real property by the Division of Facilities Construction and Management.

1144 (3) An applicable rulemaking authority may make its own rules, consistent with this  
1145 chapter, governing procurement by a person over which the applicable rulemaking authority  
1146 has rulemaking authority.

1147 (4) The board shall make a report on or before July 1 of each year to a legislative  
1148 interim committee, designated by the Legislative Management Committee created under  
1149 Section 36-12-6, on the establishment, implementation, and enforcement of the rules made  
1150 under Section 63G-6a-203.

1151 Section 11. Section **63G-6a-302 (Effective 05/01/13)** is amended to read:

1152 **63G-6a-302 (Effective 05/01/13). Chief procurement officer -- Appointment --**  
1153 **Qualifications -- Authority.**

1154 (1) The executive director of the Department of Administrative Services, with the  
1155 consent of the governor, shall appoint the chief procurement officer after considering  
1156 recommendations from the board.

1157 (2) The chief procurement officer shall:

1158 (a) have a minimum of eight years' experience in the large-scale procurement of  
1159 supplies and services or services and construction, at least five years of which shall have been  
1160 in public or comparable private procurement within 12 years preceding the date of  
1161 appointment; and

1162 (b) be a person with demonstrated executive and organizational ability.

1163 (3) The chief procurement officer appointed under Subsection (1) is also the director of  
1164 the Division of Purchasing and General Services.

1165 [~~(4) Except as otherwise expressly provided in this chapter, the chief procurement~~  
1166 ~~officer has authority over procurements by a public procurement unit, other than:]~~

1167 [~~(a) a non-executive procurement unit;~~]

1168 [~~(b) a local government unit; or~~]

1169 [~~(c) a state purchasing unit, other than the division.~~]

1170 (4) The chief procurement officer has authority over a procurement by a procurement  
1171 unit, except:

1172 (a) a procurement unit with independent procurement authority; or

1173 (b) as otherwise expressly provided in this chapter.

1174 Section 12. Section **63G-6a-303 (Effective 05/01/13)** is amended to read:

1175 **63G-6a-303 (Effective 05/01/13). Duties of chief procurement officer.**

1176 Except as otherwise specifically provided in this chapter, the chief procurement officer  
1177 serves as the central procurement officer of the state and shall:

1178 (1) adopt office policies governing the internal functions of the division;

1179 (2) procure or supervise each procurement over which the chief procurement officer  
1180 has authority;

1181 (3) establish and maintain programs for the inspection, testing, and acceptance of each  
1182 procurement item over which the chief procurement officer has authority;

1183 (4) prepare statistical data concerning each procurement and procurement usage of a  
1184 state procurement unit;

1185 (5) ensure that:

1186 (a) before approving a procurement not covered by an existing statewide contract for  
1187 information technology or telecommunications supplies or services, the chief information  
1188 officer and the agency have stated in writing to the division that the needs analysis required in  
1189 Section 63F-1-205 was completed, unless the procurement is approved in accordance with  
1190 Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program; and

1191 (b) the oversight authority required by Subsection(5)(a) is not delegated outside the  
1192 division; and

1193 (6) provide training to [public] procurement units and to persons who do business with  
1194 [public] procurement units.

1195 Section 13. Section **63G-6a-305 (Effective 05/01/13)** is amended to read:

1196 **63G-6a-305 (Effective 05/01/13). Duty of chief procurement officer in**  
1197 **maintaining specifications.**

1198 (1) The chief procurement officer may prepare, issue, revise, maintain, and monitor the  
1199 use of specifications for each procurement over which the chief procurement officer has  
1200 authority.

1201 (2) The chief procurement officer shall obtain expert advice and assistance from  
1202 personnel of [public] procurement units in the development of specifications and may delegate  
1203 in writing to a [public] procurement unit the authority to prepare and utilize its own  
1204 specifications.

1205 (3) For a procurement under Title 63M, Chapter 1, Part 26, Government Procurement

1206 Private Proposal Program, any delegation by the chief procurement officer under this section  
1207 shall be made to the Governor's Office of Economic Development.

1208 Section 14. Section **63G-6a-402 (Effective 05/01/13)** is amended to read:

1209 **63G-6a-402 (Effective 05/01/13). Procurement unit required to comply with Utah**  
1210 **Procurement Code and applicable rules -- Rulemaking authority -- Reporting.**

1211 (1) Except as otherwise provided in Section 63G-6a-107, Section 63G-6a-403, Part 8,  
1212 Exceptions to Procurement Requirements, or elsewhere in this chapter, a [public] procurement  
1213 unit may not obtain a procurement item, unless:

1214 (a) if the [public] procurement unit is [~~an authorized purchasing entity~~] a procurement  
1215 unit with independent procurement authority, the [public] procurement unit:

1216 (i) uses a standard procurement process or an exception to a standard procurement  
1217 process, described in Part 8, Exceptions to Procurement Requirements; and

1218 (ii) complies with:

1219 (A) the requirements of this chapter; and

1220 (B) the rules made pursuant to this chapter by the applicable rulemaking authority;

1221 (b) except as provided in Subsection (2)(a), if the [public] procurement unit is a [~~local~~  
1222 ~~government unit~~] county, a municipality, a political subdivision created by counties or  
1223 municipalities under Title 11, Chapter 13, Interlocal Cooperation Act, or the Utah Housing  
1224 Corporation, the [public] procurement unit complies with:

1225 (i) the requirements of this chapter that are adopted by the [~~local government unit~~]  
1226 procurement unit; and

1227 (ii) all other procurement requirements that the [~~local government unit~~] procurement  
1228 unit is required to comply with; or

1229 (c) if the [public] procurement unit is not a [public] procurement unit described in  
1230 Subsections (1)(a) or (b), the [public] procurement unit:

1231 (i) obtains the procurement item under the direction and approval of the division,  
1232 unless otherwise provided by a rule made by the board;

1233 (ii) uses a standard procurement process; and

1234 (iii) complies with:

1235 (A) the requirements of this chapter; and

1236 (B) the rules made pursuant to this chapter by the applicable rulemaking authority.

1237 (2) (a) Subsection (1)(b) does not apply to a political subdivision created by counties or  
1238 municipalities under Title 11, Chapter 13, Interlocal Cooperation Act, if the political  
1239 subdivision does not receive or expend tax revenue.

1240 (b) Subject to Subsection (3), the applicable rulemaking authority shall make rules  
1241 relating to the management and control of procurements and procurement procedures by a  
1242 [public] procurement unit.

1243 (3) (a) Rules made under Subsection (2) shall ensure compliance with the federal  
1244 contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub.  
1245 L. No. 110-174) that prohibit contracting with a person doing business in Sudan.

1246 (b) The State Building Board rules governing procurement of construction,  
1247 architect-engineer services, and leases apply to the procurement of construction,  
1248 architect-engineer services, and leases of real property by the Division of Facilities  
1249 Construction and Management.

1250 (4) An applicable rulemaking authority that is subject to Title 63G, Chapter 3, Utah  
1251 Administrative Rulemaking Act, shall make the rules described in this chapter in accordance  
1252 with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1253 (5) The State Building Board shall make a report on or before July 1 of each year to a  
1254 legislative interim committee, designated by the Legislative Management Committee created  
1255 under Section 36-12-6, on the establishment, implementation, and enforcement of the rules  
1256 made by the State Building Board under this chapter.

1257 Section 15. Section **63G-6a-403 (Effective 05/01/13)** is amended to read:

1258 **63G-6a-403 (Effective 05/01/13). Prequalification of potential bidders, offerers, or**  
1259 **contractors.**

1260 (1) A [public] procurement unit may, in accordance with this section:

1261 (a) prequalify potential bidders [or], offerers, or contractors to provide any type of  
1262 procurement item specified by the [public] procurement unit; and

1263 (b) limit participation in an invitation for bids or a request for proposals to the  
1264 prequalified potential bidders [or], offerers, or contractors for the specified type of procurement  
1265 item.

1266 (2) To prequalify potential bidders [or], offerers, or contractors to provide a specified  
1267 type of procurement item, a [public] procurement unit shall issue a request for qualifications.

- 1268 (3) A [~~public~~] procurement unit that issues a request for qualifications shall:
- 1269 (a) publish the request for qualifications in accordance with the requirements of
- 1270 Section 63G-6a-402;
- 1271 (b) state in the request for qualifications:
- 1272 (i) the type of procurement item to which the request for qualifications relates;
- 1273 (ii) the scope of work to be performed;
- 1274 (iii) the instructions and the deadline for providing information in response to the
- 1275 request for qualifications;
- 1276 (iv) the minimum criteria for prequalification;
- 1277 (v) the period of time during which the list of prequalified potential bidders [~~or~~],
- 1278 offerors, or contractors will remain in effect, which may not be longer than 18 months after the
- 1279 list of prequalified potential bidders [~~or~~], offerors, or contractors is made available to the public
- 1280 under Subsection (8)(b); and
- 1281 (vi) that a [~~public~~] procurement unit may limit participation in an invitation for bids or
- 1282 a request for proposals, during the time period described in Subsection (3)(b)(v), to the
- 1283 potential bidders [~~or~~], offerors, or contractors that are prequalified to provide the specified type
- 1284 of procurement item.
- 1285 (4) The minimum criteria described in Subsection (3)(b)(iv):
- 1286 (a) shall include the prequalification requirements unique to the procurement;
- 1287 (b) may include performance rating criteria; and
- 1288 (c) may not be so restrictive that the criteria unreasonably limit competition.
- 1289 (5) A [~~public~~] procurement unit may, before making a final list of prequalified bidders
- 1290 [~~or~~], offerors, or contractors, request additional information to clarify responses made to the
- 1291 request for [~~prequalifications~~] qualifications.
- 1292 (6) A potential bidder [~~or~~], offeror, or contractor shall be included on the list of
- 1293 prequalified potential bidders [~~or~~], offerors, or contractors if the bidder or offeror:
- 1294 (a) submits a timely, responsive response to the request for [~~prequalifications~~]
- 1295 qualifications; and
- 1296 (b) meets the minimum criteria for qualification described in Subsection (3)(b)(iv).
- 1297 (7) If a request for qualifications will result in only one potential bidder [~~or~~], offeror, or
- 1298 contractor being placed on the list of prequalified potential bidders [~~or~~], offerors, or

1299 contractors:

1300 (a) the ~~[public]~~ procurement unit shall cancel the request for qualifications; and

1301 (b) the list may not be used by the ~~[public]~~ procurement unit.

1302 (8) The ~~[public]~~ procurement unit shall:

1303 (a) before making the list of prequalified potential bidders ~~[or]~~, offerors, or contractors

1304 available to the public, provide each potential bidder ~~[or]~~, offeror, or contractor who provided

1305 information in response to the request, but who did not meet the minimum qualifications for

1306 placement on the list, a written justification statement describing why the potential bidder ~~[or]~~,

1307 offeror, or contractor did not meet the criteria for inclusion on the list; and

1308 (b) within 30 days after the day of the deadline described in Subsection (3)(b)(iii),

1309 make the list of prequalified potential bidders ~~[or]~~, offerors, or contractors available to the

1310 public.

1311 Section 16. Section **63G-6a-404 (Effective 05/01/13)** is amended to read:

1312 **63G-6a-404 (Effective 05/01/13). Approved contractor list or approved potential**

1313 **contractor list.**

1314 (1) ~~[An authorized purchasing entity]~~ A procurement unit with independent

1315 procurement authority may compile a list of approved contractors or approved potential

1316 contractors from which procurement items may be obtained.

1317 (2) An approved contractor list or an approved potential contractor list may only be

1318 compiled from:

1319 (a) timely, responsive bids or responses received in response to:

1320 (i) an invitation for bids; ~~[or]~~

1321 (ii) a request for proposals; or

1322 (iii) a request for qualifications; or

1323 (b) timely, responsive responses to ~~[-(i)]~~ the prequalification process described in

1324 Section 63G-6a-403~~[-or]~~.

1325 ~~[(ii) the process described in Part 15, Architect-Engineer Services.]~~

1326 (3) In order to ensure equal treatment of all contractors on ~~[a contractor list, an~~

1327 ~~authorized purchasing entity]~~ an approved contractor list or an approved potential contractor

1328 list, the procurement unit shall use one of the following methods in an unbiased manner:

1329 (a) a rotation system, organized alphabetically, numerically, or randomly;

1330 (b) assigning contractors to a specified geographical area; or  
1331 (c) classifying each contractor based on each contractor's particular expertise or field.

1332 (4) A procurement unit shall select a potential contractor from an approved potential  
1333 contractor list:

1334 (a) using an invitation for bids;

1335 (b) using a request for proposals; or

1336 (c) for a potential contractor that is an architect, an engineer, or another professional:

1337 (i) using a rotation system, organized alphabetically, numerically, or randomly;

1338 (ii) assigning a potential contractor to a specified geographical area; or

1339 (iii) classifying each potential contractor based on the potential contractor's field or  
1340 area of expertise.

1341 Section 17. Section **63G-6a-406 (Effective 05/01/13)** is amended to read:

1342 **63G-6a-406 (Effective 05/01/13). Public notice of procurement process or sole**  
1343 **source procurement.**

1344 (1) [~~An authorized purchasing entity~~] A procurement unit with independent  
1345 procurement authority that issues an invitation for bids, a request for proposals, or [~~another~~  
1346 ~~document~~] a notice of sole source procurement required [~~by this chapter~~] to be published in  
1347 accordance with this section, shall provide public notice that includes:

1348 (a) for an invitation for bids or a request for proposals, the name of the [authorized  
1349 purchasing entity and] issuing procurement unit;

1350 (b) the name of the [public] procurement unit acquiring the procurement item;

1351 [~~(b)~~] (c) for an invitation for bids or a request for proposals, information on how to  
1352 contact the [authorized purchasing entity] issuing procurement unit in relation to the invitation  
1353 for bids[;] or request for proposals[; or other document];

1354 (d) for a notice of sole source procurement, contact information and other information  
1355 relating to contesting, or obtaining additional information in relation to, the sole source  
1356 procurement;

1357 [~~(e)~~] (e) for an invitation for bids or a request for proposals, the date of the opening and  
1358 closing of the invitation for bids or request for proposals;

1359 (f) for a notice of sole source procurement, the earliest date that the procurement unit  
1360 may make the sole source procurement;

1361 ~~[(d)]~~ (g) information on how to obtain a copy of the invitation for bids, request for  
1362 proposals, or ~~[other document]~~ further information related to the sole source procurement; and  
1363 ~~[(e)]~~ (h) a general description of the procurement items that will be obtained through  
1364 the standard procurement process or sole source procurement.

1365 (2) Except as provided in Subsection ~~[(3)]~~ (4), for an invitation for bids or a request for  
1366 proposals, the [authorized purchasing entity] issuing procurement unit shall publish the notice  
1367 described in Subsection (1), using at least one of the following methods:

1368 (a) at least 10 days before the day of the deadline for submission of a bid or other  
1369 response, publish the notice:

1370 (i) in a newspaper of general circulation in the state; or

1371 (ii) in a newspaper of local circulation in the area:

1372 (A) directly impacted by the procurement; or

1373 (B) over which the [public] procurement unit has jurisdiction; or

1374 (b) at least 10 consecutive days before the day of the deadline for submission of a bid  
1375 or other response, publish the notice:

1376 (i) on the main website for the [authorized purchasing entity or public] issuing  
1377 procurement unit or the procurement unit acquiring the procurement item; or

1378 (ii) on a state website that is owned, managed by, or provided under contract with, the  
1379 division for posting a public procurement notice.

1380 (3) Except as provided in Subsection (4), for a sole source procurement for which  
1381 notice is required to be published in accordance with this section, the procurement unit making  
1382 the sole source procurement shall publish the notice described in Subsection (1), using at least  
1383 one of the following methods:

1384 (a) at least seven days before the day on which the procurement unit makes the sole  
1385 source procurement, publish the notice:

1386 (i) in a newspaper of general circulation in the state; or

1387 (ii) in a newspaper of local circulation in the area:

1388 (A) directly impacted by the procurement; or

1389 (B) over which the procurement unit has jurisdiction; or

1390 (b) at least seven consecutive days before the day on which the procurement unit makes  
1391 the sole source procurement, publish the notice:

1392 (i) on the main website for the procurement unit acquiring the procurement item; or  
 1393 (ii) on a state website that is owned by, managed by, or provided under contract with,  
 1394 the division for posting a procurement notice.

1395 ~~[(3)]~~ (4) ~~[An authorized purchasing entity]~~ An issuing procurement unit, or the  
 1396 procurement unit making a sole source procurement may reduce the 10-day period described in  
 1397 Subsection (2) or (3), if the procurement officer or the procurement officer's designee signs a  
 1398 written statement that:

1399 (a) states that a shorter time is needed; and

1400 (b) as it relates to an invitation for bids or a request for proposals, determines that  
 1401 competition from multiple sources may be obtained within the shorter period of time.

1402 ~~[(4)]~~ (5) (a) An ~~[authorized purchasing entity]~~ issuing procurement unit shall make a  
 1403 copy of an invitation for bids~~;~~ or a request for proposals~~;~~ ~~or any other document described in~~  
 1404 ~~Subsection (1);~~ available for public inspection at the main office of the ~~[authorized purchasing~~  
 1405 ~~entity]~~ issuing procurement unit or on the website described in Subsection (2)(b).

1406 (b) A procurement unit making a sole source procurement shall make a copy of  
 1407 information related to the sole source procurement available for public inspection at the main  
 1408 office of the procurement unit or on the website described in Subsection (3)(b).

1409 Section 18. Section **63G-6a-407 (Effective 05/01/13)** is amended to read:

1410 **63G-6a-407 (Effective 05/01/13). Purpose of specifications.**

1411 (1) All specifications shall seek to promote the overall economy and best use for the  
 1412 purposes intended and encourage competition in satisfying the needs of the ~~[public]~~  
 1413 procurement unit, and may not be unduly restrictive.

1414 (2) The requirements of this part regarding the purposes and nonrestrictiveness of  
 1415 specifications shall apply to all specifications, including those prepared by architects,  
 1416 engineers, designers, and draftsmen for public contracts.

1417 Section 19. Section **63G-6a-408 (Effective 05/01/13)** is amended to read:

1418 **63G-6a-408 (Effective 05/01/13). Small purchases.**

1419 (1) As used in this section:

1420 (a) "Annual cumulative threshold" means the maximum total annual amount,  
 1421 established by the applicable rulemaking authority under Subsection (2)(a)(i), that a  
 1422 procurement unit may expend to obtain procurement items from the same source under this

1423 section.

1424 (b) "Individual procurement threshold" means the maximum amount, established by  
1425 the applicable rulemaking authority under Subsection (2)(a)(ii), for which a procurement unit  
1426 may purchase a procurement item under this section.

1427 (c) "Single procurement aggregate threshold" means the maximum total amount,  
1428 established by the applicable rulemaking authority under Subsection (2)(a)(iii), that a  
1429 procurement unit may expend to obtain multiple procurement items from one source at one  
1430 time under this section.

1431 ~~[(+)]~~ (2) The applicable rulemaking authority may make rules governing small  
1432 purchases, including:

1433 ~~[(a) establishing the maximum expenditure that may qualify as a small purchase, unless~~  
1434 ~~otherwise provided by statute;]~~

1435 ~~[(b)]~~ (a) establishing expenditure thresholds ~~[and procurement requirements related to~~  
1436 ~~those thresholds; and], including:~~

1437 (i) an annual cumulative threshold;

1438 (ii) an individual procurement threshold; and

1439 (iii) a single procurement aggregate threshold;

1440 (b) establishing procurement requirements relating to the thresholds described in  
1441 Subsection (2)(a); and

1442 (c) the use of electronic, telephone, or written quotes.

1443 (3) Expenditures made under this section by a procurement unit may not exceed a  
1444 threshold established by the applicable rulemaking authority.

1445 ~~[(2)(a)]~~ (4) Except as provided in Subsection ~~[(2)(b), a public]~~ (5), an executive  
1446 branch procurement unit may not obtain a procurement item through a small purchase standard  
1447 procurement process if the procurement item may be obtained through a cooperative  
1448 contract or a contract awarded by the chief procurement officer under Subsection  
1449 63G-6a-2105(1).

1450 ~~[(b)]~~ (5) Subsection ~~[(2)(a)]~~ (4) does not apply if:

1451 ~~[(i) to a non-executive state procurement unit;]~~

1452 ~~[(ii) if the procurement officer or the head of the state purchasing unit authorizes an~~  
1453 ~~exception to the requirement; or]~~

1454 ~~[(iii) to a local public procurement unit.]~~  
1455 ~~[(c) An entity that is exempt from the requirements of Subsection (2)(a) is encouraged;~~  
1456 ~~but not required, to comply with Subsection (2)(a).]~~  
1457 (a) the procurement item is obtained for an unanticipated, urgent or unanticipated,  
1458 emergency condition, including:  
1459 (i) an item needed to avoid stopping a public construction project;  
1460 (ii) an immediate repair to a facility or equipment; or  
1461 (iii) another emergency condition; or  
1462 (b) the chief procurement officer or the head of a procurement unit that is an executive  
1463 branch procurement unit with independent procurement authority:  
1464 (i) determines in writing that it is in the best interest of the procurement unit to obtain  
1465 an individual procurement item outside of the state contract, comparing:  
1466 (A) the contract terms and conditions applicable to the procurement item under the  
1467 state contract with the contract terms and conditions applicable to the procurement item if the  
1468 procurement item is obtained outside of the state contract;  
1469 (B) the maintenance and service applicable to the procurement item under the state  
1470 contract with the maintenance and service applicable to the procurement item if the  
1471 procurement item is obtained outside of the state contract;  
1472 (C) the warranties applicable to the procurement item under the state contract with the  
1473 warranties applicable to the procurement item if the procurement item is obtained outside of  
1474 the state contract;  
1475 (D) the quality of the procurement item under the state contract with the quality of the  
1476 procurement item if the procurement item is obtained outside of the state contract; and  
1477 (E) the cost of the procurement item under the state contract with the cost of the  
1478 procurement item if the procurement item is obtained outside of the state contract;  
1479 (ii) for a procurement item that, if defective in its manufacture, installation, or  
1480 performance, may result in serious physical injury, death, or substantial property damage,  
1481 determines in writing that the terms and conditions, relating to liability for injury, death, or  
1482 property damage, available from the source other than the contractor who holds the state  
1483 contract, are similar to, or better than, the terms and conditions available under the state  
1484 contract; and

1485 (iii) grants an exception, in writing, to the requirement described in Subsection (4).

1486 [~~(3)~~] ~~(6) [(a) Except as provided in Subsection (3)(b), a public]~~ A procurement unit:

1487 [~~(i)~~] (a) may not use the small purchase standard procurement process described in this  
1488 section for ongoing, continuous, and regularly scheduled procurements; and

1489 [~~(ii)~~] (b) shall make its ongoing, continuous, and regularly scheduled procurements that  
1490 exceed the annual cumulative threshold through a contract awarded through a standard  
1491 procurement process described in this chapter or an applicable exception to a standard  
1492 procurement process, described in Part 8, Exceptions to Procurement Requirements.

1493 [~~(b) Subsection (3)(a) does not apply to an ongoing, continuous, or regularly scheduled~~  
1494 ~~procurement to the extent that the total expenditures for the procurement during a fiscal year do~~  
1495 ~~not exceed the maximum expenditure that the public procurement unit is permitted to make~~  
1496 ~~under this section, as established by rule made by the applicable rulemaking authority.]~~

1497 (7) This section does not prohibit regularly scheduled payments for a procurement item  
1498 obtained under another provision of this chapter.

1499 [~~(4)~~] (8) It is unlawful for a person to intentionally or knowingly divide a procurement  
1500 into one or more smaller procurements with the intent to make a procurement:

1501 (a) qualify as a small purchase, if, before dividing the procurement, it would not have  
1502 qualified as a small purchase; or

1503 (b) meet a threshold established by rule made by the applicable rulemaking authority,  
1504 if, before dividing the procurement, it would not have met the threshold.

1505 [~~(5)~~] (9) A division of a procurement that is prohibited under Subsection [~~(4)~~] (8)  
1506 includes doing any of the following with the intent or knowledge described in Subsection [~~(4)~~]  
1507 (8):

1508 (a) making two or more separate purchases;

1509 (b) dividing an invoice or purchase order into two or more invoices or purchase orders;

1510 or

1511 (c) making smaller purchases over a period of time.

1512 [~~(6)~~] (10) A person who violates Subsection [~~(4)~~] (8) is subject to the criminal  
1513 penalties described in Section 63G-6a-2305.

1514 [~~(7)~~] (11) The Division of Finance within the Department of Administrative Services  
1515 may conduct an audit of [~~a public procurement unit in the state~~] an executive branch

1516 procurement unit to verify compliance with the requirements of this section.

1517           ~~[(8)] (12) [A public procurement unit in the state]~~ An executive branch procurement  
1518 unit may not make a small purchase after January 1, ~~[2013]~~ 2014, unless the chief procurement  
1519 officer certifies that the person responsible for procurements in the ~~[public]~~ procurement unit  
1520 has satisfactorily completed training on this section and the rules made under this section.

1521           Section 20. Section **63G-6a-503 (Effective 05/01/13)** is amended to read:

1522           **63G-6a-503 (Effective 05/01/13). Request for information and response**  
1523 **nonbinding.**

1524           (1) A request for information is not a procurement process and may not be used to  
1525 make a purchase or enter into a contract. A ~~[public]~~ procurement unit is required to use a  
1526 standard procurement process, or comply with an exception to the requirement to use a  
1527 standard procurement process described in Part 8, Exceptions to Procurement Requirements, in  
1528 order to make a purchase or enter into a contract.

1529           (2) A response to a request for information is not an offer and may not be accepted to  
1530 form a binding contract.

1531           Section 21. Section **63G-6a-505** is enacted to read:

1532           **63G-6a-505. Protected information.**

1533           Information submitted to or by a governmental entity in response to a request for  
1534 information is protected under Section 63G-2-305.

1535           Section 22. Section **63G-6a-602 (Effective 05/01/13)** is amended to read:

1536           **63G-6a-602 (Effective 05/01/13). Contracts awarded by bidding.**

1537           (1) Except as otherwise provided in this chapter, ~~[an authorized purchasing entity]~~ a  
1538 procurement unit with independent procurement authority shall award a contract for a  
1539 procurement by bidding, in accordance with the rules of the applicable rulemaking authority.

1540           (2) The bidding standard procurement process is appropriate to use when cost is the  
1541 major factor in determining the award of a procurement.

1542           Section 23. Section **63G-6a-603 (Effective 05/01/13)** is amended to read:

1543           **63G-6a-603 (Effective 05/01/13). Invitation for bids -- Contents -- Notice.**

1544           (1) The bidding standard procurement process begins when ~~[the authorized purchasing~~  
1545 entity] a procurement unit with independent procurement authority issues an invitation for bids.

1546           (2) An invitation for bids shall:

- 1547 (a) state the period of time during which bids will be accepted;
- 1548 (b) describe the manner in which a bid shall be submitted;
- 1549 (c) state the place where a bid shall be submitted; and
- 1550 (d) include, or incorporate by reference:
  - 1551 (i) a description of the procurement items sought;
  - 1552 (ii) the objective criteria that will be used to evaluate the bids; and
  - 1553 (iii) the required contractual terms and conditions.
- 1554 (3) An [~~authorized purchasing entity~~] issuing procurement unit shall publish an
- 1555 invitation for bids in accordance with the requirements of Section 63G-6a-406.
- 1556 Section 24. Section **63G-6a-604 (Effective 05/01/13)** is amended to read:
- 1557 **63G-6a-604 (Effective 05/01/13). Bid opening and acceptance.**
  - 1558 (1) Bids shall be opened:
    - 1559 (a) publicly, except as provided in Section 63G-6a-611;
    - 1560 (b) in the presence of one or more witnesses, unless an electronic bid opening process
    - 1561 is used where bidders may see the opening of the bid electronically; and
    - 1562 (c) at the time and place indicated in the invitation for bids.
  - 1563 (2) Bids shall be accepted unconditionally, without alteration or correction, except as
  - 1564 otherwise authorized by this chapter.
    - 1565 (3) (a) The procurement officer shall reject a bid that is not responsive or responsible.
    - 1566 (b) A bid that is not responsive includes a bid that:
      - 1567 (i) is conditional;
      - 1568 (ii) attempts to modify the bid requirements;
      - 1569 (iii) contains additional terms or conditions; or
      - 1570 (iv) fails to conform with the requirements or specifications of the invitation for bids.
    - 1571 (c) A bid that is not responsible includes a bid where the procurement officer
    - 1572 reasonably concludes that the bidder or an employee, agent, or subcontractor of the bidder, at
    - 1573 any tier, is unable to satisfactorily fulfill the bid requirements.
  - 1574 (4) An [~~authorized purchasing entity~~] issuing procurement unit may not accept a bid
  - 1575 after the time for submission of a bid has expired.
  - 1576 (5) The procurement officer shall:
    - 1577 (a) record the name of each bidder and the amount of each bid; and

1578 (b) after the bid is awarded, make the information described in Subsection (5)(a)  
1579 available for public disclosure.

1580 Section 25. Section **63G-6a-605 (Effective 05/01/13)** is amended to read:

1581 **63G-6a-605 (Effective 05/01/13). Correction or withdrawal of bids -- Cancellation**  
1582 **of award.**

1583 (1) Correction or withdrawal of inadvertently erroneous bids, or the cancellation of an  
1584 award or a contract that is based on an unintentionally erroneous bid, may be made in  
1585 accordance with the rules of the applicable rulemaking authority.

1586 (2) Notwithstanding Subsection (1), the following changes may not be made to a bid  
1587 after the bid opening:

1588 (a) changes in bid pricing;

1589 (b) changes in the cost evaluation formula; or

1590 (c) changes in other provisions that are prejudicial to fair competition or to the interest  
1591 of the ~~[public]~~ procurement unit.

1592 (3) A decision to permit the correction or withdrawal of a bid or the cancellation of an  
1593 award or a contract under Subsection (1) shall be supported in a written document, signed by  
1594 the procurement officer or the head of the ~~[authorized purchasing entity]~~ procurement unit with  
1595 independent procurement authority.

1596 Section 26. Section **63G-6a-606 (Effective 05/01/13)** is amended to read:

1597 **63G-6a-606 (Effective 05/01/13). Evaluation of bids -- Award -- Cancellation --**  
1598 **Disqualification.**

1599 (1) ~~[An authorized purchasing entity]~~ A procurement unit with independent  
1600 procurement authority shall evaluate each bid using the objective criteria described in the  
1601 invitation for bids, which may include:

1602 (a) experience;

1603 (b) performance ratings;

1604 (c) inspection;

1605 (d) testing;

1606 (e) quality;

1607 (f) workmanship;

1608 (g) time and manner of delivery;

- 1609 (h) references;
- 1610 (i) financial stability;
- 1611 (j) cost;
- 1612 (k) suitability for a particular purpose; or
- 1613 (l) other objective criteria specified in the invitation for bids.
- 1614 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.
- 1615 (3) The ~~[authorized purchasing entity]~~ procurement unit shall:
- 1616 (a) award the contract as soon as practicable to:
- 1617 (i) the lowest responsive and responsible bidder who meets the objective criteria
- 1618 described in the invitation for bids; or
- 1619 (ii) if, in accordance with Subsection (4), the procurement officer or the head of the
- 1620 ~~[authorized purchasing entity]~~ procurement unit disqualifies the bidder described in Subsection
- 1621 (3)(a)(i), the next lowest responsive and responsible bidder who meets the objective criteria
- 1622 described in the invitation for bids; or
- 1623 (b) cancel the invitation for bids without awarding a contract.
- 1624 (4) In accordance with Subsection (5), the procurement officer or the head of the
- 1625 ~~[authorized purchasing entity]~~ procurement unit may disqualify a bidder for:
- 1626 (a) a violation of this chapter;
- 1627 (b) a violation of a requirement of the invitation for bids;
- 1628 (c) unlawful or unethical conduct; or
- 1629 (d) a change in circumstance that, had the change been known at the time the bid was
- 1630 submitted, would have caused the bidder to not be the lowest responsive and responsible bidder
- 1631 who meets the objective criteria described in the invitation for bids.
- 1632 (5) A procurement officer or head of ~~[an authorized purchasing entity]~~ a procurement
- 1633 unit who disqualifies a bidder under Subsection (4) shall:
- 1634 (a) make a written finding, stating the reasons for disqualification; and
- 1635 (b) provide a copy of the written finding to the disqualified bidder.
- 1636 (6) If ~~[an authorized purchasing entity]~~ a procurement unit cancels an invitation for
- 1637 bids without awarding a contract, the ~~[authorized purchasing entity]~~ procurement unit shall
- 1638 make available for public inspection a written justification for the cancellation.
- 1639 Section 27. Section **63G-6a-607 (Effective 05/01/13)** is amended to read:

1640 **63G-6a-607 (Effective 05/01/13). Action when all bids are over budget.**

1641 (1) Except as provided in Subsection (2) or (3), if the fiscal officer for the [public]  
1642 procurement unit certifies that all accepted bids exceed available funds and that the lowest  
1643 responsive and responsible bidder does not exceed the available funds by more than 5%, the  
1644 procurement officer may negotiate an adjustment of the bid price and bid requirements with the  
1645 lowest responsive and responsible bidder in order to bring the bid within the amount of  
1646 available funds.

1647 (2) A procurement officer may not adjust the bid requirements under Subsection (1) if  
1648 there is a substantial likelihood that, had the adjustment been included in the invitation for  
1649 bids, a person that did not submit a bid would have submitted a responsive, responsible, and  
1650 competitive bid.

1651 (3) The Division of Facilities Construction and Management is exempt from the  
1652 requirements of this section if:

1653 (a) the building board adopts rules governing procedures when all accepted bids exceed  
1654 available funds; and

1655 (b) the Division of Facilities Construction and Management complies with the rules  
1656 described in Subsection (3)(a).

1657 Section 28. Section **63G-6a-608 (Effective 05/01/13)** is amended to read:

1658 **63G-6a-608 (Effective 05/01/13). Tie bids -- Resolution -- Copies provided to**  
1659 **attorney general.**

1660 (1) A procurement officer shall resolve a tie bid in accordance with a method  
1661 established by rule made by the applicable rulemaking authority. The method may include  
1662 awarding the tie bid:

1663 (a) to the tie bidder who:

1664 (i) is a provider of state products, if no other tie bidder is a responsive provider of state  
1665 products;

1666 (ii) is closest to the point of delivery;

1667 (iii) received the previous award; or

1668 (iv) will provide the earliest delivery date;

1669 (b) by drawing lots; or

1670 (c) by any other reasonable method of resolving a tie bid.

1671 (2) The method chosen by the procurement officer to resolve a tie bid shall be at the  
1672 sole discretion of the procurement officer, subject to the rules established under Subsection (1).

1673 (3) A [~~public~~] procurement unit in the state executive branch shall provide a copy of  
1674 the procurement to the attorney general if an award of a contract to a tie bidder exceeds  
1675 \$100,000 in expenditures.

1676 Section 29. Section **63G-6a-609 (Effective 05/01/13)** is amended to read:

1677 **63G-6a-609 (Effective 05/01/13). Multiple stage bidding process.**

1678 (1) [~~An authorized purchasing entity~~] A procurement unit with independent  
1679 procurement authority may conduct a bid in multiple stages, to:

- 1680 (a) narrow the number of bidders who will progress to a subsequent stage;  
1681 (b) prequalify bidders for subsequent stages, in accordance with Section 63G-6a-403;  
1682 (c) enter into a contract for a single procurement; or  
1683 (d) award multiple contracts for a series of upcoming procurements.

1684 (2) The invitation for bids for a multiple stage bidding process shall:

- 1685 (a) describe the requirements for, and purpose of, each stage of the process;  
1686 (b) indicate whether the [~~authorized purchasing entity~~] procurement unit intends to

1687 award:

- 1688 (i) a single contract; or  
1689 (ii) multiple contracts for a series of upcoming procurements; and  
1690 (c) state that:  
1691 (i) the first stage is for prequalification only;  
1692 (ii) a bidder may not submit any pricing information in the first stage of the process;

1693 and

1694 (iii) bids in the second stage will only be accepted from a person who prequalifies in  
1695 the first stage.

1696 (3) During the first stage, the [~~authorized purchasing entity~~] procurement unit:

- 1697 (a) shall prequalify bidders to participate in subsequent stages, in accordance with  
1698 Section 63G-6a-403;  
1699 (b) shall prohibit the submission of pricing information until the final stage; and  
1700 (c) may, before beginning the second stage, request additional information to clarify  
1701 the qualifications of the bidders who submit timely responses.

1702 (4) Contracts may only be awarded for a procurement item described in stage one of  
1703 the invitation for bids.

1704 (5) ~~[An authorized purchasing entity]~~ A procurement unit with independent  
1705 procurement authority may conduct a bid in as many stages as it determines to be appropriate.

1706 (6) Except as otherwise expressly provided in this section, ~~[an authorized purchasing~~  
1707 ~~entity]~~ a procurement unit with independent procurement authority shall conduct a multiple  
1708 stage process in accordance with this part.

1709 (7) The applicable rulemaking authority may make rules governing the use of a  
1710 multiple stage process described in this section.

1711 Section 30. Section **63G-6a-610 (Effective 05/01/13)** is amended to read:

1712 **63G-6a-610 (Effective 05/01/13). Contracts awarded by reverse auction.**

1713 (1) Reverse auction bidding may be used if the procurement officer determines, in  
1714 writing, that reverse auction bidding will provide the best value to the ~~[public]~~ procurement  
1715 unit.

1716 (2) Reverse auction bidding is appropriate to use when there are multiple prequalified  
1717 providers of a procurement item.

1718 Section 31. Section **63G-6a-611 (Effective 05/01/13)** is amended to read:

1719 **63G-6a-611 (Effective 05/01/13). Invitation for bids for reverse auction -- Notice**  
1720 **contents -- Agreement to terms and conditions.**

1721 (1) The reverse auction bidding process begins when ~~[an authorized purchasing entity]~~  
1722 a procurement unit with independent procurement authority issues an invitation for bids to  
1723 prequalify bidders to participate in the reverse auction.

1724 (2) The invitation for bids shall:

1725 (a) state the period of time during which bids will be accepted;

1726 (b) state that the bid will be conducted by reverse auction;

1727 (c) describe the procurement items sought;

1728 (d) describe the minimum requirements to become prequalified;

1729 (e) state the required contractual terms and conditions; and

1730 (f) describe the procedure that the authorized purchasing entity will follow in  
1731 conducting the reverse auction.

1732 (3) In order to participate in a reverse auction, a bidder shall agree to:

1733 (a) the specifications, and contractual terms and conditions, of the procurement; and  
1734 (b) be trained in, and abide by, the procedure that the [~~authorized purchasing entity~~]  
1735 procurement unit will follow in conducting the reverse auction.

1736 (4) [~~An authorized purchasing entity~~] A procurement unit with independent  
1737 procurement authority shall publish an invitation for bids for a reverse auction in accordance  
1738 with the requirements of Section 63G-6a-406.

1739 Section 32. Section **63G-6a-612 (Effective 05/01/13)** is amended to read:

1740 **63G-6a-612 (Effective 05/01/13). Conduct of reverse auction.**

1741 (1) When conducting a reverse auction, [~~an authorized purchasing entity~~] a  
1742 procurement unit with independent procurement authority:

1743 (a) may conduct the reverse auction at a physical location or by electronic means;

1744 (b) shall permit all prequalified bidders to participate in the reverse auction;

1745 (c) may not permit a bidder to participate in the reverse auction if the bidder did not  
1746 prequalify to participate in the reverse auction;

1747 (d) may not accept a bid after the time for submission of a bid has expired;

1748 (e) shall update the bids on a real time basis; and

1749 (f) shall conduct the reverse auction in a manner that permits each bidder to:

1750 (i) bid against each other; and

1751 (ii) lower the bidder's price below the lowest bid before the reverse auction closes.

1752 (2) At the end of the reverse auction, the [~~authorized purchasing entity~~] procurement  
1753 unit shall:

1754 (a) award the contract as soon as practicable to the lowest responsive and responsible  
1755 bidder who meets the objective criteria described in the invitation for bids; or

1756 (b) cancel the reverse auction without awarding a contract.

1757 (3) After the reverse auction is finished, the procurement officer shall make publicly  
1758 available:

1759 (a) (i) the amount of the final bid submitted by each bidder during the reverse auction;

1760 and

1761 (ii) the identity of the bidder that submitted each final bid; and

1762 (b) if practicable:

1763 (i) the amount of each bid submitted during the reverse auction; and

1764 (ii) the identity of the bidder that submitted each bid.

1765 Section 33. Section **63G-6a-702 (Effective 05/01/13)** is amended to read:

1766 **63G-6a-702 (Effective 05/01/13). Contracts awarded by request for proposals.**

1767 (1) A request for proposals standard procurement process may be used instead of  
1768 bidding if the procurement officer determines, in writing, that the request for proposals  
1769 standard procurement process will provide the best value to the [public] procurement unit.

1770 (2) The request for proposals standard procurement process is appropriate to use for:

1771 (a) the procurement of professional services;

1772 (b) a design-build procurement;

1773 (c) when cost is not the most important factor to be considered in making the selection  
1774 that is most advantageous to the [public] procurement unit; or

1775 (d) when factors, in addition to cost, are highly significant in making the selection that  
1776 is most advantageous to the [public] procurement unit.

1777 Section 34. Section **63G-6a-703 (Effective 05/01/13)** is amended to read:

1778 **63G-6a-703 (Effective 05/01/13). Request for proposals -- Notice -- Contents.**

1779 (1) The request for proposals standard procurement process begins when [~~the~~  
1780 ~~authorized purchasing entity~~] a procurement unit with independent procurement authority  
1781 issues a request for proposals.

1782 (2) A request for proposals shall:

1783 (a) state the period of time during which a proposal will be accepted;

1784 (b) describe the manner in which a proposal shall be submitted;

1785 (c) state the place where a proposal shall be submitted;

1786 (d) include, or incorporate by reference:

1787 (i) a description of the procurement items sought;

1788 (ii) a description of the subjective and objective criteria that will be used to evaluate  
1789 the proposal; and

1790 (iii) the standard contractual terms and conditions required by the authorized  
1791 purchasing entity;

1792 (e) state the relative weight that will be given to each score awarded for the criteria  
1793 described in Subsection (2)(d)(ii), including cost;

1794 (f) state the formula that will be used to determine the score awarded for the cost of

1795 each proposal;

1796 (g) if the request for proposals will be conducted in multiple stages, as described in  
1797 Section 63G-6a-710, include a description of the stages and the criteria and scoring that will be  
1798 used to screen offerors at each stage; and

1799 (h) state that discussions may be conducted with offerors who submit proposals  
1800 determined to be reasonably susceptible of being selected for award, followed by an  
1801 opportunity to make best and final offers, but that proposals may be accepted without  
1802 discussions.

1803 (3) [~~An authorized purchasing entity~~] A procurement unit with independent  
1804 procurement authority shall publish a request for proposals in accordance with the  
1805 requirements of Section 63G-6a-406.

1806 Section 35. Section **63G-6a-704 (Effective 05/01/13)** is amended to read:

1807 **63G-6a-704 (Effective 05/01/13). Opening of proposals and acceptance.**

1808 (1) An [~~authorized purchasing entity~~] issuing procurement unit shall ensure that  
1809 proposals are opened in a manner that avoids disclosing the contents to competing offerors  
1810 during the evaluation process.

1811 (2) An [~~authorized purchasing entity~~] issuing procurement unit may not accept a  
1812 proposal:

1813 (a) after the time for submission of a proposal has expired; or

1814 (b) that is not responsive to the request for proposals.

1815 Section 36. Section **63G-6a-705 (Effective 05/01/13)** is amended to read:

1816 **63G-6a-705 (Effective 05/01/13). Discussions -- Best and final offers.**

1817 (1) After proposals are received and opened, the [~~authorized purchasing entity~~] issuing  
1818 procurement unit may conduct discussions with the offerors and allow the offerors to make  
1819 best and final offers after the discussions.

1820 (2) The [~~authorized purchasing entity~~] issuing procurement unit shall:

1821 (a) ensure that each offeror receives fair and equal treatment with respect to the other  
1822 offerors;

1823 (b) establish a schedule and procedures for conducting discussions;

1824 (c) ensure that information in each proposal and information gathered during  
1825 discussions is not shared with other offerors until the contract is awarded;

1826 (d) ensure that auction tactics are not used in the discussion process, including  
1827 discussing and comparing the costs and features of other proposals; and  
1828 (e) set a common date and time for the submission of best and final offers.  
1829 (3) If an offeror chooses not to participate in a discussion or does not make a timely  
1830 best and final offer, the offer submitted by the offerors before the conduct of discussions shall  
1831 be treated as the offeror's best and final offer.

1832 Section 37. Section **63G-6a-707 (Effective 05/01/13)** is amended to read:  
1833 **63G-6a-707 (Effective 05/01/13). Evaluation of proposals -- Evaluation**  
1834 **committee.**

1835 (1) Each proposal shall be evaluated using the criteria described in the request for  
1836 proposals, which may include:

- 1837 (a) experience;
- 1838 (b) performance ratings;
- 1839 (c) inspection;
- 1840 (d) testing;
- 1841 (e) quality;
- 1842 (f) workmanship;
- 1843 (g) time, manner, or schedule of delivery;
- 1844 (h) references;
- 1845 (i) financial stability;
- 1846 (j) suitability for a particular purpose;
- 1847 (k) management plans;
- 1848 (l) cost; or
- 1849 (m) other subjective or objective criteria specified in the request for proposals.

1850 (2) Criteria not described in the request for proposals may not be used to evaluate a  
1851 proposal.

1852 (3) The ~~[authorized purchasing entity]~~ issuing procurement unit shall:

- 1853 (a) appoint an evaluation committee consisting of at least three individuals ~~[at least one~~  
1854 ~~of which is a representative of the user agency]~~; and
- 1855 (b) ensure that the evaluation committee and each member of the evaluation  
1856 committee:

- 1857 (i) does not have a conflict of interest with any of the offerors;
- 1858 (ii) can fairly evaluate each proposal;
- 1859 (iii) does not contact or communicate with an offeror for any reason other than
- 1860 conducting the standard procurement process; and
- 1861 (iv) conducts the evaluation in a manner that ensures a fair and competitive process
- 1862 and avoids the appearance of impropriety.
- 1863 (4) The evaluation committee may conduct interviews with, or participate in
- 1864 presentations by, the offerors.
- 1865 (5) Except as provided in Subsection (6) or (7), each member of the evaluation
- 1866 committee is prohibited from knowing, or having access to, any information relating to the
- 1867 cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its
- 1868 final recommended scores on all other criteria to the [~~authorized purchasing entity~~] issuing
- 1869 procurement unit.
- 1870 (6) (a) As used in this Subsection (6), "management fee" includes only the following
- 1871 fees of the construction manager/general contractor:
- 1872 (i) preconstruction phase services;
- 1873 (ii) monthly supervision fees for the construction phase; and
- 1874 (iii) overhead and profit for the construction phase.
- 1875 (b) When selecting a construction manager/general contractor for a construction
- 1876 project, the evaluation committee:
- 1877 (i) may, at any time after the opening of the responses to the request for proposals, have
- 1878 access to, and consider, the management fee proposed by the offerors; and
- 1879 (ii) except as provided in Subsection (7), may not know or have access to any other
- 1880 information relating to the cost of construction submitted by the offerors, until after the
- 1881 evaluation committee submits its final recommended scores on all other criteria to the
- 1882 [~~authorized purchasing entity~~] issuing procurement unit.
- 1883 (7) An [~~authorized purchasing entity~~] issuing procurement unit is not required to
- 1884 comply with Subsection (5) if, before opening the responses to the request for proposals, the
- 1885 head of the [~~authorized purchasing entity~~] issuing procurement unit or a person designated by
- 1886 rule made by the applicable rulemaking authority:
- 1887 (a) signs a written statement:

1888 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the  
1889 best interest of the [state] procurement unit to waive compliance with Subsection (5); and

1890 (ii) describing the nature of the proposal and the other circumstances relied upon to  
1891 waive compliance with Subsection (5); and

1892 (b) makes the written statement available to the public, upon request.

1893 (8) The evaluation committee shall award scores to each responsive and responsible  
1894 proposal that has not been disqualified from consideration under the provisions of this chapter.

1895 Section 38. Section **63G-6a-708 (Effective 05/01/13)** is amended to read:

1896 **63G-6a-708 (Effective 05/01/13). Cost-benefit analysis.**

1897 ~~[(1) The authorized purchasing entity shall, on the day on which the selection is~~  
1898 ~~announced, make available to each offeror and to the public a written statement that includes:]~~

1899 ~~[(a) the name of the offeror found by the authorized purchasing entity to provide the~~  
1900 ~~greatest overall value to the public procurement unit, taking into account the cost and the other~~  
1901 ~~evaluation criteria described in the request for proposals; and]~~

1902 ~~[(b) the scores awarded to each offeror by the evaluation committee for each evaluation~~  
1903 ~~criteria category described in the request for proposals.]~~

1904 ~~[(2)]~~ (1) If the ~~[contract is]~~ highest score awarded by the evaluation committee,  
1905 including the score for cost, is awarded to [an offeror] a proposal other than the lowest cost  
1906 ~~[offeror] proposal~~, and the difference between the cost of the ~~[accepted]~~ highest scored  
1907 proposal and the lowest cost proposal exceeds the greater of \$10,000 or 5% of the lowest cost  
1908 ~~[offer, an authorized purchasing entity] proposal, the issuing procurement unit shall [include,~~  
1909 ~~with the statement described in Subsection (1), an] make an informal written cost-benefit~~  
1910 analysis that:

1911 (a) explains, in general terms, the advantage to the ~~[public]~~ procurement unit of  
1912 awarding the contract to the higher cost offeror;

1913 (b) includes, except as provided in Subsection ~~[(2)]~~ (1)(c), the estimated added  
1914 financial value to the ~~[public]~~ procurement unit of each criteria that justifies awarding the  
1915 contract to the higher cost offeror;

1916 (c) includes, to the extent that assigning a financial value to a particular criteria is not  
1917 practicable, a statement describing:

1918 (i) why it is not practicable to assign a financial value to the criteria; and

1919 (ii) in nonfinancial terms, the advantage to the [public] procurement unit, based on the  
1920 particular criteria, of awarding the contract to the higher cost offeror;

1921 (d) demonstrates that the value of the advantage to the [public] procurement unit of  
1922 awarding the contract to the higher cost offeror exceeds the value of the difference between the  
1923 cost of the higher cost [offeror] proposal and the cost of the lower cost [offerors] proposals;  
1924 and

1925 (e) includes any other information required by rule made by the applicable rulemaking  
1926 authority.

1927 (2) If the informal cost-benefit analysis described in Subsection (1) does not justify  
1928 award of the contract to the offeror that received the highest score, the issuing procurement  
1929 unit:

1930 (a) may not award the contract to the offeror that received the highest score; and

1931 (b) may award the contract to the offeror that received the next highest score, unless:

1932 (i) an informal cost-benefit analysis is required, because the difference between the  
1933 cost proposed by the offeror that received the next highest score and the lowest cost proposal  
1934 exceeds the greater of \$10,000 or 5% of the lowest cost proposal; and

1935 (ii) the informal cost-benefit analysis does not justify award of the contract to the  
1936 offeror that received the next highest score.

1937 (3) If the informal cost-benefit analysis described in Subsection (1) does not justify  
1938 award of the contract to the offeror, described in Subsection (2), that received the next highest  
1939 score, the issuing procurement unit:

1940 (a) may not award the contract to the offeror that received the next highest score; and

1941 (b) shall continue with the process described in Subsection (2) for each offeror that  
1942 received the next highest score, until the issuing procurement unit:

1943 (i) awards the contract in accordance with the provisions of this section; or

1944 (ii) cancels the request for proposals.

1945 Section 39. Section **63G-6a-709 (Effective 05/01/13)** is amended to read:

1946 **63G-6a-709 (Effective 05/01/13). Award of contract -- Cancellation --**

1947 **Disqualification.**

1948 (1) After the evaluation and scoring of proposals is completed, the [authorized  
1949 purchasing entity] issuing procurement unit shall:

1950 (a) except as provided in Section 63G-6a-708, award the contract as soon as practicable  
1951 to:

1952 (i) the responsive and responsible offeror with the highest total score; or

1953 (ii) if, in accordance with Subsection (2), the procurement officer or the head of the  
1954 ~~[authorized purchasing entity]~~ issuing procurement unit disqualifies the offeror described in  
1955 Subsection (1)(a)(i), the responsive and responsible offeror with the next highest total score; or

1956 (b) cancel the request for proposals without awarding a contract.

1957 (2) In accordance with Subsection (3), the procurement officer or the head of the

1958 ~~[authorized purchasing entity]~~ issuing procurement unit may disqualify an offeror for:

1959 (a) a violation of this chapter;

1960 (b) a violation of a requirement of the request for proposals;

1961 (c) unlawful or unethical conduct; or

1962 (d) a change in circumstance that, had the change been known at the time the proposal  
1963 was submitted, would have caused the proposal to not have the highest score.

1964 (3) A procurement officer or head of an ~~[authorized purchasing entity]~~ issuing  
1965 procurement unit who disqualifies an offeror under Subsection (2) shall:

1966 (a) make a written finding, stating the reasons for disqualification; and

1967 (b) provide a copy of the written finding to the disqualified offeror.

1968 (4) If an ~~[authorized purchasing entity]~~ issuing procurement unit cancels a request for  
1969 proposals without awarding a contract, the ~~[authorized purchasing entity]~~ issuing procurement  
1970 unit shall make available for public inspection a written justification for the cancellation.

1971 Section 40. Section **63G-6a-709.5** is enacted to read:

1972 **63G-6a-709.5. Publication of award and scores.**

1973 The issuing procurement unit shall, on the day on which the award of a contract is  
1974 announced, make available to each offeror and to the public a written statement that includes:

1975 (1) the name of the offeror to which the contract is awarded and the total score awarded  
1976 by the evaluation committee to that offeror;

1977 (2) the total score awarded by the evaluation committee to each offeror to which the  
1978 contract is not awarded, without identifying which offeror received which score; and

1979 (3) any cost-benefit analysis made, under Section 63G-6a-708, in relation to the request  
1980 for proposals.

1981 Section 41. Section **63G-6a-710 (Effective 05/01/13)** is amended to read:

1982 **63G-6a-710 (Effective 05/01/13). Multiple stage process.**

1983 (1) [~~An authorized purchasing entity~~] A procurement unit with independent  
1984 procurement authority may conduct a request for proposals in stages, where an earlier stage is  
1985 used to qualify offerors for subsequent stages or to narrow the number of offerors that will  
1986 move on to subsequent stages.

1987 (2) Except as otherwise expressly provided in this section, [~~an authorized purchasing~~  
1988 ~~entity~~] a procurement unit with independent procurement authority shall conduct a multiple  
1989 stage process in accordance with this part.

1990 Section 42. Section **63G-6a-711 (Effective 05/01/13)** is amended to read:

1991 **63G-6a-711 (Effective 05/01/13). Procurement for submitted proposal.**

1992 (1) As used in this section:

1993 (a) "Committee" is as defined in Section 63M-1-2602.

1994 (b) "Initial proposal" is a proposal submitted by a private entity under Section  
1995 63M-1-2605.

1996 (2) After receipt by the chief procurement officer of a copy of an initial proposal from  
1997 the committee in accordance with Subsection 63M-1-2606(5), including any comment,  
1998 suggestion, or modification to the initial proposal, the chief procurement officer shall initiate a  
1999 standard procurement process in compliance with this chapter.

2000 (3) The chief procurement officer or designee shall:

2001 (a) review each detailed proposal received in accordance with Title 63M, Chapter 1,  
2002 Part 26, Government Procurement Private Proposal Program; and

2003 (b) submit all detailed proposals that meet the guidelines established under Subsection  
2004 63M-1-2608(1) to the committee for review under Section 63M-1-2609.

2005 (4) For purposes of this chapter, the Governor's Office of Economic Development is  
2006 considered [~~the state purchasing unit~~] a procurement unit with independent procurement  
2007 authority for a procurement [~~process~~] under Title 63M, Chapter 1, Part 26, Government  
2008 Procurement Private Proposal Program.

2009 Section 43. Section **63G-6a-802 (Effective 05/01/13)** is amended to read:

2010 **63G-6a-802 (Effective 05/01/13). Sole source -- Award of contract without**  
2011 **competition -- Notice.**

- 2012 (1) As used in this section:
- 2013 (a) "Transitional costs" mean the costs of changing from an existing provider of, or
- 2014 type of, a procurement item to another provider of, or type of, procurement item.
- 2015 (b) "Transitional costs" include:
- 2016 (i) training costs;
- 2017 (ii) conversion costs;
- 2018 (iii) compatibility costs;
- 2019 (iv) system downtime;
- 2020 (v) disruption of service;
- 2021 (vi) staff time necessary to put the transition into effect;
- 2022 (vii) installation costs; and
- 2023 (viii) ancillary software, hardware, equipment, or construction costs.
- 2024 (c) "Transitional costs" do not include:
- 2025 (i) the costs of preparing for or engaging in a procurement process; or
- 2026 (ii) contract negotiation or contract drafting costs.
- 2027 (2) A procurement unit with independent procurement authority may award a contract
- 2028 ~~[may be awarded]~~ for a procurement item without competition if the procurement officer, the
- 2029 head of ~~[an authorized purchasing entity]~~ the procurement unit, or a designee of either who is
- 2030 senior to the procurement officer or the head of the ~~[authorized purchasing entity]~~ procurement
- 2031 unit, determines in writing that:
- 2032 (a) there is only one source for the procurement item; or
- 2033 (b) the award to a specific supplier, service provider, or contractor is a condition of a
- 2034 donation that will fund the full cost of the supply, service, or construction item.
- 2035 (3) Circumstances under which there is only one source for a procurement item may
- 2036 include:
- 2037 (a) where the most important consideration in obtaining a procurement item is the
- 2038 compatibility of equipment, technology, software, accessories, replacement parts, or service;
- 2039 (b) where a procurement item is needed for trial use or testing;
- 2040 (c) where transitional costs are unreasonable or cost prohibitive; or
- 2041 (d) procurement of public utility services.
- 2042 (4) The applicable rulemaking authority shall make rules regarding the publication of

2043 notice for a sole source procurement that, at a minimum, require publication of notice of a sole  
2044 source procurement, in accordance with Section 63G-6a-406, if the cost of the procurement  
2045 exceeds \$50,000.

2046 (5) ~~[An authorized purchasing entity]~~ A procurement unit with independent  
2047 procurement authority who awards a sole source contract on behalf of ~~[a public]~~ another  
2048 procurement unit shall negotiate with the contractor to ensure that the terms of the contract,  
2049 including price and delivery, are in the best interest of the ~~[state]~~ procurement unit.

2050 (6) A ~~[public procurement unit]~~ procurement unit with independent procurement  
2051 authority may extend a contract for a reasonable period of time without engaging in a standard  
2052 procurement process, if:

2053 (a) the award of a new contract for the procurement item is delayed due to a protest or  
2054 appeal;

2055 (b) the standard procurement process is delayed due to unintentional error;

2056 (c) changes in industry standards require significant changes to specifications for the  
2057 procurement item;

2058 (d) the extension is necessary to prevent the loss of federal funds;

2059 (e) the extension is necessary to address a circumstance where the appropriation of  
2060 state or federal funds has been delayed; or

2061 (f) the extension covers the period of time during which contract negotiations with a  
2062 new provider are being conducted.

2063 Section 44. Section **63G-6a-804 (Effective 05/01/13)** is amended to read:

2064 **63G-6a-804 (Effective 05/01/13). Purchase of prison industry goods.**

2065 (1) (a) A ~~[public]~~ procurement unit that is not a political subdivision shall purchase  
2066 goods and services produced by the Utah Correctional Industries Division as provided in this  
2067 section.

2068 (b) A political subdivision of the state may, and is encouraged to, purchase goods and  
2069 services under this section.

2070 (c) A ~~[public]~~ procurement unit is not required to use a standard procurement process  
2071 to purchase goods or services under this section.

2072 (2) On or before July 1 of each year, the director of the Utah Correctional Industries  
2073 shall:

2074 (a) publish and distribute to all [public] procurement units and other interested public  
2075 entities a catalog of goods and services provided by the Correctional Industries Division,  
2076 including a description and price of each item offered for sale; and

2077 (b) update and revise the catalog described in Subsection (2)(a) during the year as the  
2078 director considers necessary.

2079 (3) (a) A procurement unit that is not a political subdivision of the state may not  
2080 purchase any goods or services provided by the Correctional Industries Division from any other  
2081 source unless it has been determined in writing by the director of Correctional Industries and by  
2082 the procurement officer or in the case of institutions of higher education, the institutional  
2083 procurement officer, that purchase from the Correctional Industries Division is not feasible due  
2084 to one of the following circumstances:

2085 (i) the good or service offered by the division does not meet the reasonable  
2086 requirements of the [public] procurement unit;

2087 (ii) the good or service cannot be supplied within a reasonable time by the division; or

2088 (iii) the cost of the good or service, including basic price, transportation costs, and  
2089 other expenses of acquisition, is not competitive with the cost of procuring the item from  
2090 another source.

2091 (b) In cases of disagreement under Subsection (3)(a):

2092 (i) the decision may be appealed to a board consisting of:

2093 (A) the director of the Department of Corrections;

2094 (B) the director of Administrative Services; and

2095 (C) a neutral third party agreed upon by the other two members of the board;

2096 (ii) in the case of an institution of higher education of the state, the president of the  
2097 institution, or the president's designee, shall make the final decision; or

2098 (iii) in the case of [~~a non-executive state procurement unit~~] any of the following  
2099 entities, a person designated by the applicable rulemaking authority shall make the final  
2100 decision[-]:

2101 (A) a legislative procurement unit;

2102 (B) a judicial procurement unit; or

2103 (C) a public transit district.

2104 Section 45. Section 63G-6a-805 (Effective 05/01/13) is amended to read:

2105           **63G-6a-805 (Effective 05/01/13). Purchase from community rehabilitation**  
2106 **programs.**

2107           (1) As used in this section:

2108           (a) "Advisory board" means the Purchasing from Persons with Disabilities Advisory  
2109 Board created under this section.

2110           (b) "Central not-for-profit association" means a group of experts designated by the  
2111 advisory board to do the following, under guidelines established by the advisory board:

2112           (i) assist the advisory board with its functions; and

2113           (ii) facilitate the implementation of advisory board policies.

2114           (c) (i) "Community rehabilitation program" means a program that is operated primarily  
2115 for the purpose of the employment and training of persons with a disability by a government  
2116 agency or qualified nonprofit organization which is an income tax exempt organization under  
2117 26 U.S.C. Sec. 501(c)(3) of the Internal Revenue Code.

2118           (ii) A community rehabilitation program:

2119           (A) maintains an employment ratio of at least 75% of the program employees under the  
2120 procurement contract in question have severe disabilities;

2121           (B) (I) complies with any applicable occupational health and safety standards  
2122 prescribed by the United States Department of Labor; or

2123           (II) is a supported employment program approved by the Utah State Office of  
2124 Rehabilitation;

2125           (C) has its principal place of business in Utah;

2126           (D) produces any good provided under this section in Utah; and

2127           (E) provides any service that is provided by individuals with a majority of whom  
2128 domiciled in Utah.

2129           (d) "Person with a disability" means a person with any disability as defined by and  
2130 covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

2131           (2) There is created within the division the Purchasing from Persons with Disabilities  
2132 Advisory Board.

2133           (3) The advisory board shall consist of three members, as follows:

2134           (a) the director of the division or the director's designee;

2135           (b) the executive director of the Utah State Office of Rehabilitation, created under

2136 Section 53A-24-103, or the executive director's designee; and

2137 (c) a representative of the private business community who shall be appointed to a  
2138 three-year term by the governor with the advice and consent of the Senate.

2139 (4) The advisory board shall meet, as needed, to facilitate the procurement of goods  
2140 and services from community rehabilitation programs by a [~~public~~] procurement unit under this  
2141 chapter by:

2142 (a) identifying goods and services that are available from community rehabilitation  
2143 programs in accordance with the requirements of Subsection (7);

2144 (b) approving prices in accordance with Subsection (7)(c) for goods and services that  
2145 are identified under Subsection (4)(a);

2146 (c) developing, maintaining, and approving a preferred procurement contract list of  
2147 goods and services identified and priced under Subsections (4)(a) and (b);

2148 (d) reviewing bids received by a community rehabilitation program; and

2149 (e) awarding and renewing specified contracts for set contract times, without  
2150 competitive bidding, for the purchase of goods and services under Subsection (7).

2151 (5) The provisions of Subsections (4) and (7)(a) are an exception to the procurement  
2152 provisions under this chapter.

2153 (6) (a) The advisory board may designate a central not-for-profit association, appoint  
2154 its members, and establish guidelines for its duties.

2155 (b) The designated central not-for-profit association serves at the pleasure of the  
2156 advisory board. The central not-for-profit association or its individual members may be  
2157 removed by the advisory board at any time by a majority vote of the advisory board.

2158 (c) Subject to the advisory board guidelines and discretion, a designated central  
2159 not-for-profit association may be assigned to perform the following duties:

2160 (i) identify qualified community rehabilitation programs and the goods and services  
2161 that they provide or have the potential to provide;

2162 (ii) help ensure that goods and services are provided at reasonable quality and delivery  
2163 levels;

2164 (iii) recommend pricing for goods and services;

2165 (iv) review bids and recommend the award of contracts under the advisory board's  
2166 direction;

2167 (v) collect and report program data to the advisory board and to the division; and

2168 (vi) other duties specified by the advisory board.

2169 (7) Except as provided under Subsection (9), notwithstanding any provision of this

2170 chapter to the contrary, each [public] procurement unit shall purchase goods and services

2171 produced by a community rehabilitation program using the preferred procurement contract list

2172 approved under Subsection (4)(c) if:

2173 (a) the good or service offered for sale by a community rehabilitation program

2174 reasonably conforms to the needs and specifications of the [public] procurement unit;

2175 (b) the community rehabilitation program can supply the good or service within a

2176 reasonable time; and

2177 (c) the price of the good or service is reasonably competitive with the cost of procuring

2178 the good or service from another source.

2179 (8) Each community rehabilitation program:

2180 (a) may submit a bid to the advisory board at any time and not necessarily in response

2181 to an invitation for bids; and

2182 (b) shall certify on any bid it submits to the advisory board or to a [public] procurement

2183 unit under this section that it is claiming a preference under this section.

2184 (9) During a fiscal year, the requirement for a [public] procurement unit to purchase

2185 goods and services produced by a community rehabilitation program under the preferred

2186 procurement list under Subsection (7) does not apply if the division determines that the total

2187 amount of procurement contracts with community rehabilitation programs has reached \$5

2188 million for that fiscal year.

2189 (10) In the case of conflict between a purchase under this section and a purchase under

2190 Section 63G-6a-804, this section prevails.

2191 Section 46. Section **63G-6a-806** is enacted to read:

2192 **63G-6a-806. Exception for public transit district contracting with a county or**

2193 **municipality.**

2194 A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public Transit

2195 District Act, may, without going through a standard procurement process or an exception to a

2196 standard procurement process, contract with a county or municipality to receive money from

2197 the county or municipality to fund a transportation project.

2198 Section 47. Section **63G-6a-902 (Effective 05/01/13)** is amended to read:

2199 **63G-6a-902 (Effective 05/01/13). Cancellation and rejection of bids and**  
2200 **proposals.**

2201 (1) An ~~[authorized purchasing entity]~~ issuing procurement unit may cancel an  
2202 invitation for bids, a request for proposals, or other solicitation or reject any or all bids or  
2203 proposal responses, in whole or in part, as may be specified in the solicitation, when it is in the  
2204 best interests of the ~~[public]~~ procurement unit in accordance with the rules of the applicable  
2205 rulemaking authority.

2206 (2) The reasons for a cancellation or rejection described in Subsection (1) shall be  
2207 made part of the contract file.

2208 Section 48. Section **63G-6a-903 (Effective 05/01/13)** is amended to read:

2209 **63G-6a-903 (Effective 05/01/13). Determination of nonresponsibility of bidder or**  
2210 **offeror.**

2211 (1) A determination of nonresponsibility of a bidder or offeror made by an ~~[authorized~~  
2212 ~~purchasing entity]~~ issuing procurement unit shall be made in writing, in accordance with the  
2213 rules of the applicable rulemaking authority.

2214 (2) The unreasonable failure of a bidder or offeror to promptly supply information in  
2215 connection with an inquiry with respect to responsibility may be grounds for a determination of  
2216 nonresponsibility with respect to the bidder or offeror.

2217 (3) Subject to Title 63G, Chapter 2, Government Records Access and Management  
2218 Act, information furnished by a bidder or offeror pursuant to this section may not be disclosed  
2219 outside of ~~[the public]~~ a procurement unit ~~[or authorized purchasing entity]~~ without prior  
2220 written consent by the bidder or offeror.

2221 Section 49. Section **63G-6a-904 (Effective 05/01/13)** is amended to read:

2222 **63G-6a-904 (Effective 05/01/13). Debarment from consideration for award of**  
2223 **contracts -- Causes for debarment.**

2224 (1) After reasonable notice to the person involved and reasonable opportunity for that  
2225 person to be heard, a procurement officer or the head of ~~[an authorized purchasing entity]~~ a  
2226 procurement unit with independent procurement authority may, after consultation with the  
2227 ~~[public]~~ procurement unit involved in the matter for which debarment is sought and, if the  
2228 ~~[public]~~ procurement unit is in the state executive branch, the attorney general:

2229 (a) debar a person for cause from consideration for award of contracts for a period not  
2230 to exceed three years; or

2231 (b) suspend a person from consideration for award of contracts if there is probable  
2232 cause to believe that the person has engaged in any activity that might lead to debarment.

2233 (2) A suspension described in Subsection (1)(b) may not be for a period exceeding  
2234 three months, unless an indictment has been issued for an offense which would be a cause for  
2235 debarment under Subsection (3), in which case the suspension shall, at the request of the  
2236 attorney general, remain in effect until after the trial of the suspended person.

2237 (3) The causes for debarment include the following:

2238 (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a  
2239 public or private contract or subcontract or in the performance of a public or private contract or  
2240 subcontract;

2241 (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery,  
2242 falsification or destruction of records, receiving stolen property, or any other offense indicating  
2243 a lack of business integrity or business honesty which currently, seriously, and directly affects  
2244 responsibility as a state contractor;

2245 (c) conviction under state or federal antitrust statutes;

2246 (d) failure without good cause to perform in accordance with the terms of the contract;

2247 (e) a violation of this chapter, including Part 22, Ethical Requirements; or

2248 (f) any other cause the procurement officer, or the head of ~~[an authorized purchasing~~  
2249 ~~entity]~~ a procurement unit with independent procurement authority determines to be so serious  
2250 and compelling as to affect responsibility as a state contractor, including debarment by another  
2251 governmental entity.

2252 Section 50. Section **63G-6a-905** is enacted to read:

2253 **63G-6a-905. Quote, bid, offer, or contract prohibited by person with outstanding**  
2254 **tax lien -- Exceptions -- Rejection of quote, bid, or offer.**

2255 (1) Except as provided in Subsection (2), a person with an outstanding tax lien in the  
2256 state may not:

2257 (a) submit a quote, bid, or offer to a procurement unit; or

2258 (b) contract to provide a procurement item to a procurement unit.

2259 (2) Subsection (1) does not apply to the extent that a procurement officer determines it

2260 is in the public interest to grant an exception to the requirements of Subsection (1) for a  
2261 particular quote, bid, offer, or contract specified by the procurement officer.

2262 (3) A procurement unit may reject a quote, bid, or offer submitted in violation of  
2263 Subsection (1).

2264 Section 51. Section **63G-6a-1002 (Effective 05/01/13)** is amended to read:

2265 **63G-6a-1002 (Effective 05/01/13). Reciprocal preference for providers of state**  
2266 **products.**

2267 (1) (a) An [~~authorized purchasing entity~~] issuing procurement unit shall, for all  
2268 procurements, give a reciprocal preference to those bidders offering procurement items that are  
2269 produced, manufactured, mined, grown, or performed in Utah over those bidders offering  
2270 procurement items that are produced, manufactured, mined, grown, or performed in any state  
2271 that gives or requires a preference to procurement items that are produced, manufactured,  
2272 mined, grown, or performed in that state.

2273 (b) The amount of reciprocal preference shall be equal to the amount of the preference  
2274 applied by the other state for that particular procurement item.

2275 (c) In order to receive a reciprocal preference under this section, the bidder shall certify  
2276 on the bid that the procurement items offered are produced, manufactured, mined, grown, or  
2277 performed in Utah.

2278 (d) The reciprocal preference is waived if the certification described in Subsection  
2279 (1)(c) does not appear on the bid.

2280 (2) (a) If the bidder submitting the lowest responsive and responsible bid offers  
2281 procurement items that are produced, manufactured, mined, grown, or performed in a state that  
2282 gives or requires a preference, and if another bidder has submitted a responsive and responsible  
2283 bid offering procurement items that are produced, manufactured, mined, grown, or performed  
2284 in Utah, and with the benefit of the reciprocal preference, the bid of the other bidder is equal to  
2285 or less than the original lowest bid, the authorized purchasing entity shall:

2286 (i) give notice to the bidder offering procurement items that are produced,  
2287 manufactured, mined, grown, or performed in Utah that the bidder qualifies as a preferred  
2288 bidder; and

2289 (ii) make the purchase from the preferred bidder if the bidder agrees, in writing, to  
2290 meet the low bid within 72 hours after notification that the bidder is a preferred bidder.

2291 (b) The ~~[authorized purchasing entity]~~ issuing procurement unit shall include the exact  
2292 price submitted by the lowest bidder in the notice the authorized purchasing entity submits to  
2293 the preferred bidder.

2294 (c) The ~~[authorized purchasing entity]~~ issuing procurement unit may not enter into a  
2295 contract with any other bidder for the purchase until 72 hours have elapsed after notification to  
2296 the preferred bidder.

2297 (3) (a) If there is more than one preferred bidder, the ~~[authorized purchasing entity]~~  
2298 issuing procurement unit shall award the contract to the willing preferred bidder who was the  
2299 lowest preferred bidder originally.

2300 (b) If there were two or more equally low preferred bidders, the ~~[authorized purchasing~~  
2301 ~~entity]~~ issuing procurement unit shall comply with the rules of the applicable rulemaking  
2302 authority to determine which bidder should be awarded the contract.

2303 (4) The provisions of this section do not apply if application of this section might  
2304 jeopardize the receipt of federal funds.

2305 Section 52. Section **63G-6a-1003 (Effective 05/01/13)** is amended to read:

2306 **63G-6a-1003 (Effective 05/01/13). Preference for resident contractors.**

2307 (1) As used in this section, "resident contractor" means a person, partnership,  
2308 corporation, or other business entity that:

2309 (a) either has its principal place of business in Utah or that employs workers who are  
2310 residents of this state when available; and

2311 (b) was transacting business on the date when bids for the public contract were first  
2312 solicited.

2313 (2) (a) When awarding contracts for construction, an ~~[authorized purchasing entity]~~  
2314 issuing procurement unit shall grant a resident contractor a reciprocal preference over a  
2315 nonresident contractor from any state that gives or requires a preference to contractors from  
2316 that state.

2317 (b) The amount of the reciprocal preference shall be equal to the amount of the  
2318 preference applied by the state of the nonresident contractor.

2319 (3) (a) In order to receive the reciprocal preference under this section, the bidder shall  
2320 certify on the bid that the bidder qualifies as a resident contractor.

2321 (b) The reciprocal preference is waived if the certification described in Subsection

2322 (2)(a) does not appear on the bid.

2323 (4) (a) If the contractor submitting the lowest responsive and responsible bid is not a  
2324 resident contractor whose principal place of business is in a state that gives or requires a  
2325 preference to contractors from that state, and if a resident contractor has also submitted a  
2326 responsive and responsible bid, and, with the benefit of the reciprocal preference, the resident  
2327 contractor's bid is equal to or less than the original lowest bid, the [~~authorized purchasing~~  
2328 ~~entity~~] issuing procurement unit shall:

2329 (i) give notice to the resident contractor that the resident contractor qualifies as a  
2330 preferred resident contractor; and

2331 (ii) issue the contract to the resident contractor if the resident contractor agrees, in  
2332 writing, to meet the low bid within 72 hours after notification that the resident contractor is a  
2333 preferred resident contractor.

2334 (b) The [~~authorized purchasing entity~~] issuing procurement unit shall include the exact  
2335 price submitted by the lowest bidder in the notice that the [~~authorized purchasing entity~~]  
2336 issuing procurement unit submits to the preferred resident contractor.

2337 (c) The [~~authorized purchasing entity~~] issuing procurement unit may not enter into a  
2338 contract with any other bidder for the construction until 72 hours have elapsed after notification  
2339 to the preferred resident contractor.

2340 (5) (a) If there is more than one preferred resident contractor, the [~~authorized~~  
2341 ~~purchasing entity~~] issuing procurement unit shall award the contract to the willing preferred  
2342 resident contractor who was the lowest preferred resident contractor originally.

2343 (b) If there were two or more equally low preferred resident contractors, the  
2344 [~~authorized purchasing entity~~] issuing procurement unit shall comply with the rules of the  
2345 applicable rulemaking authority to determine which bidder should be awarded the contract.

2346 (6) The provisions of this section do not apply if application of this section might  
2347 jeopardize the receipt of federal funds.

2348 Section 53. Section **63G-6a-1102 (Effective 05/01/13)** is amended to read:

2349 **63G-6a-1102 (Effective 05/01/13). Bid security requirements -- Directed**  
2350 **suretyship prohibited -- Penalty.**

2351 (1) Bid security in an amount equal to at least 5% of the amount of the bid shall be  
2352 required for all competitive bidding for construction contracts. Bid security shall be a bond

2353 provided by a surety company authorized to do business in this state, the equivalent in cash, or  
2354 any other form satisfactory to the state.

2355 (2) When a bidder fails to comply with the requirement for bid security described in the  
2356 invitation for bids, the bid shall be rejected unless, pursuant to rules of the applicable  
2357 rulemaking authority, the ~~[authorized purchasing entity]~~ issuing procurement unit determines  
2358 that the failure to comply with the security requirements is nonsubstantial.

2359 (3) After the bids are opened, they shall be irrevocable for the period specified in the  
2360 invitation for bids, except as provided in Section 63G-6a-605. If a bidder is permitted to  
2361 withdraw a bid before award, no action shall be taken against the bidder or the bid security.

2362 (4) (a) When issuing an invitation for a bid under this chapter, the procurement officer  
2363 or the head of an ~~[authorized purchasing entity]~~ issuing procurement unit responsible for  
2364 carrying out a construction project may not require a person or entity who is bidding for a  
2365 contract to obtain a bond of the type described in Subsection (1) from a specific insurance or  
2366 surety company, producer, agent, or broker.

2367 (b) A person who violates Subsection (4)(a) is guilty of an infraction.

2368 Section 54. Section **63G-6a-1103 (Effective 05/01/13)** is amended to read:

2369 **63G-6a-1103 (Effective 05/01/13). Bonds necessary when contract is awarded --**  
2370 **Waiver -- Action -- Attorney fees.**

2371 (1) When a construction contract is awarded under this chapter, the contractor to whom  
2372 the contract is awarded shall deliver the following bonds or security to the state, which shall  
2373 become binding on the parties upon the execution of the contract:

2374 (a) a performance bond satisfactory to the state that is in an amount equal to 100% of  
2375 the price specified in the contract and is executed by a surety company authorized to do  
2376 business in this state or any other form satisfactory to the state; and

2377 (b) a payment bond satisfactory to the state that is in an amount equal to 100% of the  
2378 price specified in the contract and is executed by a surety company authorized to do business in  
2379 this state or any other form satisfactory to the state, which is for the protection of each person  
2380 supplying labor, service, equipment, or material for the performance of the work provided for  
2381 in the contract.

2382 (2) (a) When a construction contract is awarded under this chapter, the procurement  
2383 officer or the head of the ~~[authorized purchasing entity]~~ issuing procurement unit responsible

2384 for carrying out the construction project may not require a contractor to whom a contract is  
2385 awarded to obtain a bond of the types referred to in Subsection (1) from a specific insurance or  
2386 surety company, producer, agent, or broker.

2387 (b) A person who violates Subsection (2)(a) is guilty of an infraction.

2388 (3) Rules of the applicable rulemaking authority may provide for waiver of the  
2389 requirement of a bid, performance, or payment bond for circumstances in which the  
2390 procurement officer considers any or all of the bonds to be unnecessary to protect the [public]  
2391 procurement unit.

2392 (4) A person shall have a right of action on a payment bond under this section for any  
2393 unpaid amount due to the person if:

2394 (a) the person has furnished labor, service, equipment, or material for the work  
2395 provided for in the contract for which the payment bond is furnished under this section; and

2396 (b) the person has not been paid in full within 90 days after the last day on which the  
2397 person performed the labor or service or supplied the equipment or material for which the  
2398 claim is made.

2399 (5) An action upon a payment bond may only be brought in a court of competent  
2400 jurisdiction in a county where the construction contract was to be performed. The action is  
2401 barred if not commenced within one year after the last day on which the claimant performed  
2402 the labor or service or supplied the equipment or material on which the claim is based. The  
2403 obligee named in the bond need not be joined as a party to the action.

2404 (6) In any suit upon a payment bond, the court shall award reasonable attorney fees to  
2405 the prevailing party, which fees shall be taxed as costs in the action.

2406 Section 55. Section **63G-6a-1202 (Effective 05/01/13)** is amended to read:

2407 **63G-6a-1202 (Effective 05/01/13). Required contract clauses -- Computation of**  
2408 **price adjustments -- Use of rules and regulations.**

2409 (1) The rules of the applicable rulemaking authority shall require for state construction  
2410 contracts, and may permit or require for contracts for supplies and services, the inclusion of  
2411 clauses providing for adjustments in prices, time of performance, or other appropriate contract  
2412 provisions, and covering the following subjects:

2413 (a) the unilateral right of the procurement officer to order in writing changes in the  
2414 work within the scope of the contract and changes in the time of performance of the contract

2415 that do not alter the scope of the contract work;

2416 (b) variations occurring between estimated quantities of work in a contract and actual  
2417 quantities;

2418 (c) suspension of work ordered by the procurement officer; and

2419 (d) site conditions differing from those indicated in the construction contract, or  
2420 ordinarily encountered, except that differing site conditions clauses required by the rules need  
2421 not be included in a construction contract when:

2422 (i) the contract is negotiated;

2423 (ii) the contractor provides the site or design; or

2424 (iii) the parties have otherwise agreed with respect to the risk of differing site  
2425 conditions.

2426 (2) Adjustments in price pursuant to clauses described in Subsection (1) shall be  
2427 computed in one or more of the following ways:

2428 (a) by agreement on a fixed price adjustment before commencement of the pertinent  
2429 performance or as soon thereafter as practicable;

2430 (b) by unit prices specified in the contract or subsequently agreed upon;

2431 (c) by the costs attributable to the events or situations under the clauses with  
2432 adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

2433 (d) in any other manner as the contracting parties may mutually agree; or

2434 (e) in the absence of agreement by the parties, by a unilateral determination by the  
2435 procurement officer of the costs attributable to the events or situations under the clauses with  
2436 adjustment of profit or fee, all as computed by the procurement officer in accordance with  
2437 applicable rules and subject to the provisions of Part 17, Procurement Appeals Board, and Part  
2438 18, Appeals to Court and Court Proceedings.

2439 (3) A contractor shall be required to submit cost or pricing data if any adjustment in  
2440 contract price is subject to the provisions of Section 63G-6a-1206.

2441 (4) The rules of the applicable rulemaking authority shall require for construction  
2442 contracts, and may permit or require for contracts for supplies and services, the inclusion of  
2443 clauses providing for appropriate remedies and covering at least the following subjects:

2444 (a) liquidated damages as appropriate;

2445 (b) specified excuses for delay or nonperformance;

2446 (c) termination of the contract for default; and

2447 (d) termination of the contract in whole or in part for the convenience of the [public]  
2448 procurement unit.

2449 (5) The contract clauses described in this section shall be established by rule.

2450 However, the procurement officer or the head of an [~~authorized purchasing entity~~] issuing  
2451 procurement unit may modify the clauses for inclusion in any particular contract. The  
2452 applicable rulemaking authority may, by rule, require that:

2453 (a) variations be supported by a written determination that describes the circumstances  
2454 justifying the variations; and

2455 (b) notice of any material variation shall be included in the invitation for bids or  
2456 request for proposals.

2457 (6) A contract for construction entered into by a [public] procurement unit shall contain  
2458 a clause that addresses the rights of the parties when, after the contract is executed, site  
2459 conditions are discovered that:

2460 (a) the contractor did not know existed, and should not have known existed, at the time  
2461 that the contract was executed; and

2462 (b) materially impacts the costs of construction.

2463 Section 56. Section **63G-6a-1203 (Effective 05/01/13)** is amended to read:

2464 **63G-6a-1203 (Effective 05/01/13). Contracts -- Certain indemnification provisions**  
2465 **forbidden.**

2466 (1) As used in this section, "design professional" means:

2467 (a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;

2468 (b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects  
2469 Licensing Act; [~~and~~] or

2470 (c) a professional engineer or professional land surveyor, licensed under Title 58,  
2471 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

2472 (2) (a) A contract, including an amendment to an existing contract, entered into under  
2473 this chapter may not require that a design professional indemnify another from liability claims  
2474 that arise out of the design professional's services, unless the liability claim arises from the  
2475 design professional's negligent act, wrongful act, error or omission, or other liability imposed  
2476 by law.

2477 (b) Subsection (2)(a) may not be waived by contract.

2478 (c) Notwithstanding Subsections (2)(a) and (b), a design professional may be required  
2479 to indemnify a person for whom the design professional has direct or indirect control or  
2480 responsibility.

2481 Section 57. Section **63G-6a-1204 (Effective 05/01/13)** is amended to read:

2482 **63G-6a-1204 (Effective 05/01/13). Multiyear contracts.**

2483 (1) Except as provided in Subsection (7), a [public] procurement unit may enter into a  
2484 multiyear contract resulting from an invitation for bids or a request for proposals, if:

2485 (a) the procurement officer determines, in the discretion of the procurement officer,  
2486 that entering into a multiyear contract is in the best interest of the [public] procurement unit;  
2487 and

2488 (b) the invitation for bids or request for proposals:

2489 (i) states the term of the contract, including all possible renewals of the contract;

2490 (ii) states the conditions for renewal of the contract; and

2491 (iii) includes the provisions of Subsections (3) through (5) that are applicable to the  
2492 contract.

2493 (2) In making the determination described in Subsection (1)(a), the procurement officer  
2494 shall consider whether entering into a multiyear contract will:

2495 (a) result in significant savings to the [public] procurement unit, including:

2496 (i) reduction of the administrative burden in procuring, negotiating, or administering  
2497 contracts;

2498 (ii) continuity in operations of the [public] procurement unit; or

2499 (iii) the ability to obtain a volume or term discount;

2500 (b) encourage participation by a person who might not otherwise be willing or able to  
2501 compete for a shorter term contract; or

2502 (c) provide an incentive for a bidder or offeror to improve productivity through capital  
2503 investment or better technology.

2504 (3) (a) The determination described in Subsection (1)(a) is discretionary and is not  
2505 required to be in writing or otherwise recorded.

2506 (b) Except as provided in Subsections (4) and (5), notwithstanding any provision of an  
2507 invitation for bids, a request for proposals, or a contract to the contrary, a multiyear contract,

2508 including a contract that was awarded outside of an invitation for bids or request for proposals  
2509 process, may not continue or be renewed for any year after the first year of the multiyear  
2510 contract if adequate funds are not appropriated or otherwise available to continue or renew the  
2511 contract.

2512 (4) A multiyear contract that is funded solely by federal funds may be continued or  
2513 renewed for any year after the first year of the multiyear contract if:

2514 (a) adequate funds to continue or renew the contract have not been, but are expected to  
2515 be appropriated by, and received from, the federal government;

2516 (b) continuation or renewal of the contract before the money is appropriated or  
2517 received is permitted by the federal government; and

2518 (c) the contract states that it may be cancelled, without penalty, if the anticipated  
2519 federal funds are not appropriated or received.

2520 (5) A multiyear contract that is funded in part by federal funds may be continued or  
2521 renewed for any year after the first year of the multiyear contract if:

2522 (a) the portion of the contract that is to be funded by funds of a public entity are  
2523 appropriated;

2524 (b) adequate federal funds to continue or renew the contract have not been, but are  
2525 expected to be, appropriated by, and received from, the federal government;

2526 (c) continuation or renewal of the contract before the federal money is appropriated or  
2527 received is permitted by the federal government; and

2528 (d) the contract states that it may be cancelled, without penalty, if the anticipated  
2529 federal funds are not appropriated or received.

2530 (6) A [~~public~~] procurement unit may not continue or renew a multiyear contract after  
2531 the end of the multiyear contract term or the renewal periods described in the contract, unless  
2532 the [~~public~~] procurement unit engages in a new standard procurement process or complies with  
2533 an exception, described in this chapter, to using a standard procurement process.

2534 (7) A multiyear contract, including any renewal periods, may not exceed a period of  
2535 five years, unless:

2536 (a) the procurement officer determines, in writing, that:

2537 (i) a longer period is necessary in order to obtain the procurement item;

2538 (ii) a longer period is customary for industry standards; or

- 2539 (iii) a longer period is in the best interest of the ~~[public]~~ procurement unit; and
- 2540 (b) the written determination described in Subsection (7)(a) is included in the file
- 2541 relating to the procurement.
- 2542 (8) This section does not apply to a contract for the design or construction of a facility,
- 2543 a road, or a public transit project.
- 2544 Section 58. Section **63G-6a-1204.5 (Effective 05/01/13)**, which is renumbered from
- 2545 Section 63G-6a-405 (Effective 05/01/13) is renumbered and amended to read:
- 2546 ~~[63G-6a-405 (Effective 05/01/13)].~~ **63G-6a-1204.5 (Effective**
- 2547 **05/01/13). Multiple award contracts.**
- 2548 (1) (a) ~~[An authorized purchasing entity]~~ A procurement unit with independent
- 2549 procurement authority may enter into multiple award contracts with bidders or offerors.
- 2550 (b) The applicable rulemaking authority may make rules, consistent with this section,
- 2551 regulating the use of multiple award contracts.
- 2552 (2) Multiple award contracts may be in ~~[an authorized purchasing entity's]~~ a
- 2553 procurement unit's best interest if award to two or more bidders or offerors for similar
- 2554 procurement items is needed or desired for adequate delivery, service, availability, or product
- 2555 compatibility.
- 2556 (3) ~~[An authorized purchasing entity]~~ A procurement unit that enters into multiple
- 2557 award contracts under this section shall:
- 2558 (a) exercise care to protect and promote competition among bidders or offerors when
- 2559 seeking to enter into multiple award contracts;
- 2560 (b) name all eligible users of the multiple award contracts in the invitation for bids or
- 2561 request for proposals; and
- 2562 (c) if the ~~[authorized purchasing entity]~~ procurement unit anticipates entering into
- 2563 multiple award contracts before issuing the invitation for bids or request for proposals, state in
- 2564 the invitation for bids or request for proposals that the ~~[authorized purchasing entity]~~
- 2565 procurement unit may enter into multiple award contracts at the end of the procurement
- 2566 process.
- 2567 (4) ~~[An authorized purchasing entity]~~ A procurement unit that enters into multiple
- 2568 award contracts under this section shall:
- 2569 (a) obtain, under the multiple award contracts, all of its normal, recurring requirements

2570 for the procurement items that are the subject of the contracts until the contracts terminate; and

2571 (b) reserve the right to obtain the procurement items described in Subsection (4)(a)  
2572 separately from the contracts if:

2573 (i) there is a need to obtain a quantity of the procurement items that exceeds the  
2574 amount specified in the contracts; or

2575 (ii) the procurement officer makes a written finding that the procurement items  
2576 available under the contract will not effectively or efficiently meet a nonrecurring special need  
2577 of a [public] procurement unit.

2578 [~~(5) Notwithstanding Subsection (3)(b), if an authorized purchasing entity enters into a~~  
2579 ~~multiple award contract under this section, another authorized purchasing entity that is not a~~  
2580 ~~signatory to the contract may, but is not required to, obtain a procurement item under the~~  
2581 ~~contract.]~~

2582 [~~(6)~~ (5) An applicable rulemaking authority may make rules to further regulate a  
2583 procurement under this section.

2584 Section 59. Section **63G-6a-1205 (Effective 05/01/13)** is amended to read:

2585 **63G-6a-1205 (Effective 05/01/13). Regulation of contract types -- Permitted and**  
2586 **prohibited contract types.**

2587 (1) Except as otherwise provided in this section, and subject to rules made under this  
2588 section by the applicable rulemaking authority, a [public] procurement unit may use any type of  
2589 contract that will promote the best interests of the [state] procurement unit.

2590 (2) An applicable rulemaking authority:

2591 (a) may make rules governing, placing restrictions on, or prohibiting the use of any  
2592 type of contract; and

2593 (b) may not make rules that permit the use of a contract:

2594 (i) that is prohibited under this section; or

2595 (ii) in a manner that is prohibited under this section.

2596 [~~(2) A public procurement unit may not use a cost-plus-a-percentage-of-cost contract.]~~

2597 [~~(3) A public procurement unit may not use a cost-reimbursement contract unless the~~  
2598 ~~procurement officer makes a written determination that:]~~

2599 [~~(a) the contract is likely to be less costly to the public procurement unit than any other~~  
2600 ~~type of contract; or]~~

2601 ~~[(b) it is impracticable to obtain the procurement item under another type of contract.]~~  
2602 ~~[(4)]~~ (3) A procurement officer, the head of an ~~[authorized procurement entity]~~ issuing  
2603 procurement unit, or a designee of either, may not use a type of contract, other than a firm fixed  
2604 price contract, unless the procurement officer makes a written determination that:  
2605 (a) the proposed contractor's accounting system will permit timely development of all  
2606 necessary cost data in the form required by the specific contract type contemplated; ~~[and]~~  
2607 (b) the proposed contractor's accounting system is adequate to allocate costs in  
2608 accordance with generally accepted accounting principles[-]; and  
2609 (c) the use of a specified type of contract, other than a firm fixed price contract, is in  
2610 the best interest of the procurement unit, taking into consideration the following criteria:  
2611 (i) the type and complexity of the procurement item;  
2612 (ii) the difficulty of estimating performance costs at the time the contract is entered  
2613 into, due to factors that may include:  
2614 (A) the difficulty of determining definitive specifications;  
2615 (B) the difficulty of determining the risks, to the contractor, that are inherent in the  
2616 nature of the work to be performed; or  
2617 (C) the difficulty to clearly determine other factors necessary to enter into an accurate  
2618 firm fixed price contract;  
2619 (iii) the administrative costs to the procurement unit and the contractor;  
2620 (iv) the degree to which the procurement unit is required to provide technical  
2621 coordination during performance of the contract;  
2622 (v) the impact that the choice of contract type may have upon the level of competition  
2623 for award of the contract;  
2624 (vi) the stability of material prices, commodity prices, and wage rates in the applicable  
2625 market;  
2626 (vii) the impact of the contract type on the level of urgency related to obtaining the  
2627 procurement item;  
2628 (viii) the impact of any applicable governmental regulation relating to the contract; and  
2629 (ix) other criteria that the procurement officer determines may relate to determining the  
2630 contract type that is in the best interest of the procurement unit.  
2631 (4) Contract types that, subject to the provisions of this section and rules made under

2632 this section, may be used by a procurement unit include the following:

2633 (a) a fixed price contract;

2634 (b) a fixed price contract with price adjustment;

2635 (c) a time and materials contract;

2636 (d) a labor hour contract;

2637 (e) a definite quantity contract;

2638 (f) an indefinite quantity contract; or

2639 (g) a requirements contract.

2640 (5) A procurement unit may not enter into a cost-plus-percentage-of-cost contract,

2641 unless:

2642 (a) use of a cost-plus-percentage-of-cost contract is approved by the procurement

2643 officer;

2644 (b) it is standard practice in the industry to obtain the procurement item through a

2645 cost-plus-percentage-of-cost contract; and

2646 (c) the percentage and the method of calculating costs in the contract are in accordance

2647 with industry standards.

2648 (6) A procurement unit may not enter into a cost-reimbursement contract, unless the

2649 procurement officer makes a written determination that:

2650 (a) (i) a cost-reimbursement contract is likely to cost less than any other type of

2651 permitted contract; or

2652 (ii) it is impracticable to obtain the procurement item under any other type of permitted

2653 contract; and

2654 (b) the proposed contractor's accounting system:

2655 (i) will timely develop the cost data in the form necessary for the procurement unit to

2656 timely and accurately make payments under the contract; and

2657 (ii) will allocate costs in accordance with generally accepted accounting principles.

2658 Section 60. Section **63G-6a-1206 (Effective 05/01/13)** is amended to read:

2659 **63G-6a-1206 (Effective 05/01/13). Rules and regulations to determine allowable**

2660 **incurred costs -- Required information -- Auditing of books.**

2661 (1) (a) The applicable rulemaking authority may, by rule, establish the cost principles

2662 to be included in a cost-reimbursement contract to determine incurred costs for the purpose of

2663 calculating a reimbursement.

2664 (b) The cost principles established by rule under Subsection (1)(a) may be modified, by  
2665 contract, if the procurement officer or head of the [~~authorized procurement entity~~] issuing  
2666 procurement unit approves the modification.

2667 (2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a  
2668 cost-based contract with a [~~public~~] procurement unit shall:

2669 (a) submit cost or pricing data relating to determining the cost or pricing amount; and

2670 (b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing  
2671 data submitted is accurate and complete as of the date specified by the [~~public~~] procurement  
2672 unit.

2673 (3) The procurement officer shall ensure that the date specified under Subsection (2)(b)  
2674 is before:

2675 (a) the pricing of any contract awarded by a standard procurement process or pursuant  
2676 to a sole source procurement, if the total contract price is expected to exceed an amount  
2677 established by rule made by the applicable rulemaking authority; or

2678 (b) the pricing of any change order that is expected to exceed an amount established by  
2679 rule made by the applicable rulemaking authority.

2680 (4) A contract or change order that requires a certification described in Subsection (2)  
2681 shall include a provision that the price to the [~~public~~] procurement unit, including profit or fee,  
2682 shall be adjusted to exclude any significant sums by which the [~~public~~] procurement unit finds  
2683 that the price was increased because the contractor provided cost or pricing data that was  
2684 inaccurate, incomplete, or not current as of the date specified by the procurement officer.

2685 (5) A [~~public~~] procurement unit is not required to comply with Subsection (2) if:

2686 (a) the contract price is based on adequate price competition;

2687 (b) the contract price is based on established catalogue prices or market prices;

2688 (c) the contract price is set by law or rule; or

2689 (d) the procurement states, in writing:

2690 (i) that, in accordance with rules made by the applicable rulemaking authority, the  
2691 requirements of Subsection (2) may be waived; and

2692 (ii) the reasons for the waiver.

2693 (6) The procurement officer may, at reasonable times and places, only to the extent that

2694 the books and records relate to the applicable cost or pricing data, audit the books and records  
2695 of:

2696 (a) a person who has submitted cost or pricing data pursuant to this section; or  
2697 (b) a contractor or subcontractor under a contract or subcontract other than a firm fixed  
2698 price contract.

2699 (7) Unless a shorter time is provided for by contract:

2700 (a) a person described in Subsection (6)(a) shall maintain the books and records  
2701 described in Subsection (6) for three years after the day on which the fiscal year in which final  
2702 payment is made under the contract ends;

2703 (b) a contractor shall maintain the books and records described in Subsection (6) for  
2704 three years after the day on which the fiscal year in which final payment under the prime  
2705 contract ends; and

2706 (c) a subcontractor shall maintain the books and records described in Subsection (6) for  
2707 three years after the day on which the fiscal year in which final payment is made under the  
2708 subcontract ends.

2709 Section 61. Section **63G-6a-1208** is enacted to read:

2710 **63G-6a-1208. Installment payments -- Contract prepayments.**

2711 (1) A contract entered into by a procurement unit may provide for installment  
2712 payments, including interest charges, over a period of time, if the procurement officer makes a  
2713 written finding that:

2714 (a) the use of installment payments are in the interest of the procurement unit;

2715 (b) installment payments are not used as a method of avoiding budgetary constraints;

2716 (c) the procurement unit has obtained all budgetary approvals and other approvals  
2717 required for making the installment payments;

2718 (d) all aspects of the installment payments required in the contract are in accordance  
2719 with the requirements of law; and

2720 (e) for a contract awarded through an invitation for bids or a request for proposals, the  
2721 invitation for bids or request for proposals indicates that installment payments are required or  
2722 permitted.

2723 (2) A procurement unit may not pay for a procurement item before the procurement  
2724 item is received by the procurement unit, unless the procurement officer makes a written

2725 finding that it is necessary or beneficial for the procurement unit to pay for the procurement  
2726 item before the procurement item is received by the procurement unit.

2727 (3) Circumstances where prepayment may be necessary for, or beneficial to, the  
2728 procurement unit include:

2729 (a) when it is customary in the industry to prepay for the procurement item;

2730 (b) if the procurement unit will receive an identifiable benefit by prepaying, including  
2731 reduced costs, additional procurement items, early delivery, better service, or better contract  
2732 terms; or

2733 (c) other circumstances permitted by rule made by the applicable rulemaking authority.

2734 (4) The applicable rulemaking authority may make rules governing prepayments.

2735 (5) A prepaid expenditure shall be supported by documentation indicating:

2736 (a) the amount of the prepayment;

2737 (b) the prepayment schedule;

2738 (c) the procurement items to which each prepayment relates;

2739 (d) the remedies for a contractor's noncompliance with requirements relating to the  
2740 provision of the procurement items; and

2741 (e) all other terms and conditions relating to the payments and the procurement items.

2742 (6) The procurement officer or the procurement officer's designee may require a  
2743 performance bond, of up to 100% of the prepayment amount, from the person to whom the  
2744 prepayments are made.

2745 Section 62. Section **63G-6a-1209** is enacted to read:

2746 **63G-6a-1209. Leases.**

2747 (1) As used in this section, "lease" means for a procurement unit to lease or  
2748 lease-purchase a procurement item from a person.

2749 (2) This section does not apply to the lease of real property.

2750 (3) A procurement unit may not lease a procurement item unless the procurement unit  
2751 complies with the requirements of this section.

2752 (4) A procurement unit may lease a procurement item if:

2753 (a) the procurement officer determines that it is in the best interest of the procurement  
2754 unit to lease the procurement item, after the procurement officer:

2755 (i) investigates alternative means of obtaining the procurement item; and

- 2756 (ii) considers the costs and benefits of the alternative means of obtaining the  
2757 procurement item;
- 2758 (b) all conditions for renewal and cost are included in the lease;
- 2759 (c) the lease is awarded through a standard procurement process, or an exception to a  
2760 standard procurement process described in Part 8, Exceptions to Procurement Requirements;
- 2761 (d) for a standard procurement process, the invitation for bids, request for proposals, or  
2762 request for quotes states:
- 2763 (i) that the procurement unit is seeking, or willing to consider, a lease; and
- 2764 (ii) for a lease purchase, that the procurement unit is seeking, or willing to consider, a  
2765 lease-purchase;
- 2766 (e) the lease is not used to avoid competition; and
- 2767 (f) the lease complies to all other provisions of law or rule applicable to the lease.
- 2768 Section 63. Section **63G-6a-1210** is enacted to read:
- 2769 **63G-6a-1210. Contract provisions for incentives, damages, and penalties.**
- 2770 A procurement unit may include in a contract terms that provide for:
- 2771 (1) incentives, including bonuses;
- 2772 (2) payment of damages, including liquidated damages; or
- 2773 (3) penalties.
- 2774 Section 64. Section **63G-6a-1302 (Effective 05/01/13)** is amended to read:
- 2775 **63G-6a-1302 (Effective 05/01/13). Alternative methods of construction**  
2776 **contracting management.**
- 2777 (1) The applicable rulemaking authority shall, by rule provide as many alternative  
2778 methods of construction contracting management as determined to be feasible.
- 2779 (2) The rules described in Subsection (1) shall:
- 2780 (a) grant to the procurement officer or the head of the [~~state purchasing unit~~] issuing  
2781 procurement unit responsible for carrying out the construction project the discretion to select  
2782 the appropriate method of construction contracting management for a particular project; and
- 2783 (b) require the procurement officer to execute and include in the contract file a written  
2784 statement describing the facts that led to the selection of a particular method of construction  
2785 contracting management for each project.
- 2786 (3) Before choosing a construction contracting management method, the procurement

2787 officer or the head of the [~~state purchasing unit~~] issuing procurement unit responsible for  
2788 carrying out the construction project shall consider the following factors:

2789 (a) when the project must be ready to be occupied;

2790 (b) the type of project;

2791 (c) the extent to which the requirements of the [~~public~~] procurement unit, and the way  
2792 they are to be met are known;

2793 (d) the location of the project;

2794 (e) the size, scope, complexity, and economics of the project;

2795 (f) the source of funding and any resulting constraints necessitated by the funding  
2796 source;

2797 (g) the availability, qualification, and experience of public personnel to be assigned to  
2798 the project and the amount of time that the public personnel can devote to the project; and

2799 (h) the availability, qualifications, and experience of outside consultants and  
2800 contractors to complete the project under the various methods being considered.

2801 (4) An applicable rulemaking authority may make rules that authorize the use of a  
2802 construction manager/general contractor as one method of construction contracting  
2803 management.

2804 (5) The rules described in Subsection (2) shall require that:

2805 (a) the construction manager/general contractor be selected using:

2806 (i) a standard procurement process; or

2807 (ii) an exception to the requirement to use a standard procurement process, described in  
2808 Part 8, Exceptions to Procurement Requirements; and

2809 (b) when entering into a subcontract that was not specifically included in the  
2810 construction manager/general contractor's cost proposal, the construction manager/general  
2811 contractor shall procure the subcontractor by using a standard procurement process, or an  
2812 exception to the requirement to use a standard procurement process, described in Part 8,  
2813 Exceptions to Procurement Requirements, in the same manner as if the subcontract work was  
2814 procured directly by the [~~public~~] procurement unit.

2815 (6) Procurement rules adopted by the State Building Board under Subsections (1)  
2816 through (3) for state building construction projects may authorize the use of a design-build  
2817 provider as one method of construction contracting management.

2818 (7) A design-build contract may include a provision for obtaining the site for the  
2819 construction project.

2820 (8) A design-build contract or a construction manager/general contractor contract may  
2821 include provision by the contractor of operations, maintenance, or financing.

2822 Section 65. Section **63G-6a-1303 (Effective 05/01/13)** is amended to read:

2823 **63G-6a-1303 (Effective 05/01/13). Drug and alcohol testing required for state**  
2824 **construction contracts.**

2825 (1) As used in this section:

2826 (a) "Contractor" means a person who is or may be awarded a state construction  
2827 contract.

2828 (b) "Covered individual" means an individual who:

2829 (i) on behalf of a contractor or subcontractor provides services directly related to  
2830 design or construction under a state construction contract; and

2831 (ii) is in a safety sensitive position, including a design position that has responsibilities  
2832 that directly affect the safety of an improvement to real property that is the subject of a state  
2833 construction contract.

2834 (c) "Drug and alcohol testing policy" means a policy under which a contractor or  
2835 subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:

2836 (i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol,  
2837 except the medically prescribed possession and use of a drug; or

2838 (ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.

2839 (d) "Random testing" means that a covered individual is subject to periodic testing for  
2840 drugs and alcohol:

2841 (i) in accordance with a drug and alcohol testing policy; and

2842 (ii) on the basis of a random selection process.

2843 (e) "State executive entity" means:

2844 (i) a state executive branch:

2845 (A) department;

2846 (B) division;

2847 (C) agency;

2848 (D) board;

2849 (E) commission;

2850 (F) council;

2851 (G) committee; or

2852 (H) institution; or

2853 (ii) a state institution of higher education, as defined in Section 53B-3-102.

2854 (f) "State construction contract" means a contract for design or construction entered  
2855 into by a state executive entity.

2856 (2) Except as provided in Subsection (7), a state executive entity may not enter into a  
2857 state construction contract unless the public construction contract requires that the contractor  
2858 demonstrate to the state executive entity that the contractor:

2859 (a) has and will maintain a drug and alcohol testing policy during the period of the state  
2860 construction contract that applies to the covered individuals hired by the contractor;

2861 (b) posts in one or more conspicuous places notice to covered individuals hired by the  
2862 contractor that the contractor has the drug and alcohol testing policy described in Subsection  
2863 (2)(a);

2864 (c) subjects the covered individuals to random testing under the drug and alcohol  
2865 testing policy described in Subsection (2)(a) if at any time during the period of the state  
2866 construction contract there are 10 or more individuals who are covered individuals hired by the  
2867 contractor; and

2868 (d) requires that as a condition of contracting with the contractor, a subcontractor:

2869 (i) has and will maintain a drug and alcohol testing policy during the period of the state  
2870 construction contract that applies to the covered individuals hired by the subcontractor;

2871 (ii) posts in one or more conspicuous places notice to covered individuals hired by the  
2872 subcontractor that the subcontractor has the drug and alcohol testing policy described in  
2873 Subsection (2)(d)(i); and

2874 (iii) subjects the covered individuals hired by the subcontractor to random testing under  
2875 the drug and alcohol testing policy described in Subsection (2)(d)(i) if at any time during the  
2876 period of the state construction contract there are 10 or more individuals who are covered  
2877 individuals hired by the subcontractor.

2878 (3) (a) Except as otherwise provided in this Subsection (3), if a contractor or  
2879 subcontractor fails to comply with Subsection (2), the contractor or subcontractor may be

2880 suspended or debarred in accordance with this chapter.

2881 (b) A state executive entity shall include in a state construction contract:

2882 (i) a reference to the rules described in Subsection (4)(b); or

2883 (ii) if the applicable rulemaking authority has not made the rules described in

2884 Subsection (4)(b), a process that provides a contractor or subcontractor reasonable notice and  
2885 opportunity to cure a violation of this section before suspension or debarment of the contractor  
2886 or subcontractor in light of the circumstances of the state construction contract or the violation.

2887 (c) (i) A contractor is not subject to penalties for the failure of a subcontractor to  
2888 comply with Subsection (2).

2889 (ii) A subcontractor is not subject to penalties for the failure of a contractor to comply  
2890 with Subsection (2).

2891 (4) An authorized rulemaking authority:

2892 (a) may make rules that establish the requirements and procedures a contractor is  
2893 required to follow to comply with Subsection (2); and

2894 (b) shall make rules that establish:

2895 (i) the penalties that may be imposed in accordance with Subsection (3); and

2896 (ii) a process that provides a contractor or subcontractor reasonable notice and  
2897 opportunity to cure a violation of this section before suspension or debarment of the contractor  
2898 or subcontractor in light of the circumstances of the state construction contract or the violation.

2899 (5) The failure of a contractor or subcontractor to meet the requirements of Subsection  
2900 (2):

2901 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,  
2902 or contractor under Part 17, Procurement Appeals Board, or Part 18, Appeals to Court and  
2903 Court Proceedings; and

2904 (b) may not be used by a state [~~public procurement unit~~] executive entity, a prospective  
2905 bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend,  
2906 disrupt, or terminate the design or construction under a state construction contract.

2907 (6) (a) After a state executive entity enters into a state construction contract in  
2908 compliance with this section, the state is not required to audit, monitor, or take any other action  
2909 to ensure compliance with this section.

2910 (b) The state is not liable in any action related to this section, including not being liable

2911 in relation to:

2912 (i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

2913 (ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and  
2914 alcohol testing policy;

2915 (iii) the requirements of a contractor's or subcontractor's drug and alcohol testing  
2916 policy;

2917 (iv) a contractor's or subcontractor's implementation of a drug and alcohol testing  
2918 policy, including procedures for:

2919 (A) collection of a sample;

2920 (B) testing of a sample;

2921 (C) evaluation of a test; or

2922 (D) disciplinary or rehabilitative action on the basis of a test result;

2923 (v) an individual being under the influence of drugs or alcohol; or

2924 (vi) an individual under the influence of drugs or alcohol harming another person or  
2925 causing property damage.

2926 (7) This section does not apply if the state executive entity determines that the  
2927 application of this section would severely disrupt the operation of a [public] procurement unit  
2928 to the detriment of the [public] procurement unit or the general public, including:

2929 (a) jeopardizing the receipt of federal funds;

2930 (b) causing the state construction contract to be a sole source contract; or

2931 (c) causing the state construction contract to be an emergency procurement.

2932 (8) If a contractor or subcontractor meets the requirements of this section, this section  
2933 may not be construed to restrict the contractor's or subcontractor's ability to impose or  
2934 implement an otherwise lawful provision as part of a drug and alcohol testing policy.

2935 Section 66. Section **63G-6a-1502 (Effective 05/01/13)** is amended to read:

2936 **63G-6a-1502 (Effective 05/01/13). Policy regarding architect-engineer services.**

2937 (1) It is the policy of this state to publicly announce all requirements for  
2938 architect-engineer services and to negotiate contracts for architect-engineer services on the  
2939 basis of demonstrated competence and qualification for the type of services required, and at fair  
2940 and reasonable prices.

2941 (2) Architect-engineer services shall be procured as provided in this part except as

2942 authorized by Sections 63G-6a-408, 63G-6a-802, and 63G-6a-803.

2943 (3) This part does not affect the authority of, and does not apply to procedures  
2944 undertaken by, a [~~public~~] procurement unit to obtain the services of architects or engineers in  
2945 the capacity of employees of the [~~public~~] procurement unit.

2946 Section 67. Section **63G-6a-1503 (Effective 05/01/13)** is amended to read:

2947 **63G-6a-1503 (Effective 05/01/13). Selection committee for architect-engineer**  
2948 **services.**

2949 (1) In the procurement of architect-engineer services, the procurement officer or the  
2950 head of [~~a state purchasing unit~~] an issuing procurement unit shall encourage firms engaged in  
2951 the lawful practice of their profession to submit annually a statement of qualifications and  
2952 performance data.

2953 (2) The Building Board shall be the evaluation committee for architect-engineer  
2954 services contracts under its authority.

2955 (3) An evaluation committee for architect-engineer services contracts not under the  
2956 authority of the Building Board shall be established in accordance with rules made by the  
2957 applicable rulemaking authority.

2958 (4) An evaluation committee shall:

2959 (a) evaluate current statements of qualifications and performance data on file with the  
2960 state, together with those that may be submitted by other firms in response to the  
2961 announcement of the proposed contract;

2962 (b) consider no less than three firms; and

2963 (c) based upon criteria established and published by the [~~authorized purchasing entity~~]  
2964 issuing procurement unit, select no less than three of the firms considered to be the most highly  
2965 qualified to provide the services required.

2966 Section 68. Section **63G-6a-1506 (Effective 05/01/13)** is amended to read:

2967 **63G-6a-1506 (Effective 05/01/13). Restrictions on procurement of**  
2968 **architect-engineer services.**

2969 (1) Except as provided in Subsection (2), when [~~an authorized purchasing entity~~] a  
2970 procurement unit with independent procurement authority, in accordance with Section  
2971 63G-6a-1502, elects to obtain architect or engineering services by using a competitive  
2972 procurement process and has provided public notice of its competitive procurement process:

2973 (a) a higher education entity, or any part of one, may not submit a proposal in response  
2974 to the [~~authorized purchasing entity's~~] procurement unit's competitive procurement process; and

2975 (b) the [~~authorized purchasing entity~~] procurement unit may not award a contract to  
2976 perform the architect or engineering services solicited in the competitive procurement process  
2977 to a higher education entity or any part of one.

2978 (2) Subsection (1) does not apply when the [~~authorized purchasing entity~~] procurement  
2979 unit is procuring architect or engineer services for contracts related to research activities and  
2980 technology transfer.

2981 Section 69. Section **63G-6a-1603 (Effective 05/01/13)** is amended to read:

2982 **63G-6a-1603 (Effective 05/01/13). Decisions of protest officer to be in writing --**  
2983 **Effect of no writing.**

2984 (1) After a timely protest is filed in accordance with Section 63G-6a-1602, the protest  
2985 officer:

2986 (a) shall consider the protest; and

2987 (b) may hold a hearing on the protest.

2988 (2) (a) The protest officer may:

2989 (i) subpoena witnesses and compel their attendance at a protest hearing; or

2990 (ii) subpoena documents for production at a protest hearing.

2991 (b) The Rules of Evidence do not apply to a protest hearing.

2992 (c) The [~~Procurement Policy Board~~] applicable rulemaking authority shall make rules  
2993 relating to intervention in a protest, including designating:

2994 (i) who may intervene; and

2995 (ii) the time and manner of intervention.

2996 (d) If a hearing on a protest is held under this section, the protest officer shall:

2997 (i) record the hearing;

2998 (ii) preserve all evidence presented at the hearing; and

2999 (iii) preserve all records and other evidence relied upon in reaching the written decision  
3000 described in this section.

3001 (e) Regardless of whether a hearing on a protest is held under this section, the protest  
3002 officer shall preserve all records and other evidence relied upon in reaching the written  
3003 decision.

3004 (f) The records described in Subsections (2)(d) and (e) may not be destroyed until the  
3005 decision, and any appeal of the decision, becomes final.

3006 (g) A protest officer who holds a hearing, considers a protest, or issues a written  
3007 decision under this section does not waive the right to, at a later date, question or challenge the  
3008 protest officer's jurisdiction to hold the hearing, consider the protest, or render the decision.

3009 (3) A protest officer, or the protest officer's designee, shall promptly issue a written  
3010 decision regarding any protest, debarment, suspension, or contract controversy if it is not  
3011 settled by mutual agreement. The decision shall state the reasons for the action taken and  
3012 inform the protestor, contractor, or prospective contractor of the right to judicial or  
3013 administrative review as provided in this chapter.

3014 (4) (a) A decision described in this section is effective until stayed or reversed on  
3015 appeal, except to the extent provided in Section 63G-6a-1903. A person who issues a decision  
3016 described in Subsection (1) shall mail, email, or otherwise immediately furnish a copy of the  
3017 decision to the protestor, prospective contractor, or contractor. [~~The decision~~]

3018 (b) A decision described in Subsection (4)(a) that is issued in relation to a procurement  
3019 unit other than a legislative procurement unit or a judicial procurement unit shall be final and  
3020 conclusive unless the protestor, prospective contractor, or contractor:

3021 [~~(a)~~] (i) for a controversy described in Section 63G-6a-1905, commences an action in  
3022 district court in accordance with Subsection 63G-6a-1802(5);

3023 [~~(b)~~] (ii) for a controversy related to a solicitation or the award of a contract, files an  
3024 appeal under Section 63G-6a-1702; or

3025 [~~(c)~~] (iii) for a debarment or suspension, files an appeal under Section 63G-6a-1702.

3026 (c) A decision described in Subsection (4)(a) that is issued in relation to a legislative  
3027 procurement unit or a judicial procurement unit shall be final and conclusive unless the  
3028 protestor, prospective contractor, or contractor:

3029 (i) for a controversy described in Section 63G-6a-1905, commences an action in  
3030 district court in accordance with Subsection 63G-6a-1802(5);

3031 (ii) for a controversy related to a solicitation or the award of a contract, files an appeal  
3032 under Subsection 63G-6a-1802(1)(b); or

3033 (iii) for a debarment or suspension, files an appeal under Subsection  
3034 63G-6a-1802(1)(b).

3035 (5) If the protest officer does not issue the written decision regarding a protest or a  
 3036 contract controversy within 30 calendar days after the day on which a written request for a final  
 3037 decision is filed with the protest officer, or within a longer period as may be agreed upon by the  
 3038 parties, the protester, prospective contractor, or contractor may proceed as if an adverse  
 3039 decision had been received.

3040 (6) Except for a controversy described in Section 63G-6a-1905, a determination under  
 3041 this section by the protest officer regarding an issue of fact may not be overturned on appeal  
 3042 unless the decision is arbitrary and capricious or clearly erroneous.

3043 Section 70. Section **63G-6a-1702 (Effective 05/01/13)** is amended to read:

3044 **63G-6a-1702 (Effective 05/01/13). Appeal to Utah State Procurement Policy**  
 3045 **Board -- Appointment of procurement appeals panel -- Proceedings.**

3046 (1) This part applies to all procurement units other than:

3047 (a) a legislative procurement unit;

3048 (b) a judicial procurement unit; or

3049 (c) a local government procurement unit.

3050 ~~(1)~~ (2) A party to a protest involving a procurement unit other than a procurement  
 3051 described in Subsection (1) may appeal the protest decision to the [~~procurement policy~~] board  
 3052 by:

3053 (a) filing a written notice of appeal with the chair of the [~~procurement policy~~] board  
 3054 within seven days after:

3055 (i) the day on which the written decision described in Section 63G-6a-1603 is:

3056 (A) personally served on the party or the party's representative; or

3057 (B) emailed or mailed to the address or email address of record provided by the party  
 3058 under Subsection 63G-6a-1602(3); or

3059 (ii) the day on which the 30-day period described in Subsection 63G-6a-1603(5) ends,  
 3060 if a written decision is not issued before the end of the 30-day period;

3061 (b) including in the filing document the person's address of record and email address of  
 3062 record; and

3063 (c) at the time that the notice of appeal described in Subsection ~~(1)~~ (2)(a) is filed,  
 3064 complying with the requirements of Section 63G-6a-1703 regarding the posting of a security  
 3065 deposit or a bond.

3066           ~~[(2)]~~ (3) A person may not appeal from a protest described in Section 63G-6a-1602,  
3067 unless:

- 3068           (a) a decision on the protest has been issued; or
- 3069           (b) a decision is not issued and the 30-day period described in Subsection  
3070 63G-6a-1603(5) has passed.

3071           ~~[(3)]~~ (4) The chair of the [~~procurement policy~~] board or a designee of the chair who is  
3072 not employed by the [~~public~~] procurement unit responsible for the solicitation, contract award,  
3073 or other action complained of:

3074           (a) shall, within seven days after the day on which the chair receives a timely written  
3075 notice of appeal under Subsection ~~[(1)]~~ (2), appoint:

3076           (i) a procurement appeals panel to hear and decide the appeal, consisting of at least  
3077 three individuals, each of whom shall be:

3078           (A) a member of the [~~Procurement Policy Board~~] board; or

3079           (B) a designee of a member appointed under Subsection ~~[(3)]~~ (4)(a)(i)(A), if the  
3080 designee is approved by the chair; and

3081           (ii) one of the members of the procurement appeals panel to be the chair of the panel;

3082           (b) may:

3083           (i) appoint the same procurement appeals panel to hear more than one appeal; or

3084           (ii) appoint a separate procurement appeals panel for each appeal; and

3085           (c) may not appoint a person to a procurement appeals panel if the person is employed  
3086 by the [~~public~~] procurement unit responsible for the solicitation, contract award, or other action  
3087 complained of.

3088           ~~[(4)]~~ (5) A procurement appeals panel described in Subsection ~~[(3)]~~ (4) shall:

3089           (a) consist of an odd number of members;

3090           (b) except as provided in Subsection ~~[(5)]~~ (6), conduct an informal proceeding on the  
3091 appeal within 60 days after the day on which the procurement appeals panel is appointed,  
3092 unless all parties stipulate to a later date;

3093           (c) at least seven days before the proceeding, mail, email, or hand-deliver a written  
3094 notice of the proceeding to the parties to the appeal; and

3095           (d) within seven days after the day on which the proceeding ends:

3096           (i) issue a written decision on the appeal; and

3097 (ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the  
 3098 appeal and to the protest officer.

3099 [(5)] (6) A procurement appeals panel may continue a procurement appeals proceeding  
 3100 beyond the 60-day period described in Subsection [(4)] (5)(b) if the procurement appeals panel  
 3101 determines that the continuance is in the interests of justice.

3102 [(6)] (7) A procurement appeals panel:

3103 (a) shall consider the appeal based solely on:

3104 (i) the protest decision;

3105 (ii) the record considered by the person who issued the protest decision; and

3106 (iii) if a protest hearing was held, the record of the protest hearing;

3107 (b) may not take additional evidence; and

3108 (c) shall uphold the decision of the protest officer, unless the decision is arbitrary and  
 3109 capricious or clearly erroneous.

3110 [(7)] (8) If a procurement appeals panel determines that the decision of the protest  
 3111 officer is arbitrary and [a] capricious or clearly erroneous, the procurement appeals panel:

3112 (a) shall remand the matter to the protest officer, to cure the problem or render a new  
 3113 decision;

3114 (b) may recommend action that the protest officer should take; and

3115 (c) may not order that:

3116 (i) a contract be awarded to a certain person;

3117 (ii) a contract or solicitation be cancelled; or

3118 (iii) any other action be taken other than the action described in Subsection [(7)] (8)(a).

3119 [(8)] (9) The [~~Procurement Policy Board~~] board shall make rules relating to the  
 3120 conduct of an appeals proceeding, including rules that provide for:

3121 (a) expedited proceedings; and

3122 (b) electronic participation in the proceedings by panel members and participants.

3123 [(9)] (10) The Rules of Evidence do not apply to an appeals proceeding.

3124 Section 71. Section **63G-6a-1703 (Effective 05/01/13)** is amended to read:

3125 **63G-6a-1703 (Effective 05/01/13). Requirement to post a security deposit or bond**

3126 **-- Exceptions -- Forfeiture of security deposit or bond.**

3127 (1) Except as provided by rule made under Subsection (2)(a), a person who files an

3128 appeal under Section 63G-6a-1702 shall, at the time that the appeal is filed, pay a security  
3129 deposit or post a bond with the protest officer in an amount that is the greater of:

- 3130 (a) for the appeal of a debarment or suspension, \$1,000;
- 3131 (b) for any type of procurement, \$1,000;
- 3132 (c) for an invitation for bids, 5% of:
  - 3133 (i) the lowest bid amount, if the bid opening has occurred; or
  - 3134 (ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the  
3135 bid opening has not yet occurred;
- 3136 (d) for a request for proposals, 5% of:
  - 3137 (i) the lowest cost proposed in a response to a request for proposals, if the opening of  
3138 proposals has occurred; or
  - 3139 (ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the  
3140 opening of proposals has not occurred; or
- 3141 (e) for a type of procurement other than an invitation for bids or a request for  
3142 proposals, the amount established in accordance with Subsection (2).

3143 (2) The [~~Procurement Policy Board~~] board shall make rules, in accordance with Title  
3144 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish:

- 3145 (a) circumstances and procedures under which the requirement for paying a security  
3146 deposit or posting a bond may be waived or reduced on grounds, including:
  - 3147 (i) that the person filing the appeal is impecunious;
  - 3148 (ii) circumstances where certain small purchases are involved; or
  - 3149 (iii) other grounds determined by the Division of Purchasing and General Services to  
3150 be appropriate; and
- 3151 (b) the method used to determine:
  - 3152 (i) the estimated contract cost described in Subsections (1)(c)(ii) and (1)(d)(ii); and
  - 3153 (ii) the amount described in Subsection (1)(e).

3154 (3) The chair of the [~~Procurement Policy Board~~] board shall [~~a~~] dismiss a protest filed  
3155 under Section 63G-6a-1702 if the actual or prospective bidder, offeror, or contractor fails to  
3156 timely pay the security deposit or post the bond required under Subsection (1).

- 3157 (4) The chair of the [~~Procurement Policy Board~~] board shall:
  - 3158 (a) retain the security deposit or bond until the protest and any appeal of the protest

3159 decision is final;

3160 (b) as it relates to a security deposit:

3161 (i) deposit the security deposit into an interest-bearing account; and

3162 (ii) after any appeal of the protest decision becomes final, return the security deposit

3163 and the interest it accrues to the person who paid the security deposit, unless the security

3164 deposit is forfeited to the General Fund under Subsection (5); and

3165 (c) as it relates to a bond:

3166 (i) retain the bond until the protest and any appeal of the protest decision becomes

3167 final; and

3168 (ii) after the protest and any appeal of the protest decision becomes final, return the

3169 bond to the person who posted the bond, unless the bond is forfeited to the General Fund under

3170 Subsection (5).

3171 (5) A security deposit that is paid, or a bond that is posted, under this section shall

3172 forfeit to the General Fund if:

3173 (a) the person who paid the security deposit or posted the bond fails to ultimately

3174 prevail on appeal; and

3175 (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its

3176 primary purpose is to harass or cause a delay.

3177 Section 72. Section **63G-6a-1704 (Effective 05/01/13)** is amended to read:

3178 **63G-6a-1704 (Effective 05/01/13). Discontinued appeal with prejudice, except as**

3179 **authorized.**

3180 After notice of an appeal to the [~~procurement policy~~] board is filed under Section

3181 63G-6a-1702, no party may discontinue the appeal without prejudice, except as authorized by

3182 the procurement appeals panel appointed for the appeal.

3183 Section 73. Section **63G-6a-1802 (Effective 05/01/13)** is amended to read:

3184 **63G-6a-1802 (Effective 05/01/13). Appeal to Utah Court of Appeals --**

3185 **Jurisdiction of district court.**

3186 (1) (a) Subject to Subsection (2), a person who receives an adverse decision, or [~~the~~

3187 ~~state~~] a procurement unit, may appeal a decision of a procurement appeals panel to the Utah

3188 Court of Appeals within seven days after the day on which the decision is issued.

3189 (b) A person who receives an adverse decision in a protest relating to a legislative

3190 procurement unit, a judicial procurement unit, or a local government procurement unit may  
 3191 appeal the decision to the Utah Court of Appeals within seven days after the day on which the  
 3192 decision is issued.

3193 (2) [~~An agency in the state executive branch or a local public~~] A procurement unit may  
 3194 not appeal the decision of a procurement appeals panel, unless the appeal is:

3195 (a) recommended by the protest officer involved; and

3196 (b) except for a [~~local public~~] procurement unit that is not represented by the attorney  
 3197 general's office, approved by the attorney general.

3198 (3) The Utah Court of Appeals:

3199 (a) shall consider the appeal as an appellate court;

3200 (b) may not hear the matter as a trial de novo; and

3201 (c) may not overturn a finding or decision of the protest officer or a procurement  
 3202 appeals panel, unless the finding or decision is arbitrary and capricious or clearly erroneous.

3203 (4) The Utah Court of Appeals is encouraged to:

3204 (a) give an appeal made under Subsection (1) priority; and

3205 (b) consider the appeal and render a decision in an expeditious manner.

3206 (5) The district court shall have original jurisdiction in a cause of action between a  
 3207 contractor and [~~the state~~] a procurement unit for any cause of action that arises under, or in  
 3208 relation to, an existing contract between the contractor and [~~the state~~] a procurement unit.

3209 Section 74. Section **63G-6a-1902 (Effective 05/01/13)** is amended to read:

3210 **63G-6a-1902 (Effective 05/01/13). Requirement to exhaust administrative**  
 3211 **remedies -- Protests and appeals.**

3212 (1) A person may not challenge a procurement, a procurement process, the award of a  
 3213 contract relating to a procurement, a debarment, or a suspension, in a court, before an  
 3214 administrative officer or body, or in any other forum other than the forum permitted in this  
 3215 chapter.

3216 (2) A person who desires to challenge a procurement, a procurement process, the award  
 3217 of a contract relating to a procurement, a debarment, or a suspension, shall bring the challenge,  
 3218 in accordance with the requirements of this chapter, by timely filing:

3219 (a) a protest in accordance with Section 63G-6a-1602;

3220 (b) any appeal of the protest decision involving a procurement unit, other than a

3221 legislative procurement unit, a judicial procurement unit, or a local government procurement  
 3222 unit, in accordance with Section 63G-6a-1702; and

3223 (c) any appeal from a procurement appeals panel, or from a protest decision of a  
 3224 legislative procurement unit, a judicial procurement unit, or a local government procurement  
 3225 unit, in accordance with Section 63G-6a-1802.

3226 (3) A person who files a protest or appeal under this chapter is limited to protesting or  
 3227 appealing on the grounds specified in the filing document described in Subsection  
 3228 63G-6a-1602.

3229 (4) In hearing a protest or an appeal under this chapter relating to an expenditure of  
 3230 federal assistance, federal contract funds, or a federal grant, the person who hears the appeal  
 3231 shall ensure compliance with federal law and regulations relating to the expenditure.

3232 Section 75. Section **63G-6a-1903 (Effective 05/01/13)** is amended to read:

3233 **63G-6a-1903 (Effective 05/01/13). Effect of timely protest or appeal.**

3234 In the event of a timely protest under Subsection 63G-6a-1602(1), or a timely appeal of  
 3235 the protest under Section 63G-6a-1702 or 63G-6a-1802, a [~~state executive branch agency or a~~  
 3236 ~~local public~~] procurement unit, other than a legislative procurement unit, a judicial  
 3237 procurement unit, or a local government procurement unit, may not proceed further with the  
 3238 solicitation or with the award of the contract until:

3239 (1) all administrative and judicial remedies are exhausted;

3240 (2) for a protest under Section 63G-6a-1602 or an appeal under Section 63G-6a-1702:

3241 (a) the chief procurement officer, after consultation with the attorney general's office  
 3242 and the head of the using agency, makes a written determination that award of the contract  
 3243 without delay is necessary to protect substantial interests of the state;

3244 (b) the head of the purchasing agency, after consultation with the attorney general's  
 3245 office, makes a written determination that award of the contract without delay is necessary to  
 3246 protect substantial interests of the state; or

3247 (c) for a [~~local public~~] procurement unit that is not represented by the attorney general's  
 3248 office, the [~~local public~~] procurement unit, after consulting with the attorney for the [~~local~~  
 3249 ~~public~~] procurement unit, makes a written determination that award of the contract without  
 3250 delay is necessary to protect substantial interests of the [~~local public~~] procurement unit; or

3251 (3) for an appeal under Section 63G-6a-1802, or an appeal to a higher court than

3252 district court:

3253 (a) the chief procurement officer, after consultation with the attorney general's office  
3254 and the head of the using agency, makes a written determination that award of the contract  
3255 without delay is in the best interest of the state;

3256 (b) the head of the purchasing agency, after consultation with the attorney general's  
3257 office, makes a written determination that award of the contract without delay is in the best  
3258 interest of the state; or

3259 (c) for a [~~local~~public] procurement unit that is not represented by the attorney general's  
3260 office, the [~~local~~public] procurement unit, after consulting with the attorney for the [~~local~~  
3261 public] procurement unit, makes a written determination that award of the contract without  
3262 delay is necessary to protect the best interest of the [~~local~~public] procurement unit.

3263 Section 76. Section **63G-6a-1904 (Effective 05/01/13)** is amended to read:

3264 **63G-6a-1904 (Effective 05/01/13). Costs to or against protestor.**

3265 (1) When a protest is sustained administratively or upon administrative or judicial  
3266 review and the protesting bidder or offeror should have been awarded the contract under the  
3267 solicitation but is not, the protestor shall be entitled to the following relief as a claim against  
3268 the state:

3269 (a) the reasonable costs incurred in connection with the solicitation, including bid  
3270 preparation and appeal costs; and

3271 (b) any equitable relief determined to be appropriate by the reviewing administrative or  
3272 judicial body.

3273 (2) When a protest is not sustained by a procurement appeals panel, the protestor shall  
3274 reimburse the [~~public~~] issuing procurement unit for expenses incurred in defending the appeal,  
3275 including personnel costs, attorney fees, other legal costs, expenses incurred by the attorney  
3276 general's office, the per diem and expenses paid by the [~~public~~] issuing procurement unit to  
3277 witnesses or appeals panel members, and any additional expenses incurred by the staff of the  
3278 [~~public~~] issuing procurement unit who have provided materials and administrative services to  
3279 the procurement appeals panel for that case.

3280 (3) The provisions of Title 63G, Chapter 7, Part 4, Notice of Claim Against a  
3281 Governmental Entity or a Government Employee, and Section 63G-7-601 do not apply to  
3282 actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs

3283 incurred in preparing or appealing an unsuccessful bid or offer.

3284 Section 77. Section **63G-6a-1905 (Effective 05/01/13)** is amended to read:

3285 **63G-6a-1905 (Effective 05/01/13). Authority to resolve controversy between state**  
3286 **and contractor.**

3287 A protest officer, or the protest officer's designee, is authorized, before commencement  
3288 of an action in court concerning a controversy that arises between [~~the state~~] a procurement unit  
3289 and a contractor in relation to an existing contract between the [~~state~~] procurement unit and the  
3290 contractor, including controversies based upon breach of contract, mistake, misrepresentation,  
3291 or other cause for contract modification or rescission, to settle and resolve the controversy.

3292 Section 78. Section **63G-6a-1910 (Effective 05/01/13)** is amended to read:

3293 **63G-6a-1910 (Effective 05/01/13). Interest rates.**

3294 (1) [~~Except as provided in Subsection (2), in~~] In controversies between the state and  
3295 contractors under this chapter, interest on amounts ultimately determined to be due to a  
3296 contractor or the state are payable at the rate applicable to judgments from the date the claim  
3297 arose through the date of decision or judgment, whichever is later.

3298 (2) Unless otherwise specified in a lawful contract between a procurement unit and the  
3299 person making a bond claim against the procurement unit, the interest rate applicable to the  
3300 bond claim is the rate described in Subsection 15-1-1(2).

3301 [~~(2)~~] (3) This section does not apply to public assistance benefits programs.

3302 Section 79. Section **63G-6a-2002 (Effective 05/01/13)** is amended to read:

3303 **63G-6a-2002 (Effective 05/01/13). Records -- Retention.**

3304 (1) All procurement records shall be retained and disposed of in accordance with Title  
3305 63G, Chapter 2, Government Records Access and Management Act.

3306 (2) Written determinations required by this chapter shall be retained in the appropriate  
3307 official contract file of:

3308 (a) the division;

3309 (b) the [~~state purchasing unit~~] procurement unit with independent procurement  
3310 authority; or

3311 (c) for a [~~non-executive state procurement unit~~] legislative procurement unit or a  
3312 judicial procurement unit, the person designated by rule made by the applicable rulemaking  
3313 authority.

3314 (3) A [public] procurement unit shall keep, and make available to the public, upon  
3315 request, [a] written [~~record of all~~] records of procurements [~~made under this section~~] for which  
3316 an expenditure of \$50 or more is made, for the longer of:

- 3317 (a) four years;  
3318 (b) the time otherwise required by law; or  
3319 (c) the time period provided by rule made by the applicable rulemaking authority.

3320 (4) The written record described in Subsection (3) shall include:

- 3321 (a) the name of the provider from whom the procurement was made;  
3322 (b) a description of the procurement item;  
3323 (c) the date of the procurement; and  
3324 (d) the expenditure made for the procurement.

3325 Section 80. Section **63G-6a-2003 (Effective 05/01/13)** is amended to read:

3326 **63G-6a-2003 (Effective 05/01/13). Records of contracts made -- Audits --**  
3327 **Contract requirements.**

3328 The procurement officer or the head of [~~an authorized purchasing entity~~] a procurement  
3329 unit with independent procurement authority shall maintain a record [~~listing~~] of all contracts  
3330 made under Section 63G-6a-408, 63G-6a-802, or 63G-6a-803, in accordance with Title 63G,  
3331 Chapter 2, Government Records Access and Management Act. The record shall contain each  
3332 contractor's name, the amount and type of each contract, and a listing of the procurement items  
3333 to which the contract relates.

3334 Section 81. Section **63G-6a-2004 (Effective 05/01/13)** is amended to read:

3335 **63G-6a-2004 (Effective 05/01/13). Chief procurement officer's collection of**  
3336 **information on procurement items.**

3337 (1) To the extent possible, the chief procurement officer may collect information  
3338 concerning the type, cost, quality, and quantity of commonly used procurement items procured  
3339 or used by [public] procurement units.

3340 (2) The chief procurement officer may make the information described in Subsection  
3341 (1) available to any [public] procurement unit upon request.

3342 Section 82. Section **63G-6a-2101 (Effective 05/01/13)** is amended to read:

3343 **Part 21. Interaction Between Procurement Units**

3344 **63G-6a-2101 (Effective 05/01/13). Title.**

3345 This part is known as "Interaction Between [Public] Procurement Units."

3346 Section 83. Section **63G-6a-2102 (Effective 05/01/13)** is amended to read:

3347 **63G-6a-2102 (Effective 05/01/13). Agreements between procurement units.**

3348 [~~(1) For purposes of this section only, "public procurement unit" includes an external~~  
3349 ~~procurement unit.~~]

3350 [~~(2)~~] A [public] procurement unit may enter into an agreement with one or more other  
3351 [public] procurement units to:

3352 [~~(a)~~] (1) sponsor, conduct, or administer a cooperative agreement for:

3353 (a) the procurement [~~or disposal~~] of a procurement item[;], in accordance with the  
3354 requirements of Section 63G-6a-2105; or

3355 (b) the disposal of a procurement item;

3356 [~~(b)~~] (2) cooperatively use a procurement item;

3357 [~~(c)~~] (3) commonly use or share warehousing facilities, capital equipment, and other  
3358 facilities;

3359 [~~(d)~~] (4) provide personnel, if the receiving [public] procurement unit pays the [public]  
3360 procurement unit providing the personnel the direct and indirect cost of providing the

3361 personnel, in accordance with the agreement; or

3362 [~~(e)~~] (5) make available informational, technical, and other services, if:

3363 [~~(i)~~] (a) the requirements of the [public] procurement unit tendering the services have  
3364 precedence over the [public] procurement unit that receives the services; and

3365 [~~(ii)~~] (b) the receiving [public] procurement unit pays the expenses of the services  
3366 provided, in accordance with the agreement.

3367 [~~(3) If a public procurement unit does not have the expertise necessary to administer a~~  
3368 ~~particular procurement, the public procurement unit may enter into an agreement for~~  
3369 ~~administration of the procurement with:~~]

3370 [~~(a) another public procurement unit; or~~]

3371 [~~(b) a person that is under contract to administer procurements.~~]

3372 Section 84. Section **63G-6a-2103 (Effective 05/01/13)** is amended to read:

3373 **63G-6a-2103 (Effective 05/01/13). Services between procurement units.**

3374 (1) Upon request, a [public] procurement unit may make services available to another  
3375 [public] procurement unit, including:

- 3376 (a) standard forms;
- 3377 (b) printed manuals;
- 3378 (c) qualified products lists;
- 3379 (d) source information;
- 3380 (e) common use commodities listings;
- 3381 (f) supplier prequalification information;
- 3382 (g) supplier performance ratings;
- 3383 (h) debarred and suspended bidders lists;
- 3384 (i) forms for invitation for bids, requests for proposals, instructions to bidders, general
- 3385 contract provisions, and contract forms; or
- 3386 (j) contracts or published summaries of contracts, including price and time of delivery
- 3387 information.

3388 (2) A [public] procurement unit may provide technical services to another [public]

3389 procurement unit, including:

- 3390 (a) development of specifications;
- 3391 (b) development of quality assurance test methods, including receiving, inspection, and
- 3392 acceptance procedures;
- 3393 (c) use of testing and inspection facilities; or
- 3394 (d) use of personnel training programs.

3395 (3) [~~Public procurement~~] Procurement units may enter into contractual arrangements

3396 and publish a schedule of fees for the services provided under Subsections (1) and (2).

3397 Section 85. Section **63G-6a-2104 (Effective 05/01/13)** is amended to read:

3398 **63G-6a-2104 (Effective 05/01/13). Compliance by one procurement unit pursuant**

3399 **to agreement considered compliance by others to agreement.**

3400 (1) When a [public] procurement unit that administers a cooperative [purchase]

3401 procurement complies with the requirements of this chapter, any [public] procurement unit

3402 participating in the purchase is considered to have complied with this chapter.

3403 (2) A [public] procurement unit may not enter into a cooperative [purchasing]

3404 procurement agreement for the purpose of circumventing this chapter.

3405 Section 86. Section **63G-6a-2105 (Effective 05/01/13)** is amended to read:

3406 **63G-6a-2105 (Effective 05/01/13). Participation of a public entity or a**

3407 **procurement unit in agreements or contracts of procurement units -- Cooperative**  
 3408 **purchasing -- State cooperative contracts.**

3409 ~~[(1) A Utah county or municipality may purchase under or otherwise participate in an~~  
 3410 ~~agreement or contract of a Utah public procurement unit.]~~

3411 (1) The chief procurement officer may, in accordance with the requirements of this  
 3412 chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a  
 3413 cooperative procurement, with:

3414 (a) another state;

3415 (b) an external procurement unit; or

3416 (c) a public entity in Utah or outside of Utah.

3417 (2) A public entity may obtain a procurement item from a state cooperative contract or  
 3418 a contract awarded by the chief procurement officer under Subsection (1), without signing a  
 3419 participating addendum if the quote, invitation for bids, or request for proposals used to obtain  
 3420 the contract includes a statement indicating that the resulting contract will be issued on behalf  
 3421 of a public entity in Utah.

3422 (3) Except as provided in Section 63G-6a-408, or as otherwise provided in this chapter,  
 3423 an executive branch procurement unit may not obtain a procurement item from a source other  
 3424 than a state cooperative contract or a contract awarded by the chief procurement officer under  
 3425 Subsection (1), if the procurement item is available under a state cooperative contract or a  
 3426 contract awarded by the chief procurement officer under Subsection (1).

3427 ~~[(2)]~~ (4) A [state purchasing unit or a] Utah [public] procurement unit may:

3428 (a) contract with the federal government without going through a standard procurement  
 3429 process or an exception to a standard procurement process[;], described in Part 8, Exceptions to  
 3430 Procurement Requirements, if the procurement item obtained under the contract is provided:

3431 (i) directly by the federal government and not by a person contracting with the federal  
 3432 government; or

3433 (ii) by a person under contract with the federal government that obtained the contract in  
 3434 a manner that substantially complies with the provisions of this chapter;

3435 ~~[(b) purchase under, or otherwise participate in, an agreement or contract of another~~  
 3436 ~~Utah public procurement unit; or]~~

3437 (b) participate in, sponsor, conduct, or administer a cooperative procurement with

3438 another Utah procurement unit or another public entity in Utah, if:

3439 (i) each party unit involved in the cooperative procurement enters into an agreement  
3440 describing the rights and duties of each party;

3441 (ii) the procurement is conducted, and the contract awarded, in accordance with the  
3442 requirements of this chapter;

3443 (iii) the request for quotes, the invitation for bids, or the request for proposals:

3444 (A) clearly indicates that the procurement is a cooperative procurement; and

3445 (B) identifies each party that may purchase under the resulting contract; and

3446 (iv) each party involved in the cooperative procurement signs a participating addendum  
3447 describing its rights and obligations in relation to the resulting contract; or

3448 (c) purchase under, or otherwise participate in, an agreement or contract of an external  
3449 [public] procurement unit, if:

3450 (i) each party involved in the cooperative procurement enters into an agreement  
3451 describing the rights and duties of each party;

3452 [(+) (ii) the procurement was conducted in accordance with the requirements of this  
3453 chapter; [and]

3454 [(ii) the Utah participating addendum to the contract contains the terms and conditions  
3455 required by the applicable rulemaking authority that enters into the Utah participating  
3456 addendum.]

3457 [(3) A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public  
3458 Transit District Act, may, without going through a procurement process or an exception to a  
3459 procurement process, contract with a county or municipality to receive money from the county  
3460 or municipality to fund a transportation project.]

3461 (iii) the request for quotes, the invitation for bids, or the request for proposals:

3462 (A) clearly indicates that the procurement is a cooperative procurement; and

3463 (B) identifies each party that may purchase under the resulting contract; and

3464 (iv) each party involved in the cooperative procurement signs a participating addendum  
3465 describing its rights and obligations in relation to the resulting contract.

3466 (5) A procurement unit may not obtain a procurement item under a contract that results  
3467 from a cooperative procurement described in Subsection (4), if the procurement unit:

3468 (a) is not identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); or

3469 (b) does not sign a participating addendum to the contract as required by this section.  
3470 (6) A procurement unit, other than a legislative procurement unit or a judicial  
3471 procurement unit, may not obtain a procurement item under a contract held by the United  
3472 States General Services Administration, unless, based upon documentation provided by the  
3473 procurement unit, the Director of the State Division of Purchasing and General Services  
3474 determines in writing that the United States General Services Administration procured the  
3475 contract in a manner that substantially complies with the provisions of this chapter.

3476 Section 87. Section **63G-6a-2302 (Effective 05/01/13)** is amended to read:

3477 **63G-6a-2302 (Effective 05/01/13). Factual information to attorney general if**  
3478 **unlawful or anticompetitive practices suspected.**

3479 If a [public] procurement unit suspects a person of violating Section 63G-6a-2304.5,  
3480 collusion, or other anticompetitive practices [among bidders or offerors] relating to a  
3481 procurement or a potential procurement, the [public] procurement unit shall transmit a notice  
3482 of the relevant facts to the attorney general.

3483 Section 88. Section **63G-6a-2304.5** is enacted to read:

3484 **63G-6a-2304.5. Gratuities -- Kickbacks -- Unlawful use of position or influence.**

3485 (1) As used in this section:

3486 (a) "Contract administrator" means a person who administers a current contract, on  
3487 behalf of a public entity, including:

3488 (i) making payments relating to the contract;

3489 (ii) ensuring compliance with the contract;

3490 (iii) auditing a contractor in relation to the contract; or

3491 (iv) enforcing the contract.

3492 (b) "Gratuity" means anything of value, including:

3493 (i) money;

3494 (ii) a loan at an interest rate below the market rate or with terms that are more  
3495 advantageous to the person receiving the loan than terms offered generally on the market;

3496 (iii) an award;

3497 (iv) employment;

3498 (v) admission to an event;

3499 (vi) a meal;

- 3500 (vii) lodging;  
3501 (viii) travel; or  
3502 (ix) entertainment for which a charge is normally made.
- 3503 (c) "Family member" means a parent, stepparent, spouse, sibling, stepsibling, child,  
3504 stepchild, foster child, father-in-law, mother-in-law, brother-in-law, sister-in-law, grandparent,  
3505 great-grandparents, grandchild, great-grandchild, aunt, uncle, niece, nephew, or first cousin.
- 3506 (d) (i) "Hospitality gift" means a promotional or hospitality item, including, a pen,  
3507 pencil, stationery, toy, pin, trinket, snack, nonalcoholic beverage, or appetizer.
- 3508 (ii) "Hospitality gift" does not include money, a meal, a ticket, admittance to an event,  
3509 entertainment for which a charge is normally made, travel, or lodging.
- 3510 (e) "Interested person" means a person who is interested in any way in the sale of a  
3511 procurement item or insurance to a public entity.
- 3512 (f) "Kickback" means a gratuity given in exchange for favorable treatment in a pending  
3513 procurement or the administration of a contract.
- 3514 (g) "Pending procurement" means a procurement at any stage, including:
- 3515 (i) preparing to engage in a standard procurement process, including preparing  
3516 documents that will be used in the standard procurement process;
- 3517 (ii) engaging in a standard procurement process;
- 3518 (iii) evaluating, or making a recommendation regarding, a quote, a bid, or a response;  
3519 and
- 3520 (iv) awarding a contract or otherwise making a decision to obtain a procurement item  
3521 from a particular person.
- 3522 (h) "Procurement participant" means a person involved in:
- 3523 (i) preparing for, administering, or conducting a standard procurement process;
- 3524 (ii) making a recommendation regarding award of a contract or regarding a decision to  
3525 obtain a procurement item for a particular person;
- 3526 (iii) evaluating a quote, a bid, or a response; or
- 3527 (iv) awarding a contract or otherwise making a decision to obtain a procurement item  
3528 from a particular person.
- 3529 (2) Nothing in this section exempts a person subject to the provisions of Title 67,  
3530 Chapter 16, Utah Public Officers' and Employees Ethics Act, from complying with the

3531 provisions of the Utah Public Officers' and Employees Ethics Act.

3532 (3) (a) Except as provided in Subsection (6) or (7), it is unlawful for an interested  
3533 person to give, offer, or promise to give a gratuity to:

3534 (i) a procurement participant; or

3535 (ii) an individual who the person knows, or should have known, is an immediate family  
3536 member of a procurement participant.

3537 (b) Except as provided in Subsection (6) or (7), it is unlawful for a procurement  
3538 participant to ask, receive, offer to receive, accept, or ask for a promise to receive a gratuity  
3539 from an interested person.

3540 (c) Except as provided in Subsection (6) or (7), it is unlawful for a contractor to give a  
3541 gratuity to:

3542 (i) a contract administrator of the contractor's contract; or

3543 (ii) an individual who the contractor knows, or should have known, is an immediate  
3544 family member of a contract administrator of the contractor's contract.

3545 (d) Except as provided in Subsection (6) or (7), it is unlawful for a person who is a  
3546 contract administrator of a contract to ask, receive, offer to receive, accept, or ask for a promise  
3547 to receive, for the contract administrator or a family member of the contract administrator, a  
3548 gratuity from the contractor for that contract.

3549 (4) (a) It is unlawful for a person to give, offer, or promise to give a kickback to a  
3550 procurement participant or to another person for the benefit of a procurement participant.

3551 (b) It is unlawful for a procurement participant to ask, receive, offer to receive, accept,  
3552 or ask for a promise to receive a kickback for the procurement participant or for another  
3553 person.

3554 (c) It is unlawful for a person to give a kickback to a contract administrator, or to  
3555 another person for the benefit of a contract administrator.

3556 (d) It is unlawful for a contract administrator to ask, receive, offer to receive, accept, or  
3557 ask for a promise to receive a kickback for the contract administrator or for another person.

3558 (5) It is unlawful for a procurement participant to use the procurement participant's  
3559 position or influence to obtain a personal benefit for the procurement participant, or for a  
3560 family member of the procurement participant, from an interested person.

3561 (6) A person is not guilty of a violation of Subsection (3) for giving, offering,

3562 promising to give, receiving, or accepting a hospitality gift if:

3563 (a) as it relates to a procurement participant:

3564 (i) the total value of all hospitality gifts given, offered, or promised to, or received or  
3565 accepted by, a procurement participant in relation to a particular procurement is less than \$10;  
3566 and

3567 (ii) the total value of all hospitality gifts given, offered, or promised to, or received or  
3568 accepted by, a procurement participant from any one person, vendor, bidder, or responder in a  
3569 calendar year is less than \$50; or

3570 (b) as it relates to a contract administrator, the total value of all hospitality gifts given,  
3571 offered, or promised to, or received or accepted by, a contract administrator from any one  
3572 person or contractor in a calendar year is less than \$50.

3573 (7) (a) A person is not guilty of a violation of this section for giving, offering, or  
3574 promising a philanthropic donation to a public entity, unless the donation is given, offered, or  
3575 promised with the intent to induce a person to make a procurement decision, or to take action  
3576 in relation to the administration of a contract, in reciprocation for the donation.

3577 (b) A person is not guilty of a violation of this section for receiving or accepting a  
3578 philanthropic donation on behalf of a public entity, unless the person accepts or receives the  
3579 donation in exchange for making a procurement decision, or for taking action in relation to the  
3580 administration of a contract, in reciprocation for the donation.

3581 (c) A person is not guilty of a violation of this section if the person gives, offers, or  
3582 makes a pledge, in the form of a philanthropic donation, to an organization to which a  
3583 procurement participant or contract administrator belongs, unless the philanthropic donation is  
3584 given, offered, or pledged with the intent to induce a person to make a procurement decision, or  
3585 to take action in relation to the administration of a contract, in reciprocation for the donation.

3586 (8) A person who violates this section is guilty of:

3587 (a) a felony of the second degree if the total value of the gratuity or kickback is \$1,000  
3588 or more;

3589 (b) a felony of the third degree if the total value of the gratuity or kickback is \$250 or  
3590 more, but less than \$1,000;

3591 (c) a class A misdemeanor if the total value of the gratuity or kickback is \$100 or more,  
3592 but less than \$250; or

3593            (d) a class B misdemeanor if the total value of the gratuity or kickback is less than  
3594 \$100.  
3595            Section 89. **Repealer.**  
3596            This bill repeals:  
3597            Section **63G-6-506.5, Interest rate for bond claim.**  
3598            Section **63G-6a-1908 (Effective 05/01/13), Resolution of local public procurement**  
3599 **controversies.**  
3600            Section **63G-6a-2201 (Effective 05/01/13), Title.**  
3601            Section **63G-6a-2202 (Effective 05/01/13), Ethical requirements for public**  
3602 **procurement.**  
3603            Section **63G-6a-2303 (Effective 05/01/13), Offering a gratuity.**  
3604            Section **63G-6a-2304 (Effective 05/01/13), Accepting or requesting a gratuity.**  
3605            Section 90. **Effective date.**  
3606            If approved by two-thirds of all members elected to each house, this bill takes effect on  
3607 May 1, 2013.

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**Legislative Review Note**  
as of 2-11-13 4:08 PM

**Office of Legislative Research and General Counsel**